



**IN THE SUPREME COURT OF NAURU**

**AT YAREN**

[CIVIL JURISDICTION]

Civil Suit No. 35 of 2016

Between **ALICE DEIRANAUW and Others** Plaintiff

and

**DITTO DANNANG and Others** Defendant

Before: Crulci, J.  
Plaintiff: V. Clodumar  
Defendant: P. N. Ekwona

Date of Hearing: 5 September 2017

Date of Decision: 19 October 2017

**CATCHWORDS**

**CIVIL** – *Nauru Housing Ordinance 1957* – *Nauru Housing Scheme* – *Nauru Local Government Council* – *Tenancy Agreements* — *Nauru Lands Committee Act 1956*

**JUDGMENT**

**BACKGROUND**

1. This action was commenced by an *ex parte* summons for an interim injunction, filed on the 9 May 2016 together with the Plaintiffs' Statement

of Claim. The matter proceeded before the then Registrar (now Chief Justice), in April 2017 after a motion was filed for its consideration. The Plaintiffs sought to restrain the Defendants from further construction of a dwelling on land Portion 92, called 'Ostinawu'<sup>1</sup> in the Anetan District.

2. The decision by the Chief Justice on the interim injunction was handed down on the 16 June 2017, and he held that the balance of convenience lay with the Plaintiffs and granted orders *inter alia* to prevent, "*That the respondents, agents, servants, and whatsoever be and are hereby restrained and/or stopped from continuing to build a house or re-build a house on land Portion 92 Anetan District, until the matter is decided by the court.*"

#### *Matters not in dispute*

3. Coconut land portion 92 in the Anetan District was determined by the Nauru Lands Committee ("the NLC") following the passing of Ebwade<sup>2</sup>, the Plaintiffs' forebear and published in Government Gazette No. 50, 13 December 1958.
4. Government Gazette notice No. 53, 4 December 1972 lists the owners of the portion as holding ¼ share each as: Lawrence Ebwade Stephen; Lilva Ebwade Stephen; May Patrick Cook<sup>3</sup>; and Pamela Nabwit-Tamakin. The plaintiff Alice Deiranawu is the daughter of Lilva Ebwade Stephen. The other three siblings who inherited a ¼ share are deceased and their interests are represented by their children who are the other Plaintiffs.
5. A house was previously erected in the 1950s on Portion 92, the land belonging to the Plaintiffs and this house was occupied by the grandfather of the Defendants (Dannag Ditto). The tenancy of the house was subject to the Nauruan Housing Ordinance ("NHO").
6. In 2014 the house occupied by the Defendants' family, on Portion 92, was completely destroyed by fire.
7. In 2015 the Defendants commenced building a house on the land upon the foundations of the previous house. The building work ceased as the company engaged in construction encountered business difficulties.
8. Counsels for both parties have filed written submissions.

#### *Matters in issue*

9. The Plaintiffs say that:
  - (a) the Defendants have no legal right to (re)build a house on their land without majority landowner support;

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<sup>1</sup> Also referred to as 'Ostinuwo'.

<sup>2</sup> Also known as Harold Stephens.

<sup>3</sup> Also referred to as 'Edinaue'.

- (b) any use of the land in question must be with the consent of the landowners;
- (c) the expenditure outlaid to date by the Defendants to build a house on the foundations will be repaid by the Plaintiffs;
- (d) previous decisions of the Supreme Court indicate that tenants do not acquire rights to land usage and determination due to the passage of time under Nauruan law.

10. The Defendants say that:

- (a) the house was in fact on their family land and the determination of the land boundaries owned by the Plaintiffs and Defendants' forebears is incorrect;
- (b) the house and land in question have been under the control of their family for three generations, without interference from the Plaintiffs, and in accordance with Nauruan custom they assert the doctrine of laches and adverse possession;
- (c) as the previous arrangement of the Nauru Local Government Council ("NLGC") lapsed and the Plaintiffs did not assert their rights over the land, the Court should bar the Plaintiffs from proceedings against the Defendants.

*Relief sought:*

11. Counsel for the Plaintiffs seek:

- (a) A declaration that the Plaintiffs are the owners of Portion 92, land known as "Otsinuwo" in the Anetan District;
- (b) A declaration that the partial built house of Portion 92 Anetan District is a fixture to the land and is now the property of the landowners;
- (c) A declaration that type 1 house prior to its being destroyed by the fire was a fixture to the land and therefore was owned by the landowners after the repeal of the NHO and NLGC ordinance; and
- (d) A declaration that the part of the land where the type 1 house was built has reverted to the landowners following the destruction of the house by fire in 2014 and therefore the whole of the land known as Portion 92 has reverted to the Plaintiffs.

## GAZETTE NOTICES

12. Published in 1958 was a NLC decision in relation to determination of certain blocks of land, excerpt as follows:



Gazette No 50 of 13<sup>th</sup> December 1958  
COCONUT LANDS - ANETAN

Name of Block	Portion	B.P.C. No.	Gaz. No.	Former Owner	Share	Proposed Owner	Share
Otsinawo		-	42/58	Ebwade (dec'd)	All	Lilva Eidinuae Lawrence Pamela	¼ ¼ ¼ ¼
<p>Any person who can show any cause or reason why the shares in the lands should not be transferred as shown may lodge his or her objection with the Central Court on or before the 3<sup>rd</sup> January 1959 with regard to the distribution of the deceased estates only as all other matters have previously been finalized.</p> <p>Failing to the receipt of any objection within the specified time, shares will be transferred as stated above.</p> <p>Any other remaining lands owned by Ebwade (dec'd) to be shared equally between Lilva, Eidinuae, Lawrence and Pamela.</p> <p style="text-align: right;">JEREMIA SECRETARY</p> <p>13<sup>th</sup> December, 1958</p>							

5. In 1972, the following NLC decision was published in the Government Gazette:

Gazette No 53 of 4<sup>th</sup> December, 1972  
LAND DETERMINATION

District	Portion	C.L. P.L.	Name of Land	Ref	Former Owners	Shares	Present Owners in Equal Shares
Anetan	92	CL	Otsinawo	Gaz. 13/64	Lawrence E Lilva E. Eidienuae C. Pamela E.	¼ ¼ ¼ ¼	Lawrence Ebwade Stephen ¼ Lilva Edwade Stephen ¼ May Patrick Cook ¼ Pamela Nabwit-Tamakin 1/4
<p>Any person who wishes to appeal against these determinations must lodge his or her appeal with the Supreme Court Registry within 21 days of this gazette and no appeal may be commenced after that time.</p> <p>Dated this 14<sup>th</sup> day of November, 1972</p> <p style="text-align: right;">JEREMIA SECRETARY</p>							

**CONSIDERATIONS**

6. As has been previously stated by this Court, the ownership of land in Nauru is determined by the NLC established under the *Nauru Lands Committee Act 1956* (Nr).

## **6 Powers of Committee**

- (1) The Committee has power to determine questions as to the ownership of, or rights in respect of, land, being questions which arise:
    - (a) between Nauruans or Pacific Islanders; or
    - (b) between Nauruans and Pacific Islanders.
  - (2) (1A) The Committee has power to determine the distribution of the personal estate of deceased Nauruans.
7. The NLC decision is binding unless appealed to the Supreme Court within 21 days of the gazetting of the decision.<sup>4</sup>
8. The *Lands Act 1976* (Nr) stipulated purpose is as '*An Act to repeal the Lands Ordinance 1921-1968 and to make new provision for the leasing of land for the purposes of the phosphate industry and other public purposes, and for the removal of trees, crops, soil and sand and the payment of compensation and other moneys*'. It lays out quite clearly what the process is for land to be transferred, sold, leased or the grants of any estate or interest in land in Nauru:

### **3 Prohibition of certain transfers, etc., of land**

(1) Transfer inter vivos of the freehold of any land in Nauru to any person other than a Nauruan person is prohibited, and any such transfer or purported transfer, or any agreement to execute any such transfer, shall be absolutely void and of no effect.

(2) Any person who transfers, or agrees, attempts or purports to transfer, the freehold of any land in Nauru to any person other than a Nauruan person is guilty of an offence and is liable to imprisonment for six months.

(3) Any person who, without the consent in writing of the President, transfers, sells or leases, or grants any estate or interest in, any land in Nauru, or enters into any contract or agreement for the transfer, sale or lease of, or for the granting of any estate or interest in, any land in Nauru, is guilty of an offence and is liable to a fine of two hundred dollars.

(4) Any transfer, sale, lease, grant of an estate or interest, contract or agreement made or entered into in contravention of the last preceding subsection shall be absolutely void and of no effect.

(5) Any transfer, sale, lease, contract or agreement made or entered into in contravention of section 3 of the *Lands Ordinance 1921-1968* shall continue to be absolutely void and of no effect.

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<sup>4</sup> *Nauru Lands Committee Act 1956* (Nr) ss 6 and 7.



(6) For the purposes of this section the expression ‘*transfer inter vivos*’ includes transfer to a corporation or an unincorporated body of persons and the expression ‘*a Nauruan person*’ does not include a corporation or an unincorporated body of persons of whom some are not Nauruans.

9. Prior to the *Lands Act 1976* (Nr), in place of the consent in writing of the President, any land transfer required the consent in writing of the Administrator.
10. The procedure for transfer of land either upon the death of the previous owner or if it is to be given to another is set out in the *Lands Act 1976* Nr). In particular section 3 outlines the conditions governing the transfer of land from one Nauruan to another. Despite the statements in the Government Gazettes in relation to an appeal against the published decisions pertaining to land ownership, there is nothing before this Court to indicate that at any time prior to this case the Defendants contested the boundaries of Portion 92 with its neighbours.
11. Although the NLGC was responsible for the renovation and extension of houses in Nauru in the 1970s, the tenant did not by virtue of the tenancy, however long the occupation was, acquire the rights of a landowner over the land on which the house was situated, see *Narayan v Alona*<sup>5</sup>.
12. In *Robertson v Cain*<sup>6</sup> this Court considered the terms of the NHO and the rights and responsibilities of the tenants and landowners under the Ordinance:

“5. Section 7(1) NHO clarifies the ownership of the houses built under the Scheme: *“From the date of commencement of this Ordinance, the ownership of the dwelling-houses erected in pursuance of the Nauruan Housing Scheme is vested in the Council.”* (emphasis added)

6. Who owns the land on which the houses were built is clarified by section 8 NHO: *The land upon which a dwelling-house was erected under the Nauru Housing Scheme is vested in the person in whom it was vested immediately before the date of commencement of this Ordinance.*” (emphasis added)

7. However, ownership of the land on which the house is built does not extend to the house built on it, as per section 9 NHO: *“The dwelling-house shall be deemed to have been erected on the land with the consent of the owner on the basis that compensation at the rate specified in section eighteen of this Ordinance is paid, and the owner does not obtain, by reason only of the ownership of the land, any right, title or interest in the dwelling house.”*

<sup>5</sup> *Narayan v Alona* [2017] NRSC2.

<sup>6</sup> *Robertson v Cain* [2017] NRSC 68.

(emphasis added)”

13. Prior to the fire that completely destroyed the house on Portion 92, the Defendants were 3<sup>rd</sup> generation occupants of the house. However as there is no house to occupy subsequent to the fire, the Defendants do not have any rights of the land ‘Otsinuwo’. There is at this time, no ‘doctrine of adverse possession’ or ‘doctrine of laches’ in law in Nauru.<sup>7</sup>
14. In consideration of the above the Court rejects the submissions of the Defendant that a previously held tenancy of the house in question that was destroyed by fire somehow results in establishment of the ownership or a right to the land, such as to enable the Defendants to build a house on the foundations of the former dwelling.
15. This Court considered in the matter of *Deireragea v Kun*<sup>8</sup> what would constitute the requisite proportional permission of the landholders, by reference to the *Lands Act 1976* (Nr), where section 6 refers to a requirement of ‘*not less than three-fourths of the owners of the land*’ needing to give their permission in respect of granting of a lease or other licence. This Court determined that, as the basis for consolidating the legal requirement, three-fourths or 75% of the landowners need to agree in relation to land.
16. It is not necessary for the Court to repeat all that was said in the previously mentioned cases, suffice to restate that it is for Parliament to resolve the uncertainties in relation to the position of those who may be second or third generation tenants of houses previously erected under the NHO and formerly overseen by the NLGC.
17. However until such time that the situation is clarified it is imperative that those involved do not take the law into their own hands and maintain cordial relationships with each other and the community at large.

#### ORDER

18. The Plaintiffs claims are upheld and the following declarations are made:
  - (1) The Plaintiffs are the landowners of Portion 92 “Otsinuwo” in the Anetan District;
  - (2) The Defendants did not have a right, in the absence of majority landowner agreement, to commence to rebuild on Portion 92 “Otsinuwo” in the Anetan District;
  - (3) As the former dwelling on Portion 92 “Otsinuwo” in the Anetan District no longer exists, any rights that the Defendants may have

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<sup>7</sup> Ibid.

<sup>8</sup> *Deireragea v Kun* [2017] NRSC 35.



had to remain and live on the aforementioned land, are extinguished;

- (4) Should the parties be unable to reach a settlement in relation to the compensation by the Plaintiffs, to the Defendants, of the building costs incurred they have leave to bring the matter back before the Registrar.
- (5) Costs are awarded to the Plaintiffs (Costs to be taxed by the Registrar, if not agreed).



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JUDGE JANE CRULCI



Dated this 19<sup>th</sup> day of October 2017