THE SUPREME COURT OF NAURU

[CIVIL JURISDICTION] **Civil Suit No. 02 of 2018**

Between: Danelle Eobob & Ors

PLAINTIFFS

AND: May Peo

RESPONDENT

Before: Judge Rapi Vaai

APPEARANCES:

Appearing for the Plaintiff: J. Olsson

Appearing for the Respondent: V. Detenamo

Date of Hearing: 19th – 20th September 2018
Date of Submissions: 20th November 2018
Date of Judgment: 30th November 2018

Introduction

1. Land Portion 199 at Aiwo was leased to the British Phosphate Commissioners, (which later became the Nauru Phosphate Corporation,)

during the era of phosphate mining in Nauru. Four families own the land; they are Emweme, Erinka, Adimin and Derodeb.

2. Several buildings were constructed on theland by the phosphate company to accommodate its expatriate workers. These buildings are referred to in the pleadings as single quarters "(SQ)".

3. When the lease came to an end in the year 2000 there were eight SQs all of which were given to the landowners for their enjoyment. These are SQ 19, 20, 21, 22, 24, 25, 26, and 27.

The Plaintiff

4. The plaintiff Danelle Eobob is the widow of Dem –Titus Eobob ("Dem") one of the land owner of Land Portion 199.The other plaintiffs are the children of the plaintiff Danelle and Dem.

5. Dem was allocated SQ26 in 2001 by written consent of more than 75% of the landowners.The Nauru Phosphate Corporation also agreed and endorsed the consent of the landowners to give Dem SQ 26.

6. Dem died in 2017. Since 2001, he was not able to move into and was prevented by the defendant from moving into SQ 26.

The Defendant

7. The defendant is a 67 year old aunt of Dem. She was allocated and had occupied SQ27. She also occupied SQ 26, which is next door to SQ27.

8. On the 5th of April 2018 the Acting registrar issued an interim injunction against the defendant to stop her from continuing with her renovations on SQ26.
   She moved to set aside the interim injunction. In her supporting affidavit she stated at paragraph 10:

"These houses were single quarters and worn down and we have done renovations, making one house larger and the other is in the process of being converted into a four bed room house."

She also deposed at paragraph 18:

"What was said that the family agreed to give away houses as they wish on the family properly portion 199 is something I totally object to because the shares of the land is far more important".

9. It seems quite obvious from her affidavit that the defendant wants the court to believe that portion 199 has been divided into four parts amongst the four land owners after the land was returned by the Nauru phosphate Corporation in 2000, and SQ26 was located on the defendants' family one quarter share of the land.
She said at paragraph 32 and 36 of her affidavit:

32. My siblings are the ones we have land in common, the share that I' m currently on which belong to our late father Adimin.

36. If Dem is to build or have a unit between Derodebs and Adimin through the unit (SQ26) then the shares will be wrong because he will be intruding on our properties. He will need permission from us to build there.

10. Not surprisingly the application to set aside the interim injunction was refused. Her contentions were blatantly misleading and without evidential foundation.
Land portion 199 has not been sub-divided or partitioned.
Neither was there a family agreement as to the occupation and use of Land Portion 199 by the four families.

The plaintiffs claim

11. The plaintiffs claim that they were unable to move into SQ26 when it was vacated by the Phosphate Corporation employees because, firstly, they were

unable at the time to finance any renovations due to the financial meltdown of the Republic at the time, and secondly because the defendant has forcibly moved into SQ26.

12. Lavender Dick the sister of Dem told the court that she visited SQ26 on the day the tenant moved out. The defendant who was sitting in the car outside SQ26 with her husband told Lavender Dick that she was moving into SQ26. She also wanted Lavender to tell Dem of her desire to use SQ26.

13. Dem sought assistance of the defandants' relatives to get the defendant out of SQ26. The relatives tried to no avail. They persuaded Dem to get the police but Dem did not wish to involve the police.

Defence and Counter Claim

14. The defendant reiterated what she alleged in her affidavit as stated in paragraph 8 and 9 above.

15. As she was not a signatory to the consent form signed by 75% of the land owners she was therefore not a party to the agreement by the majority. She contended at paragraph 7 of her statement of defence:

> "The defendant is a substantive landowner and she has taken on the North West side of the property which is inclusive of SQ26 and SQ27 and has developed it to meet her needs".

16. She is firmly of the view she needs no permission from anyone to occupy and develop SQ26. She says so at paragraph 12 point 7 of the statement of defence:

> "May Peo does not need anybody's permission to construct on the property as she is developing what belongs to her and her siblings".

17. For over 17 years the defendant claims she lived in and developed SQ26 without harassment from Dem during his lifetime. Dem knew and did comply with the traditional custom of respect and obedience for his elderly aunt (the defendant).

18. Under counter-claim the defendant claims over $35,000 for the renovations. Through the written submission of her pleader however the claim was reduced to $12,300.

Findings of facts

19. The defendant did not testify or called evidence.

20. The court accepts the evidence of Lavender Dick that the defendant was outside of SQ26 on the day SQ26 was vacated by its occupant. On the same day the defendant moved into SQ26.

21. In defiance of the written consent of more than 75% of the land owners, and of the desire of Dem to move into SQ26, the defendant forcibly moved into and occupied SQ26.

22. Land portion 199 is owned by four families. The land has not been sub-divided or partitioned into four separate shares by family agreement or otherwise.

23. It was not until February 2018, that the plaintiff took steps and initiated legal proceedings to claim SQ26.

24. Initially, the plaintiffs, due to financial difficulties, could not renovate and move into SQ26. In any event, even if they had finance, the defendant was already in occupation of SQ26.

25. The defendant, with the firm belief that she is a substantive owner of lot 199, believed that she needs no permission to occupy SQ26.

26. No evidence was called by the defendant to prove her counter claim for damages.

Discussion

27. Land portion 199 is owned in common by the defendant and many others; their rights of ownership are undivided. The right to use the land or part of the land can only be obtained through the consent of the majority of all the co-owners.
In *Deireregea v. Kun [2017] NRSC 35* this court considered 75% or three-fourths of the landowners need to agree, as the legal requirement, for any person to use the land.

28. The defendant acted high handedly when she insisted "she does not need anybody's permission". She rejected efforts to settle the standoff with her nephew Dem by discussion, goodwill, agreement and conciliation. She had a moral and legal duty to consult with the other land owners. This point was commented on by Milhouse CJ in *Audoa v. Finch 2008 NRSC 3.* He said:

> "The question I have to answer is whether ..... had in law an obligation to consult and agree with other land owners...
> No doubt they have acted high handedly in not consulting. They had I suggest, at least a moral obligation to consult. Courtesy, good manners, sensitivity for the feelings of others demanded it.
> From my observation of Nauruan people they as much as any other community practice the courtesies common to all civilised people. Indeed their institutions (for example the Nauru Lands Committee) assume that disputes should be settled by discussion, conciliation, agreement and goodwill.
> Is that moral obligation also a legal duty?...The whole ethos of Nauru is toward consideration for the feelings and rights of others. The institutions of the country are based on that ethos. It is more than a moral obligation; it should be and is a legal obligation as well".

29. The continued occupation of SQ26 by the defendant ousting the plaintiff militates against the spirit of co-ownership.
Even if she or her family has substantive shares in the land, as she claimed, it does not necessarily entitle her or her family to a priority claim over any particular portion of the land. The law does not recognize any exclusive right

of claim to any particular part of the land through the portion of shares held by a co-owner.

30. Seventeen years of occupation, adverse to the right of the plaintiff to occupy, and contrary to the consent of the 75% of the landowners, does not amount to a defence in law to the claim. The plaintiffs, by virtue of the Limitation Act 2017, have 20 years, from 2001, to file their claim which they did.

31. It is accepted however that during the seventeen years of occupation, the defendant has expended monies on renovations which will now enable the plaintiff to move into SQ26. It will be a benefit to the plaintiffs.

32. Although the defendant did not pursue her counter claim for costs of renovations, it was plainly obvious from the oral submissions, that the failure to pursue her counter claim was not her choice or doing but a result of the advice she got and the manner her defense was conducted.
In the circumstances I consider it unfair and unjust to dismiss her counter claim. To enable her to pursue it, I will simply non-suit her on her counter claim.

Orders

(i) The defendant, her family servants and agents are ordered to vacate SQ26 within 14 days from the date of this judgment.

(ii) The defendant is non-suited on the counterclaim.

(iii) The defendant is ordered to pay costs of $500.

SUPREME COURT OF NAURU

Judge Rapi Vaai