



IN THE SUPREME COURT OF QUEENSLAND  
CIVIL JURISDICTION AT YAREN

Civil Suit No. 107 of 2016

BETWEEN

Emily Robertson

Plaintiff

AND:

Leona Cain and others

Defendants

Before: Khan, J  
Date of Hearing: 28 June 2019  
Date of Ruling: 4 July 2019

Case may be cited as: *Robertson v Cain and others*

**CATCHWORDS:**

Where the Supreme Court delivered a judgement and made an order that the house which the defendants are in occupation of was previously vested in the Council under Nauru Housing Ordinance 1957 and is now vested in the Cabinet and the Republic under Nauru Local Government Council Dissolution Consequential (Amendment) Act 1997 and the ownership of the land on which the house is situated belongs to the plaintiff under the Nauru Housing Ordinance 1957

Where the plaintiff filed a motion to seek an order for vacant possession against the defendants-

Whether in those circumstances the plaintiff has locus standi to seek an order for vacant possession against the defendants.

HELD: That the plaintiff has no local standi and the motion is dismissed with costs.

**APPEARANCES:**

Counsel for the plaintiff: J Daurewa  
Counsel for the defendants: V Clodumar

RULING

INTRODUCTION

1. The plaintiff filed a notice of motion on 6 December 2018 seeking the following orders:
  - 1) That the Supreme Court is to hear further from counsel regarding its answers and interim orders in this matter;
  - 2) That the defendants be evicted from Banun, Portion 59 in Boe District to comply with the answers and interim orders in this matter;
  - 3) That the Nauru Police Force be directed to be present during the eviction process to maintain protection of the landowners including the plaintiff and the property situated on Portion 59 in Banun, Boe District;
  - 4) That the defendants be ordered to provide security for the plaintiff costs of the suit of \$10,000 or such sum as it deems fit;
  - 5) That should the Court not order eviction at the date of the hearing of this matter then an order that the defendants pay a collective weekly rent of \$800 as tenants for the use of Banun, Portion 59 in Boe District until the date that they are evicted from the land. This amount to be backdated to 31 August 2017 that is the date of the judgement;
  - 6) That the defendants pay the costs for this claim; and
  - 7) Any other order that the Court deems fit.
2. On 31 August 2017 Crulci J (the presiding Judge) delivered her judgement. At paragraph 7 of the judgement the parties sought the following matters to be determined by the Court:
  - a) Who is the owner of the house occupied by the defendants?
  - b) Whether in the absence of any written or verbal agreement between the plaintiff and the defendants the defendants can continue their occupation of the house?
  - c) Whether the defence of adverse possession is applicable under the circumstances?
3. Having heard the parties Crulci J in her judgement stated at [41] as follows:

“[41] In answer to the questions put before the Court at [7], above, the answers are as follows:

  - a) The house occupied by the defendants on Portion 59 was previously vested in the Council under section 7(1) of NHO, is now vested in the Cabinet and the Republic pursuant to sections 4(a)<sup>1</sup> and 5(3)<sup>2</sup> of the Nauru Local Government Dissolution Consequential (Amendment) Act 1997;

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<sup>1</sup> “All references to the Council or the Nauru Local Government Council are references to the Cabinet”

<sup>2</sup> “All the property and assets of the Nauru Council situated in Nauru are the property and assets of the Republic”

- b) The defendants do not hold any legal tenancy in the house at portion 59; at most they are tenants at will;
  - c) No, adverse possession does not apply. The rights of the landowners are protected under section 8 of the NHO.
4. At [42] she made the following orders:
- “[42] I am prepared to hear further from counsel but the interim orders are as follows:
- 1) The injunction continues to prevent the defendants from constructing any buildings or altering any existing buildings on Portion 59, ‘Banun’, in Boe District;
  - 2) No one is to interfere with the plaintiff’s rights to use the property or interfere with reasonable access and enjoyment of the property;
  - 3) Costs awarded to the plaintiff (costs to be taxed by the Registrar).
5. Following the judgment, the plaintiff filed this motion dated 6 December 2018.

SUBMISSIONS

- 6. Both parties were ordered to file written submissions which they have filed and at the hearing they also supplemented their written submissions by way of oral submissions.
- 7. Mr Daurewa informed the court that he was not seeking any further hearing as stipulated by Crulci J at [42] of the judgement and therefore he will not be adducing any further evidence.

EVICITION ORDER

- 8. Mr Daurewa in his submissions conceded that the plaintiff did not have any local standi to seek an order for vacant possession to evict the defendants from the house as the house is vested in the Cabinet/Republic<sup>3</sup>.
- 9. He also submitted that the judgement declared that the defendants did not hold any legal tenancy in the house on Portion 59 and at best they are tenants at will<sup>4</sup> but argued that by virtue of being owner of Portion 59 (Banun, in Boe District)<sup>5</sup> the plaintiff can seek an order for eviction against the defendants on that basis.
- 10. Mr Clodumar in response submitted that the plaintiff’s basis to seek an order for eviction or vacant possession is flawed as the plaintiff does not have the necessary local standi to seek those reliefs since the house on Portion 59 is vested in the

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<sup>3</sup> [41(a)] of the judgement

<sup>4</sup> [41(b)] of the judgement

<sup>5</sup> [42(2)] of the judgement



Cabinet/Republic by virtue of Nauru Local Government Council Dissolution (Amendment) Act 1979<sup>6</sup> and that this application should be dismissed.


### CONSIDERATION

11. I agree with Mr Clodumar that the plaintiff has no basis to seek an order for eviction. The judgement deals with the issue of tenancy under Nauru Housing Ordinance 1957. The defendants ancestors were the original tenants of Nauru Local Government Council and the defendants do not hold any legal tenancy and at best they are the tenants at will of Cabinet/Republic in which the house is now vested under Nauru Local Government Dissolution Consequential (Amendment) Act 1997; and the tenancy at will in my view can only be terminated by the Republic.
12. Under s.8 of NHO 1957 the land on which the house was constructed (house occupied by the defendants) the ownership of the land always remained with the land owners and [41(c)] of the judgment made those findings.
13. Mr Daurewa further submitted that the plaintiff's predecessors entered into an agreement to lease the land to Nauru Local Government Council under NHO 1957 and the plaintiff did not give her consent. In my respectful opinion it is immaterial whether the plaintiff gave her consent or not because she is bound by the actions of her predecessors.
14. Mr Daurewa also submitted that payment of the rent stopped under the initial agreement and therefore the agreement came to an end. The leasing agreement is not part of the judgement and I will not be making any comments thereon. If the plaintiff feels aggrieved about this, she is at liberty to institute separate proceedings.
15. Mr Daurewa submitted that if an order for eviction is not granted then the plaintiff is seeking weekly rental of \$800. Mr Clodumar submitted in response that once again the plaintiff has no local standi to make a claim for rent as the property is vested in the Republic and I agree with Mr Clodumar.

### CONCLUSION

16. The plaintiff's motion and the application for an order for eviction and claim for rent has no merit and is dismissed with costs to the defendants to be taxed if not agreed.

DATED this 4 day of July 2019

  
Mohammed Shafiullah Khan  
Judge



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<sup>6</sup> [41] of the judgement