



IN THE SUPREME COURT OF NAURU  
AT YAREN DISTRICT  
CIVIL JURISDICTION

LAND APPEAL NO 15 OF 2019

BETWEEN

ANITA HARRIS

Applicant

AND

NAURU LANDS COMMITTEE

First Respondent

AND

BENEFICIARIES OF NIBOK LAND PORTION 255

Second Respondent

Before: Khan, J  
Date of Hearing: 1, 2 and 9 October 2020  
Date of Ruling: 16 October 2020

Case may be referred to as: Harris v NLC and Others

**CATCHWORDS:** Where NLC made determination in respect of Portion 255 Nibok District – Where the applicant filed an application for leave to file appeal out of time – Where subsequent to the decision three beneficiaries died – Where NLC made determination in respect of their estates – Whether this Court's jurisdiction as provided for in s.7(2) of the Nauru Lands Committee Act 1956 is ousted because of the three new determinations.

**HELD:** This Court does not have the power to hear the appeal as provided for in s.7(2) of the Nauru Lands Committee Act 1956.

## APPEARANCES:

Counsel for the Applicant: E Soriono  
Counsel for the First Respondent: B Narayan and J Togoran  
Counsel for the Second Respondent: R Tagivakatini

## RULING

### INTRODUCTION

1. This is an application for leave to appeal out of time against a determination made by the Nauru Lands Committee (NLC) in respect of Portion 255 Nibok District in Gazette No 23 dated 23 February 2014 published in G. No. 120 of 2014.

### BACKGROUND

2. The NLC determined the following to be owners of Portion 255:
  - 1) Livingston Aiy (1/4 share)
  - 2) Nyoka Bill (4/9 share)
  - 3) Nellinda Deidenang (4/9 share)
  - 4) Angelo Tom (1/9 share)
  - 5) Mere Fifi Dake (1/20 share)
  - 6) Chris Adueor Tom (1/20 share)
  - 7) Anna Mobit (1/20 share)
  - 8) Angelina Tom LTO (1/20 share)
  - 9) Deresa Teerua (1/20 share)
  - 10) Eidina Dagagio (1/8 share)
  - 11) Nana D Aiy (1/8 share)

### APPLICANT'S CLAIM

3. This application was filed by the applicant on 13 June 2019. She claims that in 2007 she and Benedicta Hubert had a meeting with NLC in respect of certain undetermined land in Nibok District; that in that meeting they mapped out an area of land known as Ubaditi after having 'walk the line'; that the outer boundaries of Ubaditi meet the boundaries of Portions 251, 254 and 255.
4. She further claims that NLC invited Amwano clan to attend a meeting for determination of Portion 251; that Eagogo clan was invited to attend a meeting for the determination of Portion 250 and that 3 days later Nauru Lands Committee divided Ubaditi in three portions – one portion being Ubaditi the other 2 portions being Yaterara and Aninoben which were allocated Portions 254 and 255 respectively.
5. The applicant states that since the determination she requested the Nauru Lands Committee to provide her with the minutes of its meetings as well as access to the relevant German sketch maps and the pages of the Land Register Book 1928 but without any success. She states that because of the delay by the NLC and its failure to provide these documents she was not able to lodge an appeal against the determination of Portion 255 in G.N. 23.

## NLC's RESPONSE TO THE APPLICANT'S CLAIM

6. NLC's states that its practice is that it does not hold field days (or walk the line) to determine the boundaries and ownership of land that has already been determined and can be located in its records; that both portions 254 and 255 had maps recorded in the German Sketch Book; and the ownership of portion 255 was already determined in the German Sketch Book plan No.10, page 239 in the Land Records Books 1928 at page 50.
7. That after holding family meetings with the interested parties it awarded ownership of portion 255 to the second respondents and published its determination in Gazette No. 23 of 2014, G.N.N. 120 of 2014.
8. Out of the owners mentioned in paragraph 2 above the following are deceased:
  - 1) Livingston Aiy;
  - 2) Deresa Teerua;
  - 3) Chris Adueor Tom.
9. As a result of the death of the beneficiaries mentioned in paragraph 5 above the NLC made the following determinations:
  - a) The estate of Livingston Aiy in Gazette No. 131 of 2014, G.N. No 610/2014 in respect of all his land including Portion 255;
  - b) The estate of Deresa Teerua in Gazette No. 181/2014, G.N. No. 783/2016 in respect of all her land except Portion 255 which it overlooked to include in the Gazette.
  - c) The estate of Chris Adueor Tom – Gazette No. 21/2017, G.N. No. 77/2017. Again, NLC overlooked to include Portion 255 in the Gazette;
  - d) NLC intends to publish an addendum gazette to include portion 255 in the estates of Deresa Teerua and Chris Adueor Tom.

## SUBMISSIONS

10. The applicant concedes that Portion 255 exists; and that it belongs to the second respondents, however, she submits that the Nauru Lands Committee allocated the wrong land to the second respondents – her complaint is about the geographical location of Portion 255.
11. Both first and second respondents submit that this Court does not have the jurisdiction to grant the leave to the applicant to lodge an appeal out of time; and they also submit that this Court does not have the jurisdiction to hear the appeal in any event. In support of their submissions they rely on the case of *Estate of Maria Smith v Nauru Lands Committee and Others*<sup>1</sup> where it was stated at [24] as follows:

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<sup>1</sup>[2018] NRSC 29 128 of 2015 12 February 2018, Khan J

[24] *'... Under s.7(2) the Supreme Court had jurisdiction to determine the appeal 'against the decision'; and in doing so it was entitled to hear the matter de novo and could allow the appeal and remit the matter for rehearing with directions or it could substitute the Committee's decision by its own decision. After the amendment of the Act in 2012 this Court was given powers and discretion to enlarge the appeal period 'against the decision' and I reiterate nothing more; and the jurisdiction of the Supreme Court will only come into play if it were to hear the appeal 'against the decision' which in my respectful opinion means the original decision. If in between the original decision there has been subsequent decisions, which is the case in this matter, then the Supreme Court would not be empowered to hear the appeal 'against the decision' as the effect of all subsequent decisions is that they are valid and binding unless and until they are appealed against; so, it would be a futile exercise.'*

## CONSIDERATION

12. In the Estate of Maria Smith's case, I discussed the importance of the appeal **'against the decision'** as provided for in s.7 of the Nauru Lands Committee Act 1956 (the 1956 Act). Under this Act an appeal could be lodged as a right within 21 days. Under the Nauru Lands Committee (Amendment) Act 2012 (2012 Act) this Court was given the discretion to grant an extension of time for an appeal to be lodged. In the second reading of the Nauru Lands Committee (Amendment) Bill 2012 His Excellency Hon. Sprent Dabwido MP, President stated as follows:

*"It is very common for an appellate court to be given an express power to grant leave to extend the time for appealing. The power to extend the time for an appeal is discretionary, and has to be exercised judicially, having regard to the well-established principles. The factors to be considered when determining an application for extension of time are: the length of the delay; the reasons for the delay; the strength of the appellant's case; the degree of prejudice to the respondent if time is extended.*

*Very often it is the final point (the question of prejudice) that leads a Court to refuse an application for leave."*

13. From the above speech it is very clear that the Court was given powers to extend 'the time for appealing' and it is also clear that when determining an application for an extension the court has to take into consideration **'the degree of prejudice to the respondent'** (emphasis added mine) if time is extended. The reference to **'respondent'** here in my respectful view means the original respondent. This is consistent with my finding in the case of the Estate of Maria Smith where I stated that the appeal is **'against the decision'** means the original decision.
14. In this case the original decision is the determination of the NLC as contained in Gazette No. 23 where it is stated:



*“Those who disagree with the **above land determination** may appeal to the Supreme Court Register within 21 days of the publication of this Government Gazette Notice.” (emphasis added mine)*

15. In *Vernier Addi and Others v Nauru Lands Committee and Others*<sup>2</sup> leave to appeal was granted by the Full Court after a lapse of 42 years as the land ownership had not changed.


WHAT ARE THE CONSEQUENCES OF THE DEATH OF THE THREE OWNERS IN GAZETTE No. 23?

16. Upon the death of Livingston Aiy, NLC made a determination of her estate in respect of portion 255 and published the same in the Gazette; it has done the same for the estates of Deresa Teerua and Chris Adueor Tom, however, it overlooked to include their share of portion 255 in the Gazette publication. It intends to do so now by way of addendum to the Gazette and there is nothing to stop it from doing so, as it has already determined those estates.
17. In Maria Smith’s case I had stated that if there were subsequent decisions after the ‘**original decision**’, then this court would not be empowered to hear the appeals ‘**against the decision**’. The situation in this matter is the same, as in the case of Maria Smith with the death of the three beneficiaries Gazette No. 23 is no longer in existence in its original form and; thus, this court is precluded from hearing the appeal ‘**against the decision**’.

CONCLUSION

18. For the reasons given above the application for leave to appeal out of time is refused.

DATED this 16 day of October 2020.

  
Mohammed Shafiullah Khan  
Judge



<sup>2</sup> [2014] NRSC 2; Case No .10 of 2014 Madriawivi CJ, Hamilton, White J and Khan J