



IN THE SUPREME COURT OF NAURU
AT YAREN
CIVIL JURISDICTION

CIVIL SUIT NO. 27/2018

BETWEEN

GWEN JUSTEN AND OTHERS REPRESENTING
THE LANDOWNERS OF PORTION 219 OF
AIWO DISTRICT

Plaintiff

AND

NAURU POLICE FORCE, YAREN DISTRICT
NAURU

First Defendant

AND

THE REPUBLIC OF NAURU AS REPRESENTED
BY THE SECRETARY FOR JUSTICE

Second Defendant

Before: Khan, ACJ
Date of Hearing: 14 June 2022
Date of Ruling: 14 April 2023

Case to be known as: *Justen v Republic of Nauru*

CATCHWORDS: Application to strike out plaintiff's action – Order 15 rule 19 of Civil Procedure Rules 1972 – Claim for breach of lease – Defendant relied on Limitation Act 2017 – Whether the claim is statute barred.

APPEARANCES:

Counsel for the Plaintiff: T Tannang
Counsel for the Defendant: S Kamtaura and M Tagivakatini

RULING

INTRODUCTION

1. The plaintiffs filed a claim on 29 November 2018 against the defendants claiming that a leasing agreement was entered into between the plaintiffs and the government of the Republic of Nauru on 1 April 2000 for leasing of Land Portion 219 Aiwo District (Portion 219).
2. In the statement of claim the plaintiffs claimed that the leasing was for the purposes of housing and accommodation of employees and that it was changed to commercial purposes; and the defendants were liable to pay the rent at the commercial rate for the property and also demanded that the defendants be restrained and/or prohibited from entering Portion 219 until the correct rent was agreed upon.

SUMMONS TO STRIKE OUT

3. On 26 August 2019 the defendants filed an application for the strike out of the plaintiff's claim on the following grounds:

“a) this action be struck-out against the Defendants on the ground that the representative action is commenced without leave of the Court and further no list is attached to identify other parties consenting to the named Plaintiff to commence this proceedings.

b) this action by the Plaintiffs be struck out against the Defendants as it discloses no reasonable cause of action in law.

c) and further order that the Plaintiff pay the costs of and incidental to this application.”

4. The summons was filed pursuant to Order 15 rule 19 which states that:

“The Court in which any suit is pending may at any stage of the proceedings order to be struck out or amended any pleading or endorsement of any writ of summons in the suit, or anything in any pleading or in the indorsement, on the ground that –

a) It discloses no reasonable cause of action or defense, as the case may be; and

b) ...;

c) ...; or

d);

and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”

5. During the course of the proceedings the plaintiffs made an application for representative proceedings under Order 12 rule 13 of the Civil Procedure Rules 1972 (CPR) and an order was made on 26 February 2021 that Gwen Justen is to represent all the landowners of Portion 219 as this was a representative proceedings.
6. On 14 February 2020 the plaintiffs filed an amended statement of claim in which it was pleaded that:
 - a) Lease agreement was entered into between the plaintiffs and the second defendant on 1 April 2000;
 - b) That the agreement for the use of the premises was for the accommodation of its non-Nauruan employees;
 - c) The second defendant breached the lease since 1 April 2000 for failing to use the premises for “permitted use or purpose”.
 - d) The second defendant assigned the lease to the first defendant without the plaintiffs’ consent;
 - e) The plaintiffs have suffered loss and damages;
 - f) That the accommodation units were converted into office blocks as a result of which the plaintiffs suffered loss;
 - g) The plaintiffs claimed damages to be paid from the date of the breach of the lease.

STRIKE OUT APPLICATION

7. The strike out application was filed on 26 August 2019 and the amended statement of claim was filed on 14 February 2020 and despite that the defendants still rely on the strike out application, but the application was confined to only one ground, that is, that it discloses no reasonable cause of action against the defendants.

LEASE AGREEMENT

8. Under Order 15 rule 19(2) of CPR no evidence is admissible as the strike out application is on the basis that the statement of claim discloses no reasonable cause of action, however, the parties agreed to file the lease document as an agreed document and relied upon it in their submissions.
9. The essential features of the lease are:
 - 1) That it was entered into between the landowners of Portion 219 as the lessors and the Republic of Nauru as the lessee.
 - 2) The term of the lease was for a period of 20 years commencing on 1 April 2000 and ending on 31 March 2020.

- 3) The permitted use or purpose of the lease is provided for in clause 2 of the lease, which provided that *“the land leased by the Lessee under this agreement is for the housing of employees of the Lessee other than Nauruans.”* Further, clause 6 of the lease provided that *“the Lessee shall not assign the lease nor sublet the land without the written consent of the Lessors, if the use or purpose of the assignment or sublease is not for the use or purpose as provided under clause 2 of this agreement.”*

NAURU POLICE FORCE IMPROPERLY JOINED AS A PARTY

10. The defendants’ counsel took objections to the Nauru Police Force being joined as a party to the proceedings and submitted that under Order 12 rule 7(2) of the CPR it should be struck out as a party as it is an Instrumentality of the Republic; and that the only party to this proceedings should be the Republic – the second defendant who is represented by the Secretary for Justice.
11. Mr Tannang did not respond to this submission and under s.11(2) of the Republic Proceedings Act 1972 civil proceedings against the Republic can only be instituted against the Secretary for Justice.
12. I agree that the first defendant was wrongly joined as a party to this proceedings and is struck out from this proceedings.

NO REASONABLE CAUSE OF ACTION AGAINST THE REPUBLIC

13. In respect of the plaintiffs’ claim that the second defendant changed the use of the property (Clause 2 of the Lease), the defendants’ counsel submitted that from the plaintiffs’ own statement of claim it is clear that they knew of the change of the use of the property; the plaintiffs have admitted that in their statement of claim and never expressed any concerns or gave notice to the defendants to remedy the breach. They submitted that by their own actions the plaintiffs have waived the strict requirements to the adherence of Clause 2 and are now estopped from using that as a cause for action.
14. Mr Tannang submits that it was the second defendant’s duty to inform the plaintiffs of the change of the use of the property and by failing to do so they are in breach of the lease.
15. It is correct that the second defendant has used the property for a different purpose and in my view there was no obligation on the second defendant to notify the plaintiff of the change. The plaintiff knew of this change for a long time and has waived that breach and is now estopped from raising it as a claim against the defendant.

SUB-LEASE AND ASSIGNMENT

16. On the issue of sub-lease and assignment it is the defendants’ contention that the Nauru Police Force is an Instrumentality of the Republic and therefore there is no sub-leasing. On the improvement to the property – it is the defendants’ contention that the improvements to the property were expressly permitted under the lease and the loss as alleged by the plaintiffs does not arise and further no particulars of the loss has been pleaded.

17. The plaintiffs' counsel did not specifically address this issue.
18. I agree that no particulars have been given – it is only a bare assertion that there has been structural change to the property without any loss being pleaded by the plaintiffs. So I find that there is no cause of action against the defendants on this issue.

CLAIM IS STATUTE BARRED

19. The defendant contended that the plaintiff's claim is statute barred under the provisions of s.6 of the Limitation Act 2017 which provides:

"Simple Contract

A proceeding to enforce, rescind, and vary or to claim damages founded on a simple contract shall not be commenced after a lapse of 6 years from the date of the cause of action accrued."

20. The defendants further contend that the plaintiffs knew about the alleged breach as stated in their statement of claim from the inception of the lease on 1 April 2000; that the original claim was filed on 29 November 2018, which is a lapse of over 17 years and the claim is statute barred. The defendants further contend at [26] of the written submissions dated 15 November 2021 that this court does not have powers to extend the limitation period as provided for under Part 4 of the Limitation Act which states that the Court may only extend time where the proceedings for damages relate to:
 - a) Personal injury or death;
 - b) Person under 18 when cause of action accrues, with guardians;
 - c) The person with mental disability when the cause of action accrues, with guardian; or
 - d) Person both under the age of 18 and with mental disability.
21. Section 6 of the Limitation Act is very clear in that it states:

"A proceedings to enforce ... or to claim damages founded on a simple contract shall not be commenced after a lapse of 6 years from the date of cause of action accrued."

22. In *Tamakin v Ronphos*¹ Eames CJ stated at [14] as follows:

"[14] An application to strike out an action will be granted only in a plain and obvious case; the case must be unarguable: *Nagle v Feilder* [1966] 2 QB 633 at 651 per Salmon LJ; see too Drummond – *Jackson v British Medical Association* [1970] 1 WLR 688. The absence of a cause of

¹ [2012] NRSC 9

action must be clearly demonstrated: *General Steel Industries Inc v Commissioner for Railways* (NSW) [1964] HCA 69; (1964) 112 CLR 125 at 129 per Barwick CJ.”

23. The cause of action accrued on 1 April 2000 and the plaintiffs had 6 years within which to file their claim and they failed to do so. I agree with the defendants’ submission that this court does not have any jurisdiction to extend the limitation period and the claim is struck out with costs to be taxed if not agreed.

DATED this 14 day of April 2023



Mohammed Shafiullah Khan
Acting Chief Justice

