



**IN THE SUPREME COURT OF NAURU
AT YAREN
CIVIL JURISDICTION**

Land Appeal No. 03 of 2022

BETWEEN : ENIGA AGNES DEBAO of Yaren District, Nauru.

APPLICANT

AND : NAURU LANDS COMMITTEE

1ST RESPONDENT

**AND : FRANCIS DEIRERAGEA & CO (BENEFICIARIES)
OF PORTION 85, ATAMO of Yaren District, Nauru.**

2ND RESPONDENTS

BEFORE: Keteca J

DATE OF HEARING: 20th December 2023

DATE OF RULING: 16th February 2024

**CITATION: Eniga Agnes Debao v Nauru Lands Committee &
Others**

**KEYWORDS: Leave to appeal out of time; Doctrine of latches; No
reasonable cause of action; Strike out; Nauru Lands
Committee**

LEGISLATION: Order 15, Rule 19 of the Civil Procedure Rules 1972;
Section 7 of the Nauru Lands Committee Act 1956;
Section 4, 5, 13 and 28 of the Limitation Act 2017

CASES CITED: Kaunji v Raim [2020] PGNC 204; N8427 (27 July 2020);
Jordan v Tatum [2023] NRSC 14; Civil Suit 37 of 2021
(30 May 2023); Dongobir v Adumur [2020] NRSC 19;
Day v William Hill (Park Lane) Ltd [1949] 1 All ER 219

APPEARANCES:

COUNSEL FOR the
Applicant: **J Olsson**

COUNSEL FOR the First
Respondent: **B Narayan & S Kamtaura**

COUNSEL FOR the Second
Respondent: **V Clodumar**

RULING

INTRODUCTION

1. On 09th June 2022, the Applicant filed an application of “Leave to Appeal Out of Time” against the decision of the Nauru Lands Committee that was published in Gazette No. 14 of 07th April 1956.
2. The Applicant relies on *Section 7(1)(b)* of the *Nauru Lands Committee Act 1956*.
3. On 28th November 2023, the Second Respondent filed a Notice of Motion to strike out the Applicants application of “leave to Appeal out of Time” under *Order 15 Rule 19(1)(a)* of the *Civil Procedure Rules 1972* and the inherent powers of the Court.
4. The First Respondent supports this *Order 15* application and further relies on *Rule 19(1)(d)*.

BACKGROUND

5. The Applicant claims that the Nauru Lands Committee (NLC) erred in law or fact in its decision published in Gazette No.14 of 1956. This related to the ownership of Land Portions 84 and 85 in Yaren District. The Applicant intends to impugn and set aside this NLC decision that was made 66 years ago.

GROUNDS OF APPEAL

6. The grounds of appeal are:

- a. *The Second Respondent erred in law or fact relying on a tampered gazette to determine the ensuing gazettes including Gazette No. 87 of 2005 dated 19th October 2005. If this ground is accepted then the First Respondent must re-determine the ownership of Atomo.*
- b. *The first Respondent erred in law or fact when it did not consider Debao claim in 1956 to Atomo under Debao's grandmother, Emwareow.*
- c. *The first respondent erred in law or fact for not considering the official records related to Atomo in the German Land Record (German Grundbuk) and the NLC register book on 1928.*
- d. *The First Respondent erred in law and in fact when it made its decision of the ownership for Portions 84 and 85 in Yaren based on Gazette No 14 of 1956 and did not consider or investigate the authenticity and validity of the purported decision given the **handwritten insertions** of portions 84 and 85 into Gazette No 14 1956.*

7. The Applicant deposes in paragraphs [7], [9], [10], [11], [21], [31] [33], [34] and [35] of her affidavit in support as follows:

7. *Debao and I have always lived on Atomo, Portions 84 and 85 in Yaren District because it belonged to Debao and his family.*
...
9. *I call the said decision a "purported decision" because I do not know whether it is a valid decision as the numbers "84 & 85" are unmistakably seen to have been written into the gazette.*
10. *I respectfully seek this Court to invoke its discretionary power and assess whether the said purported decision is valid.*
11. *I verily believe that the First Respondent would be in the best position to assist the Court as to the authenticity and validity of the purported decision given the handwritten insertions of Portions 84 and 85 into it.*
...
21. *Atomo belonged to Debao's grandmother **Emwareow** before the war and before we were taken to Truk*
31. *In my search, I realized that the attached gazette that first determined Atomo, Gazette No. 14 of 1956, however, as noted above it appeared to have been tampered with.*
33. *After Francisc Deirerga approached me in 2016 about Atomo, I then went to the office of the First Respondent and discovered that the German Register nor*

*the NLC Land Register registered Atomo to Franscis's ancestor- **Mwareow**, the purported original owner.*

34. *To the contrary, the German Register actually showed that Atomo belonged to **Emwareow**, my husband's grandmother.*

35. *There appears to be an element of oversight committed by **Mwareow** in the determination of the 1956 gazette regarding Atomo. His name is extremely similar to the name of Debao's grandmother, **Emwareow** and I aver that he used this similarity in his name to lay his claim to Atomo, although he does not have any biological link through blood or marriage, to my family. I put both Respondents to strict proof that the biological link can never be proved nor is there any transfer of Atomo by **Emwareow** to **Mwareow** in her lifetime.*

STRIKE OUT APPLICATION

9. Order 15, Rule 19(1) (a) and (b) of the Civil Procedure Act 1972 provides:

(1) *The court in which a suit is pending may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement 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 defence as the case maybe;

...or

(d) it is otherwise an abuse of the process of the court;

And may order the suit to be stayed or dismissed or judgement to be entered accordingly as the case may be.

(2) *No evidence shall be admissible on an application under sub-paragraph (a) of the last preceding paragraph.*

SECOND RESPONDENTS SUBMISSIONS

10. In submitting that the application for "Leave to Appeal Out of Time" discloses no reasonable cause of action, the Counsel for the Second respondent submits that the application for leave to appeal is "time barred pursuant to *Section 13(4) and (5) of the Limitation Act 2017*.

11. *Section 13(4) and (5) of the Limitation Act 2017 provides:*

(1) A proceeding to recover land shall not be commenced after a lapse of 20 years from the day the cause of action accrued.

(2) ...

(3) ...

(4) A person's claim to a title to land is extinguished if the period in subsection (1) ends before the person makes a claim to recover the land.

(5) A Court shall not grant a relief in any proceeding or appeal from the Nauru Lands Committee to the Supreme Court, which would result in a claim being barred under subsection (1).

12. Counsel submits that the Limitation Act is clear. The Application for Leave to Appeal out of Time is out of time and the Court is barred by *Section 13(5)* from granting any relief. Counsel adds that res judicata applies here.
13. Counsel also referred to *Section 4* of the *Limitation Act 2017* which stipulates the objectives of the Act and *Section 5* on the general limitation period.
14. Counsel seeks costs.

FIRST RESPONDENTS SUBMISSIONS

15. The Counsel for the First Respondent filed comprehensive submissions supporting the “Strike Out” application.
16. In addition, Counsel submits that it should also be struck out because the Application for Leave to Appeal out of Time is also an “abuse of the court process” under Order 15. Rule 19(d).

The Doctrine of Latches

17. Counsel for the First Respondent submits that under the doctrine of “latches” there is clearly lack of diligence by the Applicant here.
18. There were two appeals against the NLC, Gazette No. 14 of 07th April 1956. The first came before the Central Court of Nauru Land Appeal. This was dismissed by Magistrate L. B. Capon on 30th May 1956. This appears on Government Gazette 22, dated 02nd June 1956.
19. The second appeal was dismissed by R.S. Leydin, sitting as the Office of the Administrator Land Appeal. This is recorded in Government Gazette No. 27, dated 03rd July, 1956.
20. In paragraphs [15] and [16] of her submission, Counsel states-

“If anything, the Appellant admits in paragraphs 26, 33, and 41 where she had been approached by the Second Respondent in 2016 regarding the subject land and was aware of a decision in 2017 as to the subject land. The delay from 2016 to 2022 when the application for leave to appeal out of time was filed is approximately 6 years. The Appellant’s excuse of age and limited resources for her delay in filing the application in all these years is clearly untenable and without merit. The reasons provided simply cannot sufficiently account for these periods of delay from 1956-2016, 2005-2022 and 2016- 2022.”

21. Counsel submits that “the Appellant and her other beneficiaries have clearly slept on their rights and are now estopped or barred by the doctrine of latches from bringing their application for leave to appeal out of time.”

22. Counsel further submits that if the appellants in 1956 were diligent in filing their appeals then, why didn't the ancestors of the current Applicant file theirs?

Limitation Act 2017

23. Both counsels for the Respondents submit that this application for "Leave to Appeal Out of Time" is statute barred. They refer to provisions of the *Limitation Act 2017* mentioned in para [11] above.

SUBMISSION BY THE APPLICANT

24. On the issue of the application for leave to appeal being statute barred, Ms. Olsson refers to *Section 6* of the *Limitation Act 2017 (dealing with simple contracts)*, as being contrary to *Article 8* of the *Constitution*. She submits that the limitation is against the customary rights and Nauru land law. Counsel did not elaborate on how this is so. **(The Court notes that the Respondents are not relying on Section 6 at all but Section 13 of the Limitation Act 2017)**
25. On the doctrine of laches, Ms. Olsson submits that it does not apply in Nauru because no one can deprive a Nauruan of their land. Ms. Olsson did not elaborate on this point either. She did not rely on any statutory provision or case law to support this contention.
26. Thirdly, Ms. Olsson submits that there are no pre-existing records of ownership of this land. She refers to paragraphs 28, 33 and 34 of the Applicant's affidavit. She makes mention of some German Register/ Land records (German Grundbuk).
27. Ms. Olsson concludes by submitting that this case is a fraud by the Nauru Lands Committee.

SUBMISSION IN RESPONSE BY THE FIRST RESPONDENT.

28. The Solicitor General agreed with the Court that Counsel for the Applicant dwelt on the merits of the appeal. She further submits that Counsel for the Applicant did not make any submissions on the law relating to the application for Strike-out under *Order 15. Rule 19* of the *Civil Procedure Act 1972*. She added that there are other processes as regards challenging the constitutionality or otherwise of an Act of parliament.
29. The court notes that both Respondents also dwelt on the demerits of the appeal and not directly on the law relating to strike out applications.

Disclosing No Reasonable Cause of Action/ Abuse of the Process of the Court

30. In *Kaunji v Raim* [2020] PGNC 204; N8427 (27 July 2020), the Court considered *PNG Forest Products Pty Ltd v Independent State of Papua New Guinea* [1992] PNGLR 85, where the court held that the procedure for dismissal for **disclosing no reasonable cause of action** should be confined to cases where the cause of action is obviously and almost

incontestably bad. The plaintiff should not be driven from the judgement seat unless the case is unarguable.

31. In *Jordan v Tatum* [2023] NRSC 14; Civil Suit 37 of 2021 (30 May 2023), Acting Chief Justice Khan, at paras [29], [30] referred to the following cases:

[29] The test for striking out is stated in the case of *Polish Ex-Servicemen's Association Sub Branch (No. 5) Canberra and District Inc (A00195) v Polish Ex-Servicemen's Ass Branch Australian Inc (No. A00025) BC 201309097* (unreported judgement of ACT) where it is stated at [22] as follows:

[22] In ACTW Corporation v Mihaljevic [2004] ACTSC 59 Master Harper set out the test for striking out a pleading as disclosing no reasonable cause of action at [26] – [27]:

The test for striking out a pleading as disclosing no reasonable cause of action is a high one. Dickson J (sic) said in Dey v Victorian Railways Commissioners (1949) 78 CLR 62:

“A case must be very clear indeed to justify the summary intervention of the Court to prevent plaintiff submitting his case for determination in the appointed manner by the Court ... Once it appears that there is a real question to be determined whether of fact or law and that rights of the parties depend upon it, then it is not competent for the Court to dismiss the action...” (my emphasis)

[30] In Tamakin v Ronphos Eames CJ stated at [14] as follow:

[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 Fiedler [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 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.

CONSIDERATION

32. The Court notes that in Order 15 Rule 19 (1) – no reasonable cause of action strike out applications- no evidence shall be admissible.

33. I refer to *Day v William Hill (Park Lane) Ltd* [1949] 1 All ER 219, Singleton, L.J. said-

“It should be clear that, if documents are referred to in a pleading, they become part of the pleading, and it is open to the court to look at them without the need of any affidavit exhibiting them.”

34. Based on the above case, I have considered the Gazette Notices No. 22 dated 02nd June 1956 and Gazette Notice No. 27 dated 07th July 1956 submitted by Counsel for the First Respondent.

35. The Applicant appears to be alleging fraud or mistake on the part of the First Respondent. These are outlined in para [7] above.
36. I have considered *Section 13* of the *Limitation Act 2017* and the decision of Rapi Vaai J in *Dongobir v Adumur* [2020] NRSC 19.
37. I have also considered *Section 28* of the *Limitation Act 2017*, on the postponement of limitation period in cases of fraud or mistake. I am of the view that this provision needs further ventilation at a proper hearing of this matter.
38. I remind myself of the observations of Narokobi J in *Kaunji v Raim* [2020] PGNC 204; N8427 (27 July 2020) that the procedure for dismissal for disclosing no reasonable cause of action should be confined to cases where the cause of action is obviously and almost incontestably bad. The plaintiff should not be driven from the judgment seat unless the case is unarguable.
39. In considering the law relating to strike out applications, the statutory bar to recovery of land under *Section 13* of the *Limitation Act 2017*, the claim of possible fraud or mistake on the part of the First Respondent and the possible applicability of *Section 28* of the *Limitation Act 2017*, I believe that the Applicant should not be driven from the judgment seat at this interlocutory stage.

CONCLUSION

40. Considering the law and the circumstances of this case I order as follows:
- a. The *Order 15 Rule (19)(1) (a) (d)* of the *Civil Procedure Act 1972* application to strike out the Application for Leave to Appeal is dismissed.
 - b. Each party will bear their own costs.

DATED this 16th day of February 2024


Kiniviliame T. Keteca
Judge

