



**SUPREME COURT OF NAURU**

**IN THE SUPREME COURT OF NAURU**

**[CIVIL JURISDICTION]**

Civil Suit No.8 of 2016

Between **JAMES DEMAUNGA & ORS**

**PLAINTIFFS**

And

**WINDY DEIRERAGEA**

**DEFENDANT**

Before: Judge Vaai

Plaintiff: K. Tulenoa

Defendant: V. Clodumar

Date of Hearing: 10 October 2017

Date of Decision: 19 October 2017

**CATCHWORDS**

**JUDGMENT**

**Introduction**

1. The plaintiff and the defendant together with several other persons are owners of a piece of land known as 'Mamwieya', being portion 153 in Ewa District. It is approximately 5,738.3m<sup>2</sup> in area.

2. In the late 1990s, the majority of the landowners, including the defendant, consented in writing, granting their consent and approval to the plaintiff to construct a house on part of 153 (the land). Consent in writing was contained in the Nauruan Housing Form which listed the names of all the owners of the land, together with the signatories of the majority who gave their approval, or who had no objection to the plaintiff constructing his house on the land.
3. The plaintiff chose the site on the land and commenced clearing leveling out and back-filling of the ground. But he was soon confronted thereafter with financial difficulty which at the time was experienced by the Republic. Work was then suspended and construction ceased. There were 2 other houses already on the land.
4. In September 2013, the defendant sought and obtained the consent of the same land owners to build on the land. The plaintiff also gave his written consent.

### **The Casus Belli**

5. Instead of building on another area of the land, the defendant decided to construct her house on the same spot which the plaintiff had cleared several years before. She then commenced to clear the vegetation and prepared the land for the construction when an order for interim injunction obtained by the plaintiff was served on her.
6. A challenge to lift the interim injunction was unsuccessful so that the injunction remains until a determination by this court.

### **Challenge by the Defendant**

7. It is contended by the defendant that , not only did the plaintiff consented in writing to the defendant to build on the land, he also consented verbally to the defendant to build on the same spot the plaintiff cleared many years ago.
8. It is also contended that the written consent of the land owners granted to the plaintiff is now rivaled by the consent granted to the defendant so that whoever is ready to build has the right to use the whole of the land that is available.
9. By way of counter-claim, the defendant alleges:
  - a) That the denial by the plaintiffs of the defendant's rights to construct on any part of the land amounts to an ouster and as a result the plaintiff has committed trespass;
  - b) That the plaintiff has committed voluntary waste by restricting other co-owners from availing themselves that part of the land they want to use.
10. The defendant, accordingly seek a declaration that the plaintiff has committed ouster and voluntary waste and the interim injunction should be dissolved.

### **The Defendant's Submissions**

11. Mr Clodumar, counsel for the defendant in his written submissions thoroughly dealt with the characteristics of the land owned by tenants in common as well as the interest which a tenant in common has. In particular, he emphasized that it is an essential characteristic of a tenancy in common that each of the tenants has a right to occupy the whole of the property in common with the others.

12. Mr. Clodumar submitted that the plaintiff cannot hold exclusive right to the part of the land under dispute and thereby stop the defendant from exercising her right to use any part of the land. For the plaintiff to do so, is to commit an ouster. And an ouster arises where an occupying owner has wrongfully excluded the other co-owners from exercising their right to occupation.

### **Discussion**

13. It is common ground that the Nauru land tenure system is based on the concept of common ownership where land is held by individuals in undivided shares; a distinct share in property which has not yet been divided amongst the co-tenants.

14. It is also common ground that the rights to use the land owned by a number of co-tenants, can only be obtained through the consent of the majority of all the co-owners. This is particularly true in this case where there are about one hundred and twenty (120) co-owners of land consisting of about 5,738 square meters.

15. When the majority of the landowners, including the plaintiff, granted their consent to the defendant in 2013 to build on the land, there was ample space for the defendant to build besides the plot which the plaintiff had already leveled and space occupied by other buildings already on the land.

16. The plaintiff did not consent to the defendant building on the spot assigned to the plaintiff. If there was discussion between the plaintiff and the defendant concerning the plaintiff's plot, the question of compensation for the time and expenses of the plaintiff in leveling and back-filling the land should have arisen.

17. The equitable doctrine of unjust enrichment comes into play.

18. Contrary to the contention by the defendant the consent granted to her by the landowners did not rival the consent granted earlier to the plaintiff. Both consent forms allowed both the plaintiff and the defendant to occupy the land.
19. The interim injunction granted by the Registrar was to restrain the defendant from ejecting the plaintiff from his plot of land. The consent of the landowners granted to the plaintiff has not been revoked or withdrawn.
20. The plaintiff did not and does wish to prevent the defendant from entering the land 'Mamwieiya', Portion 153. As a result, the doctrine of waste and ouster do not arise.

### **Result**

- (i) The defendant's application to revoke the interim injunction issued by the Registrar on the 4<sup>th</sup> February 2016 and extended on the 31<sup>st</sup> May 2016 is refused.
- (ii) If costs are not agreed to, counsel to file memorandum within 14 days.



Judge Rapi L Va'ai



DATED this 19<sup>th</sup> day of October, 2017