



IN THE NAURU COURT OF APPEAL
AT YAREN
CIVIL APPELLATE JURISDICTION

**Civil Appeal No. 1
of 2019
Supreme Court
Civil Case No. 2 of
2018**

BETWEEN

MAY PEO

APPELLANT

AND

**DANELLE EOBOB AND
OTHERS**

RESPONDENTS

BEFORE:

**Justice R. Wimalasena,
Acting President
Justice Sir A. Palmer
Justice P. de Silva**

DATE OF HEARING:

27 October 2023

DATE OF JUDGMENT: **14 December 2023**

CITATION: **May Peo v Danelle Eobob & Ors**

KEYWORDS: Defence of limitation not pleaded before; Waiver of limitation period; Not permitted to advance a fresh ground of appeal based on limitation; Fresh evidence on limitation and amending pleadings on limitation at the appeal;

LEGISLATION: Section 58 of the Limitation Act 2017

CASE CITED: Fiji Electricity Authority v Ganilau [1999] FJCA 34 (14 May 1999)

APPEARANCES:

COUNSEL FOR the Appellant: **Mr. V Clodumar**

COUNSEL FOR the Respondent: **Ms. J Olsson**

APPEAL: **Allowed | Dismissed**

JUDGMENT

1. The Respondents, who were the Plaintiffs in Supreme Court invoked the original jurisdiction of the Supreme Court by filing a Writ of Summons and Statement of Claim in Civil Action No. 02 of 2018, against the Appellant who was the Defendant in the Supreme Court for trespassing single unit SQ26, on Land Portion 199 in Aiwo District.
2. Notably, during the Era of Phosphate mining in Nauru, the Land Portion 199 in Aiwo District was leased to the British Phosphate Commissioners (which later became the

Nauru Phosphate Corporation) under a hundred-year lease agreement. The British Phosphate Corporation constructed eight single quarters namely SQ19, SQ20, SQ21, SQ22, SQ24, SQ25, SQ26 and SQ2 on the said land to provide accommodation for their expatriate workers. After the expiration of the lease agreement in the year 2000, seven out of the eight single quarter units were returned to the land owners for their private use as per paragraph 4 of the Statement of Claim.

3. The Land Portion 199 in Aiwo District was originally owned by one Eigaga. The Appellant's grandfather was Deduna. He was the first husband of Eigaga. Whereas the Respondent, Danelle Eobob's husband's grandfather Eobob, was the second husband of Eigaga.
4. Apparently, the Land Portion 199 which was originally owned by Eigaga had been inherited by her descendants from the two marriages. There were 4 siblings namely Emweme, Erinka, Admin and Derodeb who became owners of the said property.
5. Since all four siblings passed away intestate, the seven single quarter units were distributed among their families as follows; the Emweme family received three units, one unit was allocated to the Erinka family, and from the three remaining units, two units were allocated to Derodeb's family and Admim's family. The Respondent Danelle Eobob's husband, Titus Eobob was allowed to occupy the last remaining unit SQ26 by majority consent of the family members. It is evident that the Appellant was allocated unit SQ27 which had been occupied by her adjacent to unit SQ26.
6. However, Titus Eobob and the Respondent Danelle Eobob could not move to unit SQ26 in the first instance because they were unable at that time to finance the renovation of the unit. Nevertheless, the Appellant, without the majority consent of the family members, had moved into unit SQ26 forcibly and remained there.
7. Although the Respondent Danelle Eobob and her husband informed the Appellant that they were ready to move into unit SQ26 and requested the Appellant to vacate the premises, she did not accede to their request. Instead she disputed it, on the premise that it belongs to her since she has done renovations. Following the demise of the

Respondent Danelle Eobob's husband, Titus Eobob in 2017, the Respondent, Danelle Eobob requested the Appellant, to vacate and return the unit SQ26 to her and her three children, because it was the will and wish of her husband. Consequently, since the Appellant, did not vacate the premises in dispute, the Respondents instituted the proceedings against the Appellant in the Supreme Court Civil Case No. 2 of 2018 and sought the following reliefs:

- a. *A permanent injunction be imposed against the Defendant, servants, and/or agents restraining them jointly and/or severally from entering into the Plaintiff's portion of LP199 Aiwo specifically that of SQ26 and curtilage without the consent of the Plaintiff.*
- b. *A permanent injunction be imposed against the Defendant, his servants and/or agents restraining them jointly and/or severally from continuing to construct the Defendants house or parts of the house so as to encroach on to the Plaintiffs 'dwelling unit SQ26 and curtilage;*
- c. *An order to be imposed against the Defendant, his servants and/or agents restraining them jointly and/or severally from further construction work or parts of construction work in relation to SQ27 that trespass and encroach upon the dwelling unit SQ26 and curtilage;*
- d. *An order directing the Defendant whether by himself, his servants and/or agents to demolish and remove the house extension or part of the house extension that the Defendant has constructed upon the dwelling of unit SQ26 and curtilage in LP199 Aiwo District;*
- e. *An order for damages be made against the Defendant for the trespass and encroachment into the physical damage to the Plaintiff's portion of LP199 Aiwo specifically SQ26 and curtilage;*
- f. *The Defendant pays costs of this action to the Plaintiffs; and,*
- g. *For any other order which this Honourable Court may deem just and expedient.*

8. Accordingly, the Supreme Court made the following orders:

- (i) *the Defendant, her family servants, and agents to vacate SQ 26 within 14 days from the date of judgment.*
- (ii) *The defendant is non-suited on the counterclaim.*
- (iii) *the Defendant to pay costs in a sum of \$500.*

9. Being aggrieved by the said decision, the Appellant preferred this appeal on the following ground.

“The Learned Judge has erred in law by stating that the Plaintiff’s claim to return the property was made within the time limit by virtue of the Limitation Act 2017 Of Nauru. The UK Limitation Act 1939 preceded the 2017 Act and was in force when the Limitation of 12 years expired in 2012.”

10. The attention of Court was directed to paragraph 30 of the Supreme Court judgment, specifically in relation to the ground of appeal relied on by the Appellant. The said paragraph reads as follows:

30. Seventeen years of occupation adverse to the right of the Plaintiff to occupy and contrary to the consent of the 75% of the Landowners, does not amount to a defence in law to the claim. The Plaintiff, by virtue of the Limitation Act 2017, have 20 years from 2001 to file their claim, which they did.

11. At this juncture it is important to draw attention to *Section 58* of the *Limitation Act 2017* before proceeding further on the merits of this appeal. *Section 58* read as follows:

(1) Where a proceeding is commenced and the defendant intends to rely upon a defence of limitation under this Act or any other law, the defendant shall plead the defence before trying to establish it.

(2) Where in the statement of defence a defendant fails to:

(a) plead the defence of limitation; or

(b) amend the defence to plead the defence of limitation -

it shall be deemed that the defendant has waived the requirements of the limitation period and the claimant may proceed to proving the claim.

(3) Where on delivery of a judgment by the court on a substantive matter and the defendant appeal to the Appellate Court, the defendant shall not be permitted to adduce fresh evidence or amend pleading to rely upon a defence of limitation.”

12. It is very clear that pursuant to *Section 58(3)*, a party is not allowed to rely upon a defence of limitation at the appeal if it was not advanced in the original action in the court below.
13. The Appellant filed the Statement of Defence on 20 March 2018 in the court below, in response to the Statement of Claim of the Respondents. According to the Statement of Defence, the Appellant answered the averments contained in the Statement of Claim and responded to the affidavits filed. Nonetheless, the Appellant did not plead a defence on limitation in the Statement of Defence as per *Section 58(1)* of the *Limitation Act 2017*.
14. In view of *Section 58(2)*, it is clearly discernable that the Appellant has waived the defence of limitation by not pleading the same in the pleadings in the Supreme Court. *Section 58(2)* expressly provides that failure to plead the defence of limitation amounts to waiver. The Appellant is thus barred from relying on defence of limitation under the *Limitation Act 2017* or any other law. *Section 58(3)* clearly manifests that once the defence of limitation is waived at the court below, there is no room for a party to advance a fresh ground of appeal based on limitation even as *Section 58(3)* expressly provides that fresh evidence or amendment of pleadings to reply upon the limitation is not permitted.
15. This is a well-established legal principle, as stated in *Fiji Electricity Authority v Ganilau [1999] FJCA 34 (14 May 1999)*, where it was observed by the Fiji Court of Appeal that:

In the present case His Lordship noted that the Attorney-General has not pleaded the limitation defence but allowed him to appear and make submissions on that preliminary issue before trial. With respect we do not think he should have been permitted to do so as no leave was given to amend the defence and it was not amended.

The Fiji Court of Appeal accordingly held that:

2. The appeal by the second appellant, the Attorney-General, is dismissed on the basis that a limitation of defence was not pleaded. The respondent will have costs and disbursements against him of \$500.

16. The sole ground of appeal of the Appellant revolves around the defence of limitation which was never advanced as a defence in the court below. In the view of the above discussion we are of the view that failure to rely on the defence of limitation precludes the Appellant to premise this appeal on this ground of appeal.


17. Accordingly, we find no reason to delve into the merits of this case any further. For those reasons, this appeal is dismissed with costs. The judgment of the Supreme Court dated 30 November 2018 stands affirmed.

Dated this 14 December 2023

Prasantha De Silva J.



Rangajeeva Wimalasena J.
I agree


Justice of Appeal


Acting President

Sir Albert Palmer J.
I agree


Justice of Appeal