



IN THE NAURU COURT OF APPEAL
AT YAREN
CIVIL APPELLATE JURISDICTION

Civil Appeal Number 2
of 2022

BETWEEN

JEFFREY IKA

Appellant

AND

LEILANI GADENANG

Respondent

BEFORE:

**Justice R. Wimalasena,
President
Justice Sir A. Palmer
Justice K.A. David**

DATE OF HEARING:

27th August 2025

DATE OF JUDGMENT:

11 December 2025

CITATION: **Jeffrey Ika v Leilani
Gadenang**

KEYWORDS: Determination of rights of Parties as Nauruans – Section 6 of the Nauru Land Committee Act, 1956 – Misapplication of doctrine of laches - Application of Nauruan customs - land use, family agreements, and recognition of original owner consent - Customs and Adopted Laws Act 1971.

APPEARANCES:

COUNSEL FOR the **Ms. Barina Duburiya**
Appellant:

COUNSEL FOR the **Ms. Shantel Hazelman**
Respondent:

By the Amicus **Ms. Bhavna Narayan**
Curiae:

Appeal **Allowed**

JUDGMENT

1. This is an appeal against the decision of the Supreme Court (Fatiaki CJ.), dated 12th November 2021, granting the issue of a permanent injunction against the Defendant (Jeffrey Ika) (Appellant in this Court), from interfering with the construction activities of the Plaintiff on her house in the disputed land.
2. The Plaintiff in the Supreme Court, Leilani Gadenang, (Respondent in this Court), is a Nauruan citizen and resident of Anetan District, claims that the Defendant (Appellant), also a Nauruan citizen and part-owner of the disputed **land** (Atomaneab, Portion 108 in Anibare District), has unlawfully interfered with her building project.

3. The Plaintiff (Respondent) claims she has spent significant time and resources, including assistance from a government housing scheme, to construct her house on land that she believes she has the right to develop.
4. She asserts that the Defendant has repeatedly interfered, also claiming rights to the land, despite the Plaintiff having obtained consent from other landowners. The Plaintiff seeks a permanent injunction restraining the Defendant from further interference and punitive damages for the Defendant's wrongful conduct.
5. The claim had been awarded in her favour with a permanent injunction issued and damages in the sum of \$1,000.00.

The Grounds of Appeal.

6. There are five (5) grounds of Appeal which are set out herewith as follows:-

1. *The judge erred in law by applying the rules of equity including the doctrine of laches in relation to interests in lands that arose between Nauruans only. In determining the rights and interests of Nauruans in relation to land particularly when given the circumstances of this case dealing with Nauruan landowners consenting or not objecting to the use of their land, the judge should have referred the matter to:*

1. *the Nauru Lands Committee pursuant to its powers under section 6 of the Nauru Lands Committee Act, or*
2. *applied section 3 of the Customs and Adopted Laws Act 1971 as appropriate to the circumstances of the case.*

to determine the interests of each party in relation to the use of and interests in the land known as Atomanab Portion 108 in Anibare (disputed land).

2. *In the alternate, if the Court finds that equity was appropriate in determining the outcome of this case then, the judge should have altered and adapted the rules of equity to best suit the circumstances of Nauruan land rights and interests consistent with section 4, sub-section 4, of the Customs and Adopted Laws Act 1971.*
3. *The judge erred in declaring that the Appellant's equitable interest was postponed by the equitable interest of the Respondent as the judge failed to reasonably direct his attention to and consider accordingly;*

(a) the circumstances surrounding the “interval” during which the Appellant had not progressed development on the disputed land up until the time the Respondent commenced their dealings with the disputed land.

[Subparagraph 3(a) refers to the impact of Nauru’s financial crisis on the Appellants ability to progress further construction on the disputed land. These financial circumstances lasted from the mid-1990s up until the 2010’s and severely impacted the Nauruan economy.

- 4. The judge erred having considered the Appellant’s “prolonged inactivity” on the land and his “omission” in not lodging or registering the consent to use the land to give rise to a “...representation that he is no longer interested in building on the disputed land that he will not seek to enforce his “consent form” against any other consent holder building on the disputed land” and therefore drawing an adverse inference and conclusion against the Appellant. The actions of the Appellant throughout the period in which the Respondent and the agents of the Respondent (including her mother) intended to use the disputed land, indicated the opposite to inactivity. The Appellant responded in opposing the Respondent’s use of the disputed land.*
- 5. The Appellant seeks to admit fresh evidence that around 1993 to 1994 the Appellant built a foundation on the disputed land which was connected to portion 104 Anibare which belongs to his wife’s family of which she is also a landowner. Located on portion 104 is Melissa Ika’s main family home. The foundation was the start to the Appellants use of the land for the purpose of building his family home, however the financial crisis in Nauru meant a halt to all efforts which lasted up until the 2010’s.*

The brief background facts.

- 7.** This is another of the land dispute cases about “rights of usage” over family disputed land. In other words, it is about the rights to build on the family disputed land, being Land Portion 108 (“LP 108”), Atomaneab, in Anibare District.
- 8.** As is often the case, the parties are closely related to each other. Their claims can be traced back to a common ancestor, the Ika Family. The Plaintiff’s (Respondent) grandmother, and the Defendant’s (Appellant) father were siblings (both now deceased). So the Appellant is like an uncle to the Respondent. One of her parents is the first cousin of the Appellant.
- 9.** It is not in dispute that the Appellant (Defendant), had obtained “100% consent” (unanimous) from all the original landowners to use and build a house on the said land portion. According to the Chronology of facts filed by the Appellant on 25

August 2025, consent was obtained on or about 1993 – 1994, some 23-24 years earlier for the Appellant to build on the land.

10. The Respondent (Plaintiff) on the other hand obtained her consent to build on the land on or about 2016-2017. She had obtained about 77% of the owners over the said land to do so. Note, this is to be contrasted to the 100% consent obtained by the Appellant.
11. It is clear from the background facts that both had at various times obtained permission (consent) to build on the land. The dispute arose as a result of the Appellant seeking to intervene or prevent the Respondent from building on the land, claiming that he had better rights, or priority rights over the Respondent to build on the land.
12. This dispute arose accordingly from the “competing rights” exercised by the parties over a certain portion or particular area of land on LP 108. In other words, it is asserted by the Appellant that the area which the Respondent wishes to build her house on, is the same area that had been given to him to build his house on.
13. This is the issue of contention in the Court below, which gave rise to the question agreed by both parties as, *“Whether the second consent for the Plaintiff superseded the first consent for the Defendant to use and build on the LP 108”*.

SUBMISSIONS OF THE PARTIES

1. Appellant’s Submissions (Summary).

14. The submissions of the Appellant can be summarised as follows:

- (i) Ms. Duburiya submits that because the dispute is a rights-in-land question between Nauruans, it should be determined by the Nauru Lands Committee (“NLC”) under s 6(1)(a) of the Nauru Lands Committee Act (“NLC Act”);
- (ii) Section 6 of the Lands Act 1976 (requiring 75% consent) does not apply to private dealings between Nauruans (*Oppenheimer v Tom* [2024] NRCA 10¹);
- (iii) The trial judge erred in relying on the 75% rule as a basis for determining “better equity.”

¹ *Oppenheimer (trading as Capelle & Partner and Pacific Occidental) v Darrel Tom & Ors* [2024] NRCA 10; Civil Appeal 3 of 2019 (8 August 2024).

- (iv) The judge failed to apply s 3 of the Customs and Adopted Laws Act 1971 requiring courts to recognise Nauruan customs relating to land use, family agreements, and recognition of original owner consent.
- (v) The judge misapplied the doctrine of *laches* and misconstrued the Appellant's delay, which was caused by the well-documented national economic collapse that drastically affected Nauru during the mid-1990s up until the 2010's; and
- (vi) The Respondent acted inequitably by failing to disclose the Appellant's original consent to the contemporary landowners.

15. The Appellant seeks referral of the entire matter to the NLC to be considered afresh and according to Nauru customs and norms.

2. Respondent's Submissions (Summary)

16. The Respondent on the other hand submitted that:

- (i) The issue was not ownership but competing claims to *build* on LP 108, and therefore outside the scope of the NLC Act.
- (ii) Having obtained the majority (77%) consent of contemporary landowners, Ms. Hazelman submits the Respondent held the "better equity."
- (iii) The Appellant's failure to develop or register his consent over decades amounted to abandonment or *laches*.
- (iv) Supreme Court precedents support applying a majority-consent rule derived from practice under the Lands Act and Housing Scheme.

3. Amicus Curiae Submissions (Summary)

17. The Solicitor General, Ms. Narayan acts as *Amicus Curiae* in this case. Her submissions can be summarised as follows:

- (i) Section 6(1)(a) of the NLC Act confers jurisdiction to the NLC over any questions of ownership or rights in respect of land between Nauruans—including rights to use land for building.
- (ii) The Supreme Court was correct to issue interim relief, but should then have referred the substantive dispute to the NLC.

- (iii) The trial judge erred in applying an outdated majority-consent practice improperly derived from s 6 of the Lands Act 1976 (“the Lands Act”).
- (iv) The Court of Appeal in *Oppenheimer v Tom* (2024), expressly held that s 6 of the Lands Act does not apply to Nauruan-to-Nauruan dealings.
- (v) Sections 3 and 4 of the Customs and Adopted Laws Act 1971 require the Court to recognise:
 - Nauruan family agreements,
 - deference to consent granted by original landowners, and
 - longstanding customs respecting earlier family elders’ decisions.

At paragraph 25 of her submissions learned Counsel states:

*“25. The above provision (section 3) is self-explanatory. It is unfortunate that in determining the issue of equitable rights of the parties, the learned trial Judge failed to take into account the ‘institutions, customs and usages of the Nauruans’ in relation to the **competing rights to the use of the subject land** which is a communal land.”* (Emphasis added).

- (vi) Equity cannot be applied in disregard of the statutory imperative to recognise Nauruan custom.

18. Ms. Narayan supports setting aside the judgment and referring the matter to the NLC.

ANALYSIS AND REASONS

ISSUE 1: Misapplication of Equity and Land Rights for Nauruans - Whether the Supreme Court had jurisdiction to determine competing rights to build on LP 108.

19. Under Ground 1 of the Appeal, it is argued that the judge made a mistake by using rules of equity, including the "*doctrine of laches*" (which generally relates to delays in enforcing rights), to decide on land interests that only affect Nauruans. The Appellant argues that when deciding who has rights over land, especially in cases where Nauruans agree or don't object to others using their land, the judge should have either:

- (a) Involved the Nauru Lands Committee (as required by the Nauru Lands Committee Act), or

(b) Applied the Customs and Adopted Laws Act 1971, specifically section 3, to deal with how Nauruan land interests should be recognized in this case. This would have been the correct approach to determining who has rights over the disputed land, Atomaneab Portion 108 in Anibare, rather than applying principles of common law and equity when Nauru law expressly provides for resolution of such matters by a body set up by law.

20. Section 6(1)(a) of the Nauru Lands Committee Act 1956 provides for the powers of the NLC:

“Powers of Committee

(1) The Committee has power to determine questions as to the ownership of, **or rights in respect of, land**, being questions which arise:

(a) **between Nauruans** or Pacific Islanders; or

(b) between Nauruans and Pacific Islanders.

(2) Subject to the next succeeding section, the decision of the Committee is final.” (Emphasis added).

21. Section 6 empowers the Committee to determine questions as to the ownership of, or rights in respect of, land arising *between Nauruans*.

22. It is pertinent to note that the so-called question posed in the Court below, “*Whether the second consent for the Plaintiff superseded the first consent for the Defendant to use and build on the LP 108*”, was erroneous from the outset.

23. We note that this question failed to identify what the real issue was in this dispute. In so doing, the court was misled into error and dealt with this matter when the solution to the problem is vested in section 6 of the NLC Act.

24. The phrase “*rights in respect of land*” plainly includes questions of who may build on communal land.

25. The Respondent’s submission therefore that the NLC has no jurisdiction because ownership was not in dispute is untenable. The statute expressly contemplates rights, not merely ownership.

26. The Supreme Court's role in the circumstances in this case would have been limited to interim injunctive relief. Once granted, the proper course was to refer the matter to the NLC — as confirmed by the supervisory jurisdiction rule in s 37(3) of the Supreme Court Act 2018.
27. It is not in dispute that there is a right of appeal to the Supreme Court. However, once the issues at stake had been properly and correctly identified, the matter should then have been referred to the right Tribunal to deal with the dispute.
28. The parties and the Court however, were misled by asking the wrong question even though the right issues were identified, being a dispute as to the rights of the parties in respect of land; the parties being Nauruans.
29. We are satisfied the trial judge exceeded jurisdiction in deciding substantive rights, when Parliament had provided for the NLC to be the rightful body to deal with the issue of rights of the parties in such a case as this.
30. We find accordingly the Supreme Court did not have jurisdiction to determine substantive competing land rights and therefore Ground 1 of the Appeal is upheld.

ISSUE 2: If Equity Was Used, It Should Have Been Adapted to Nauru's Specific Land Laws. Did the trial Judge err in applying a "75% majority consent" rule?

31. If the Court decides that using equity (the principles of fairness) was the right choice for deciding this case, the judge should have adjusted the equity rules to fit Nauruan land rights better. This should have been done in line with the provisions set out in section 4(4) of the Customs and Adopted Laws Act 1971, which allows for adaptations based on local practices.
32. In *Oppenheimer (trading as Capelle & Partner and Pacific Occidental) v Darrel Tom & Ors* [2024] NRCA 10) (ibid), this Court has held that the requirement to obtain consent of 75% of owners of land as stipulated under Section 6 of the Lands Act, does not apply to dealings in land between a Nauruan (or Nauruan entity) and Nauruan landowners unless it was for the purpose of the phosphate industry or other public purposes.
33. The trial judge relied however on earlier Supreme Court precedents predating *Oppenheimer*, and thereby erred by importing a statutory rule that did not apply in the circumstances of this case.
34. We note the submissions (paragraph 12) of Ms. Narayan, in which she correctly identified this as a fundamental error:

*“12. However, Fatiaki CJ resorted to applying the 75% majority consent of landowners relying on the past Supreme Court precedents which applied this majority consent rule in private dealings in land between Nauruan individuals and Nauruan landowners. This is where, in our respectful submission, the learned trial Judge had erred in law. **The majority rule applied by the Supreme Court in several cases was basically adopted from Section 6 of the Lands Act and/or the Housing Scheme which were not applicable.***

13. We therefore respectfully submit that the learned trial Judge erred in law by holding that the Respondent had obtained the requisite minimum percentage of the consent of the contemporary landowners entitling her to build on the subject land.” (Emphasis added).

35. We are satisfied the trial judge erred in law and accordingly Ground 2 of the Appeal is also upheld.

ISSUE 3: Whether the trial judge failed to apply Nauruan custom under the Customs and Adopted Laws Act 1971 – sections 3 and 4.

36. Sections 3 and 4 provide as follows:

“NAURUAN INSTITUTIONS, CUSTOMS AND USAGES

3. (1) The institutions, customs and usages of the Nauruans to the extent that they existed immediately before the commencement of this Act shall, save in so far as they may hereby or hereafter from time to time be expressly, or by necessary implication, abolished, altered or limited by any law enacted by Parliament, be accorded recognition by every Court and have full force and effect of law to regulate the following matters -

(a) title to, and interests in, land, other than any title or interest granted by lease or other instrument or by any written law not being an applied statute;

(b) rights and powers of Nauruans to dispose of their property, real and personal, inter vivos and by will or any other form of testamentary disposition;

(c) succession to the estates of Nauruans who die intestate; and

(d) any matters affecting Nauruans only.

(2) Any custom or usage by which -

(a) any person is, or may be, entitled or empowered to take or deal with the property of any other person without that person's consent; or

(b) any person is or may be entitled or empowered to deprive the parents of a child of its custody and control without their consent,

is hereby abolished.

ENGLISH LAWS ADOPTED

4. (1) Subject to the provisions of sections 3, 5 and 6 of this Act, the common law and the statutes of general application, including all rules, regulations and orders of general application made thereunder, which were in force in England on the thirty-first day of January, 1968, are hereby adopted as laws of Nauru.

(2) The principles and rules of equity which were in force in England on the thirty-first day of January, 1968, are hereby adopted as the principles and rules of equity in Nauru.

(3) In every civil cause or matter instituted in any Court law and equity shall be administered concurrently."

37. Section 3 requires courts to recognise Nauruan custom concerning:

- title and interests in land;
- rights of Nauruans to dispose of property; and
- matters affecting Nauruans only.

38. Section 4 in turn relates to the general adoption and application of the common law and statutes of general application which were in force in England on the 31st day of January 1968.

39. In this instance, the evidence (facts) showed the following:

- i. The Appellant received 100% consent from original landowners as opposed to only about 77% of the Respondent;
- ii. Custom respects original elder-given consent;

- iii. Later generations traditionally honour such decisions; and
- iv. A *family agreement* process should have been pursued.

40. It is relevant to note that the learned Judge bypassed these important and relevant considerations and instead applied common law equity principles without adaptation, contrary to s 4(4) of the Customs and Adopted Laws Act (as amended).
41. Note subsection 4(4) of the Customs and Adopted Laws Act, by amendment in 1976 added the following:

Section 4(4):

"(4) The principles and rules of the common law and equity adopted by this section may from time to time in their application to Nauru be altered and adapted by the Courts to take account of the circumstances of Nauru, and of any changes of those circumstances, and of any alterations or adaptations of those principles and rules which may have taken place in England after the thirty-first day of January, 1968, whether before or after the commencement of this Act, but-

(a) nothing in this subsection shall be taken as requiring that any principle or rule of the common law or equity adopted by this section be altered or adapted in its application to Nauru; and

(b) a principle or rule of the common law or equity adopted by this section shall not be altered or adapted in its application to Nauru unless the Court which makes the alteration or adaptation is satisfied that the principle or rule so altered or adapted will suit better the circumstances of Nauru than does the principle or rule without that alteration or adaptation."

42. We are satisfied the learned Judge erred by failing to apply ss 3 and 4 of the Customs and Adopted Laws Act and accordingly uphold ground 3 of the appeal as well.

ISSUE 4: Whether the judge erred in concluding the Appellant abandoned interest

43. Under this Appeal Ground, we are satisfied the judge wrongly concluded that the Appellant was no longer interested in building on the land because of his inactivity and failure to register consent.

44. We note from the evidence adduced that the Appellant did not show "inaction", to the contrary, he actively opposed the Respondent's use of the disputed land, showing he still cared about it and intended to use it.
45. We are satisfied the learned Judge misunderstood this and made an unfair assumption about the Appellant's intentions.
46. To the contrary, we note the following from the Appellant's submissions:
- i. That he undertook foundational development in the 1990s;
 - ii. But was prevented from continuing due to Nauru's national economic collapse;
 - iii. He repeatedly objected to the Respondent's encroachment and did not "sleep on his rights"; and
 - iv. Did not acquiesce or permit the Respondent's activities.
47. The trial judge's application of the doctrine of *laches* was inappropriate given the unique national circumstances widely recognised in Nauru's socio-economic history. Further, it is relevant to note that Parliament in its wisdom had expressly legislated for this type of scenario and provided a body (set up according to custom and traditional practices), to deal with this type of dispute. The Courts accordingly must in the first instance, allow such body to deal with the dispute according to traditional norms and practices and only take carriage whether on appeal, or on a judicial review basis.
48. Accordingly, we find that the inference of abandonment was not supported by evidence.
49. We are satisfied Ground 4 of the Appeal should also be upheld.

ISSUE 5: Leave to adduce fresh evidence.

50. The Appellant wants to submit new evidence showing that in 1993-1994, he began building a foundation on the disputed land. This foundation was connected to land (portion 104) that belongs to his wife's family, where her main family home is located. The foundation was meant to be part of the Appellant's future home, but due to the Nauru financial crisis, all construction was halted and couldn't resume until the 2010s.
51. Ms. Duburiya submits that the evidence of the 1993–1994 foundation work:

- i. was not available during trial due to circumstances explained;
- ii. is credible;
- iii. is highly material to the Appellant's asserted rights; and
- iv. supports the Appellant's position that he never abandoned interest.

52. She points out that section 24 of the Nauru Court of Appeal Act provides that a party can apply for leave to admit fresh evidence. However there are three limbs that will need to be fulfilled:

- (1) The evidence could not have been obtained with reasonable diligence for use at the trial;
- (2) It must be such that if admitted would more probable than not influence the result of the case; and
- (3) Must be such as to be believed or credible.

53. She relied on the case authority of *All Freight Logistics Ltd v. Choice Resources Ltd*², which provides as follows:

"The governing principle on new evidence on appeal, Lord Denning in *Ladd v Marshall* [1954] 3 ATI 745, set out the principles applicable in considering whether leave should be granted at the appeal to adduce further or fresh evidence as follows:

First, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial.

Second, evidence must be that if given, it would probably have an important influence on the result of the case, although it need not be decisive.

Third, the evidence must be such as it presumably to be believed or in other words, it may be apparently credible, although it need not be incontrovertible."

² *All Freight Logistics Ltd v. Choice Resources Ltd* [2019] FJHC 87 at paragraph 8

54. She submits that the power to admit fresh evidence is a discretionary power and it is for the party seeking leave to convince the Court that it is justifiable. She quotes *All Freight Logistics Ltd*, at paragraph 14 – 16 in support:

"[14] The discretion to admit fresh evidence on appeal has to be exercised in accordance with the overriding objective (*Evan Tiger Investment Ltd* [2002] EWCA CN 161, [2002] 2 BLLC 185).

15. Strong grounds have to be shown before fresh evidence will be admitted, and the *Ladd v Marshall* principles will be looked at with considerable case (*Hertfordshire Investment Ltd v Bubb* [2000] EWCA Civ 3013; [2000] 1 WLR 2318).

16. It will be a rare case where the *Ladd v Marshall* conditions are not satisfied but the court nevertheless admits fresh evidence on appeal (*Shakar v Al-Bedrawi* [2002] EWCA Civ 1452)."

55. In her submissions opposing the admission of this crucial evidence, Ms. Hazelman submits pursuant to the case authority of *Ladd v. Marshall*³, that the map should with reasonable diligence have been obtained during the hearing before the Supreme Court.

56. On the first limb of reasonable diligence, she submits that:

- i. The Appellant always claimed long-standing occupation.
- ii. If the foundation existed, it should have been produced at trial.
- iii. Defence counsel's own statements show lack of diligence rather than impossibility.
- iv. The Appellant knew of the foundation decades earlier, yet provided no explanation for not tendering evidence at trial.

57. On the second limb of probable influence on the result, Counsel submits that the alleged foundation never developed into a dwelling nor accompanied by any supporting works. She also points out that this assertion was unknown to co-landowners and was unsupported by any official documentation. She also asserts that the Respondent was never made aware of this foundation as asserting a continuing claim.

58. She also submits that it could not outweigh the Respondent's valid, registered, and acted-upon consent.

³ *Ladd v. Marshall* [1954] 1 WLR 1489

59. On the third limb of credibility, Counsel submits that there is no contemporaneous documentation to support the existence or date of the slab. She points out it was never raised at trial despite being allegedly central to the Appellant's claim.
60. She also refers to the Respondent's affidavit questions whether the slab merely "creased the boundary" of the land and may have been an attempt to bolster a weak claim. She concludes the evidence lacks credibility and cannot justify reopening the case.
61. We note this was the subject of a separate application to adduce fresh evidence which was heard and reserved for determination as part of this substantive appeal.
62. Having heard submissions and the grounds relied on in this appeal, we are satisfied that leave should be granted herewith.
63. In considering that fresh evidence we are satisfied that contrary to what the finding of the learned judge of laches and abandonment of claim, there is direct evidence of assertion of rights of ownership over the said land which ought to have been taken into account.
64. Even in the absence of this fresh evidence, the claims of rights of usage over the land cannot be disputed. This evidence further supports and strengthens the claim of right by the Appellant over the said land and should be allowed to be considered.
65. This appeal ground is accordingly upheld herewith as well.

CONCLUSION

66. This appeal raises substantive errors of jurisdiction, law, and principle. Both Ms. Duburiya - Appellant and the Solicitor General (Amicus Curiae) correctly submit that:
- i. the Supreme Court lacked jurisdiction to determine substantive rights in this instance;
 - ii. the wrong legal test was applied or the wrong question was put forward for consideration by the Court and which resulted in an error of law to be committed;

- iii. Nauruan custom was disregarded contrary to statute;
- iv. the majority-consent rule was applied in error;
- v. the judge's equitable assessment accordingly was incorrect.

67. The dispute ought to have been referred pursuant to statutory provisions clearly set out, before the NLC rather than the Supreme Court.

68. We are satisfied accordingly the appeal should be allowed and the following orders to be issued herewith.

ORDERS OF THE COURT:

- 1. The Appeal is allowed.**
- 2. The judgment of the Supreme Court dated 12 November 2021 is set aside in its entirety.**
- 3. The substantive dispute concerning competing rights to use or build upon Land Portion 108, Atomoneab, Anibare District is referred to the Nauru Lands Committee for determination pursuant to s 6(1)(a) of the Nauru Lands Committee Act 1956.**
- 4. The NLC shall determine:**
 - i. the effect of the original landowners' consent;**
 - ii. the status and validity of the contemporary landowner consents;**
 - iii. any non-disclosure issues; and**
 - iv. all relevant Nauruan customs and usages.**
- 5. Leave to adduce new evidence (Appellant's 1993–94 foundation works) is granted for consideration by the NLC.**
- 6. Costs of the appeal are to be costs in the NLC proceedings.**

Dated this 11 December 2025

Justice Rangajeeva Wimalasena

President

Justice Sir Albert Palmer

Justice of Appeal

Justice Allen David

Justice of Appeal