



Domestic Violence Case No. 4 of 2024

**IN THE DISTRICT COURT OF NAURU**

**AT YAREN**

**IN THE MATTER** of the *Domestic Violence and Family Protection Act 2017*.

**AND**

**IN THE MATTER** of an application for a Permanent Protection Order pursuant to *Sections 17 & 19* of the *Domestic Violence and Family Protection Act 2017*.

**BETWEEN:**

**A.K.**

**Applicant**

**AND:**

**L.D.**

**Respondent**

**Before:** Resident Magistrate Mr. Vinay Sharma

**Date of Hearing:** 7 March & 26 May 2025

**Date of Ruling:** 15 July 2025

**Appearance:**

**Applicant:** LM Solomon & R Tagivakatini

**Respondent:** V Clodumar

# RULING

## INTRODUCTION

1. This ruling will be anonymised for publication to protect the parties' privacy.
2. I am to determine whether a Permanent Protection Order should be granted in favour of the Applicant. The Applicant filed an application for a Permanent Protection Order on 28 June 2024. I made an Interim Protection Order, which was reviewed and renewed every 14 days. The Respondent filed her affidavit in response on 15 July 2024. The Applicant filed her affidavit in reply on 30 August 2024.
3. Both parties attended mandatory counselling. However, they were unable to resolve the issues that had arisen between them.
4. All parties filed their affidavit evidence in chief. During the hearing of this matter on 7 March 2025, the parties submitted that they would rely on the affidavit evidence in chief of the witnesses and the affidavits filed by the respective parties. The counsels for the parties also submitted that they would not cross-examine the witnesses.
5. Affidavit evidence in chief of the following witnesses was filed:
  - i) A.K. ("the Applicant");
  - ii) R.J.;
  - iii) L.D ("the Respondent"); and
  - iv) V.D.incent Deireragea.
6. Both counsels sought time to file written submissions to make their closing submissions. I heard the parties' closing submissions on 26 May 2025.
7. I am to determine the following issues:
  - i) Are the parties in a domestic relationship?

- ii) Does the Respondent's conduct amount to domestic violence?
- iii) Whether a Permanent Protection Order would be appropriate in the circumstances?

8. The reasons for my decision are as follows.

### **STANDARD OF PROOF**

- 9. Section 24 of the Domestic Violence And Family Protection Act 2017 ("the Act") provides that "*every question of fact arising in any proceeding shall be decided on the balance of probabilities*".
- 10. The Family Court of New Zealand in *CLS v DCDS* [2012] NZFC 9278 (27 November 2012) made the following observations with regard to the standard of proof in domestic violence cases, which is also applicable in Nauru as well:

#### ***The Onus of Proof***

*[54] There are a number of discrete stand alone issues which, for convenience and because they arise out of the same set of facts, have been heard in the one hearing. Nevertheless, in each case the Court has to have regard to the particular application and the relevant evidence and be satisfied, on the balance of probabilities, as to any factual finding.*

...

*[56] In each instance, where there is competing evidence, the Court must determine whether the basis for the making of an order is made out and on each occasion is made out to the required standards of the balance of probabilities.*

*[57] In Z v Dental Complaints Assessment Committee, (2008) NZSC 55, the Supreme Court had to consider how the Court in civil proceedings should, in practice, deal with issues of proof. In the majority judgment of Blanchard, Tipping and McGrath, Judge A said at para 101 and following:*

*“Without wishing to be pedantic, it is not the position that flexibility be “built into” the civil standard, thereby requiring greater satisfaction in some cases. Rather, the quality of the evidence required to meet that fixed standard may differ in cogency depending on what is at stake.*

*Para 102 – The civil standard has been flexibly applied in civil proceedings no matter how serious the contact that is alleged. In New Zealand it has been emphasised that no intermediate standard of proof exists between the criminal and the civil standards for application in certain types of civil cases. The balance of probabilities still simply means more probable than not. Allowing the civil standard to be applied flexibly has not meant that the degree of probability requires to meet the standard changes in serious cases. Rather, the civil standard is flexibly applied because it accommodates serious allegations through the natural tendency to acquire stronger evidence before being satisfied to the balance of probabilities standard.”*

*[58] In King v Gooch, (2008) CIV-2008-412-287, Dunedin Registry, Priestley J., in interpreting the Supreme Court’s decision in Z v Dental Complaints Assessment Committee (supra), said at para 25:*

*“I accept Mr Moore’s proposition that on the highest authority, the civil standard has a built in flexibility. That flexibility, however, as I understand the Supreme Court’s judgment, does not authorise a shifting standard of proof or intermediate standard of proof. Rather, it alerts the Court to the quality of evidence which is required to discharge the onus. As the majority stated in the Supreme Court, the more serious the allegation, the more tendency to require stronger evidence before the balance of probabilities is satisfied.”*

*[59] Priestley J went on to note, in addressing the issue in terms of a protection order, that:*

*“Para 28 – It is clear that evidence of a cogent nature must be required to satisfy the normal civil standard.”*

11. Now I will consider the evidence before me.

## **EVIDENCE**

12. I have considered all the evidence before me. I will provide a summary of the evidence which is pertinent to the determination of this matter. I note that despite being allowed to cross-examine the witnesses, each party chose not to do so. The evidence of each witness is uncontested.
13. The Applicant gave evidence that the Respondent is her youngest sibling and that they live on the same portion of family land, which they own jointly. She stated that the Respondent removed bricks from a wall that she built to demarcate the boundary of her share of the land. She also planted trees near the boundary, which the Respondent cut and placed on her side of the boundary. She gave evidence that the Respondent has been confrontational about the boundary and the hut built by her, amongst other structures. She also stated that the Respondent continues to message and confront her about the same issue. She stated that the Respondent involves her other siblings, which creates tension among them. She also stated that the Respondent's constant messaging and confrontation about the land is stressful on her, that she suffers from hypertension, and that the Respondent's conduct affects her health. She further stated that after the interim protection order was granted, the Respondent stopped confronting and harassing her, and that she is of the view that if a permanent protection order is not granted, the Respondent will resort to harassing her again.
14. R.J. corroborates the Applicant's evidence. She states that the Respondent is confrontational and aggressive. She also gave evidence that the Respondent had assaulted her on two occasions.
15. The Respondent gave evidence that the main issue is the disproportionate use of the family land where they live, XXXX District, Land Portion No. XX. She gave evidence that the Respondent keeps extending her boundary of land, which is affecting her. She also stated that she had cut the branches of the trees protruding into her side of the boundary and that she left those branches on the Applicant's side of the boundary because the branches were from her tree. She also gave evidence that the Applicant's husband is violent and that he has threatened his brother with a shovel and also

threatened their stepfather that he will kill all his pigs if they come out of the pigpen again. She further conceded that she moved some bricks and that she feels that the Applicant is a bully because she is the eldest of all her siblings. She also thinks that the application for a protection order is being used as a means to derail her “planned action” with regard to the land issues that they are having.

16. V.D. gave evidence that the Applicant’s husband is a violent person. Vincent is the Applicant’s and Respondent’s brother. He stated that the Applicant’s husband would always confront him if he did anything on the family land, and once threatened him with a shovel when he was cleaning his boat after returning from fishing. He also gave evidence that once the Applicant’s husband took a hammer and killed his son’s puppies in front of his son. Further, he stated that the Respondent is taking advantage of the fact that his husband is violent and does as she pleases in relation to the family land.
17. Since the evidence of the witnesses is not disputed, I find that the above evidence establishes the facts in this matter.

#### **ARE THE PARTIES IN A DOMESTIC RELATIONSHIP?**

18. To determine whether the parties are in a domestic relationship, I will examine the appropriate interpretation that is to be applied to the term “domestic” in Nauru’s context in accordance with the legislative provisions of the Domestic Violence And Family Protection Act 2017.
19. C Pearce and R S Geddes, in their book on Statutory Interpretation in Australia, provide the following:

*Legislation is, at its heart, an instrument of communication. For this reason, many of the so-called rules or principles of interpretation are no more than common-sense and grammatical aids that are applicable to any document by which one person endeavours to convey a message to another. Any inquiry into the meaning of an Act should therefore start with the question: ‘What message is the legislature trying to convey in this communication?’<sup>1</sup>*

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<sup>1</sup> D C Pearce and R S Geddes, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 8th ed, 2014) 146 [4.1]

20. With this regard, Lord Bingham in the House of Lords case in *R (Quintavalle) v Secretary of State for Health*<sup>2</sup> made the following observations on the principle of statutory interpretation at [8] of his judgment:

*The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.*

21. Further, Lady Arden and Lord Burrows in their concurring judgment in the Supreme Court of the United Kingdom in *Kostal UK Ltd v Dunkley*<sup>3</sup> made the following observations concerning the recent development in statutory interpretation in the United Kingdom:

*The modern approach to statutory interpretation requires the courts to ascertain the meaning of the words in a statute in the light of their context and purpose... In carrying out their interpretative role, the courts can look not only at the statute but also, for example, at the explanatory notes to the statute, at relevant consultation papers, and, within the parameters set by *Pepper v Hart* ..., at ministerial statements reported in *Hansard*.*

22. In addition, Section 49 of the *Interpretation Act 2011* provides as follows:

**49 Interpretation to achieve purpose of law**

*(1) In interpreting a written law, the interpretation that would best achieve the purpose of the written law shall be preferred to any other interpretation.*

*(2) This Section applies whether or not the purpose of the written law is expressly stated in the written law*

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<sup>2</sup> [2003] UKHL 13, [2003] 2 AC 687, at [8]

<sup>3</sup> [2021] UKSC 39, [2021] 3 WLR 697, at [109]

23. Section 49 of the *Interpretation Act 2011* is in line with recent developments in the common law principles of statutory interpretation, which now focuses on ascertaining “the meaning of the words in a statute in the light of their context and purpose”.
24. I have read decisions from the Fiji, New Zealand, and Queensland (Australia) courts regarding protection orders under their respective domestic violence legislative provisions. The courts in all three jurisdictions have given a very liberal interpretation to the term “*domestic relationship*” in circumstances where the respondent is a “*family member*” of the applicant. They are not required to be “*family members*” living in the same home or household.
25. The reason behind the very liberal interpretation given to the term “*domestic relationship*” is the general nature of the legislative provisions on what amounts to a “*domestic relationship*” in those countries. Their legislative provisions regarding “*family members*” in a “*domestic relationship*” with the respondent are also general in nature. Their legislation goes further by defining the term “*family member*”. The Nauru Act does not define the term “*family member*”. There is also another significant difference in their domestic violence legislation compared to the Nauru Act. They do not define the term “*domestic*” in their domestic violence legislation. While the Nauru Act specifically defines the term “*domestic*”. Their legislations are designed to suit their circumstances.
26. Our legislature rightly chose not to define “*family member*” but decided to define the term “*domestic*”, which under section 4 of the Nauru Act is defined as “relating to the home or household”. Therefore, every time the term “*domestic*” is used, its legislative definition must be resorted to when giving effect to a provision in which it is being used. In light of this, the terms “*domestic violence*” and “*domestic relationship*” are to be understood as being within the context of a home or household.
27. This suits the circumstances of Nauru. In Nauru, most, if not all, Nauruan can trace their blood, tribal, or marital relationships to almost every other Nauruan. Nauru is a very close-knit society. A broad interpretation of the terms “*domestic relationship*” or “*family member*” would lead to a floodgate of applications that may potentially be an abuse of process, where people who are not subject to actual domestic violence would

be able to apply for a protection order just because they can show that they are somehow related to the respondent without having any close relationship with the respondent within a home or household setting. The primary purpose of the introduction of domestic violence laws worldwide was to protect women and children from violence within their homes and/or private settings. However, countries adopted domestic violence laws tailored to their specific circumstances.

28. The narrow definition of “*domestic violence*” and “*domestic relationship*” requires an element of intimacy between the parties that would be evident within a home or household setting. This requirement does not deviate from the central purpose of the Nauru Act, as it protects victims of domestic violence while ensuring that the provisions under the Act are not abused. This narrow definition also accords with the notion that domestic violence usually occurs where there is an imbalance of power and/or a level of dependency between the parties who are in an intimate relationship within a home or household setting. Further, applicants who cannot establish a “*domestic relationship*” under the Nauru Act would still have recourse pursuant to section 27(2) of the *Criminal Procedure Act 1972* for an Apprehended Violence Order. Therefore, I find that the narrow interpretation I have discussed above is appropriate in light of the context of the Nauru Act and its purpose.
29. Having considered the above provisions, I now turn to determine whether the parties are in a domestic relationship. This is a factual matter. The terms 'home' and 'household,' as discussed above, are to be understood from the perspective of Nauruan society. The Western ideology of a home and household is narrow and individualistic in nature. However, in Nauru, as in many other Pacific island countries, what constitutes a home or a household is broad, with communal family living arrangements and communal family identity being significant factors to consider. Therefore, the terms home and household in Nauru’s context must be given a broader meaning so that they are in line with Nauru’s society’s sense of communal family identity and communal family households.
30. In the current circumstances, the Applicant and the Respondent are siblings. They live on the same family land, which they inherited from their father. Both of them, together with their other siblings, are joint owners of the family land. Out of the seven siblings,

five have built their houses on the family land. As the family grows, so will the communal ownership of the family land increase and the new members of the family will be entitled to live on the same family land. This is, in Nauru's context, a communal family household where the members of the community are close family members. I find that the parties are part of the same household and are also close family members. Therefore, they are in a domestic relationship as provided under the Act.

### **DOES THE RESPONDENT'S CONDUCT AMOUNT TO DOMESTIC VIOLENCE?**

31. According to section 6 of the Act, "domestic violence" is as follows:

*Domestic violence*

*(1) A person commits domestic violence if he or she threatens to or commits the following against a person with whom he or she is or has been, in a domestic relationship:*

*(a) assault;*

*(b) coercive control;*

*(c) economic and financial abuse;*

*(d) sexual violence;*

*(e) stalking;*

*(f) persistently behaving in an abusive, cruel, inhumane, degrading, provocative or offensive manner; or*

*(g) damage to property.*

*(2) A person commits domestic violence if he or she engages or incites another person to commit any conduct in subsection (1).*

*(3) Domestic violence may consist of a single act or a number of acts that form a pattern of behaviour, despite some of those acts when viewed in isolation appearing to be minor or trivial.*

32. The Family Court of New Zealand in *CLS v DCDS*, supra, made the following observations at [64] of its judgment on how a conduct which may have been engaged for a proper purpose by a person may become unreasonable and psychologically abusive:

*[64] Importantly, there is no obligation for the respondent to deliberately intend abuse of the applicant or domestic violence. The Court's obligation is to assess the impact of the behaviour (proved) not the intent of the respondent in carrying out the actions. Thus, the desire of the respondent to make contact with the applicant for initially proper reasons (such as contact) may become quite unreasonable and psychologically abusive. If the physical contact, or phone contact, or indirect contact is repeated incessantly or in respect of phone contact repeated incessantly over a short period, whatever the intention of the respondent was, it may nevertheless be psychologically abusive.*

33. It is not disputed that the Respondent has been confronting the Applicant with regard to the structures built by the Applicant and also the plants that the Applicant planted. Furthermore, it is not disputed that the Respondent involved the other siblings in their dispute, which caused tension among family members. It is also not disputed that this was an ongoing issue and that the Applicant was feeling harassed and threatened by such confrontations. While it would have been proper to raise such matters with the Applicant initially, constant confrontations regarding the same issues became unreasonable and psychologically abusive, which is rightly being claimed by the Applicant. I find that this conduct of the Respondent in the current circumstances amounts to domestic violence.

**WHETHER A PERMANENT PROTECTION ORDER WOULD BE APPROPRIATE  
IN THE CIRCUMSTANCES?**

34. Section 19 of the Act provides that:

***19 Permanent protection order***

*(1) On hearing an application, the court may make a permanent protection order against a respondent, if the respondent:*

*(a) has habitually committed an act of domestic violence against the victim;*

- (b) is likely to repeat an act of domestic violence against the victim;*
- (c) has breached the safety or interim protection orders; or*
- (d) has received a report from a counsellor under Part 5 that the parties cannot reconcile.*

*(2) Without limiting the jurisdiction of the court in granting a permanent protection order, the court shall take into account the following matters:*

- (a) the need to ensure that the victim is protected from domestic violence;*
- (b) the welfare of the victim and the victim's children; and*
- (c) the welfare of other family members.*

*(3) The court may include the name of another person in the domestic relationship in a protection order if the court is satisfied that the respondent has committed or is likely to commit an act of domestic violence against that other person.*

*(4) A permanent protection order including any conditions considered appropriate shall be in Form 3 of the Schedule. (5) A protection order continues to be in force until it is varied or revoked by the court.*

35. Having found that the Respondent's conduct complained of amounts to domestic violence, I will now consider whether a permanent protection order would be appropriate in the circumstances.
36. The established evidence proves that the Respondent habitually engaged in conduct that is unreasonable and psychologically abusive. Furthermore, the evidence presented by the Respondent suggests that her unreasonable conduct is a means of resolving the land dispute. Therefore, it is most likely that she will revert to the same conduct if a Permanent Protection Order is not granted. Therefore, a permanent protection order would be appropriate in this matter, and I make orders accordingly.

## **ORDERS**

37. The following are the orders of this court:

- i) That a Permanent Protection Order is made in favour of the Applicant against the Respondent.
- ii) The conditions of the Permanent Protection Order are as follows:
  - a) The Respondent must not:
    - (1) Approach the Applicant, and must maintain a distance of 50 meters from the Applicant;
    - (2) Contact and/or communicate with the Applicant in person or by electronic means;
    - (3) Be in or near the Applicant's main house or where the Applicant frequents, even though the respondent has a personal or proprietary interest in the premises;
    - (4) Damage any property belonging to the Applicant; and
    - (5) Engage and incite another person to carry out any of the prohibited acts provided above.

Dated this 16<sup>th</sup> day of July 2025.

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**Mr. Vinay Sharma**  
**Resident Magistrate**