



Domestic Violence Case No. 1 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:

D.E. & CHILDREN

Applicant

AND:

M.P.

1st Respondent

D.I.D

2nd Respondent

J.D.

3rd Respondent

Before: Resident Magistrate Mr. Vinay Sharma
Date of Hearing: 18 February 2025
Date of Ruling: 15 May 2025
Appearance:
Applicant: S Hazelman
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 Applicants. The Applicants filed an application for a Permanent Protection Order on 8 January 2024. I made an Interim Protection Order, which was reviewed and renewed every 14 days.
3. All parties filed their affidavit evidence in chief. They also gave oral evidence to supplement their written evidence where necessary. The witnesses were cross-examined as well.
4. The main contention of the Respondents is that they are not in a domestic relationship with the Applicants.
5. The 1st and 2nd Respondents concede that they are related to the principal Applicant's children by blood, and to the principal Applicant through marriage. The 3rd Respondent is the 2nd Respondent's husband. However, they maintain that they do not have a close relationship with the Applicants and are not part of their "household". Therefore, they

are not in a domestic relationship as provided for under the *Domestic Violence and Family Protection Act 2017* (“the Nauru Act”).

6. The Applicants’ counsel submits that the Applicants and the Respondents are in a domestic relationship because they are related.
7. My decision is limited to whether the parties are in a “*domestic relationship*” because that would be sufficient to dispose of this application.
8. I am to determine the following issues:
 - i) What are the legal principles in relation to statutory interpretation in Nauru?
 - ii) Are the parties in a “*domestic relationship*”?

9. The reasons for my decision are as follows.

WHAT ARE THE LEGAL PRINCIPLES IN RELATION TO STATUTORY INTERPRETATION IN NAURU?

10. 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?’¹

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

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

² [2003] UKHL 13, [2003] 2 AC 687, at [8]

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.

12. Further, Lady Arden and Lord Burrows in their concurring judgment in the Supreme Court of the United Kingdom in *Kostal UK Ltd v Dunkley*³ 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*.*

13. 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

14. 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”.

³ [2021] UKSC 39, [2021] 3 WLR 697, at [109]

ARE THE PARTIES IN A “DOMESTIC RELATIONSHIP”?

15. 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.
16. 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.
17. 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.
18. This suits the circumstances of Nauru. In Nauru, most, if not all, Nauruan can trace blood relationships, tribal relationships or relationships through marriages to almost every 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 to suit their circumstances.

19. 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 because it protects victims of domestic violence, and at the same time ensures that the provisions under the Nauru 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.

20. The current case is a classic example of how the provisions of the Nauru Act have been used in a manner that the Nauru Act did not envisage. Before the institution of the current proceedings, the parties had a civil case before the courts over a dwelling house, namely XXXX. The civil dispute was within the courts for a few years. Eventually, the Applicants succeeded in their claim. The Respondents had the impression that there was ambiguity concerning the structure they built adjoining XXXX. The Respondents reside at YYYY. The Applicants and the Respondents are neighbours who also happen to be related to each other. The Applicants stayed at XXXX on a temporary basis because it did not have the necessary amenities. On the date of the alleged altercation and verbal confrontation, the 1st Respondent was moving building materials into the adjoining structure they built, which has a separate entrance. This was to protect the building materials from rain. The evidence before me establishes that the principal Applicant confronted the 1st Respondent when she was moving the building material into the adjoining structure. Even her children gave evidence that they called out to her not to do anything to the 1st Respondent. The altercation and the verbal confrontation

arose due to a civil dispute between the parties about the ownership of the adjoining structure.

21. There is no dispute that the parties do not live, nor have they ever lived, in the same home or within the same household. There is also no dispute that the parties do not have a close relationship. The evidence before me establishes that before the Applicants moved into XXXX, they never used to meet the Respondents, nor did they maintain a meaningful relationship with each other and did not know each other personally. I am to determine from the evidence as to whether the parties, who are related to each other, were family members within the context of a “*domestic relationship*”, where the term “*domestic*” is to be interpreted as being within a home or household setting, thus requiring that the Applicants prove that; (1) they are related to the Respondents, and (2) that they live or lived with the Respondents in the same home or were part of the same household. This is a factual matter, and based on the evidence before me, I find that while the parties are related to each other, they have never lived together, nor have they ever been part of the same household.
22. In light of the above, I find that the parties are not in a “*domestic relation*” as provided for under the Nauru Act. Therefore, the Applicants’ application for a protection order under the Nauru Act is misconceived.

ORDERS

23. The following are the orders of this court:
 - i) That this ruling is to be anonymised before its publication.
 - ii) That the Application for a Permanent Protection Order filed on 8 January 2024 is dismissed.
 - iii) That the Interim Protection Order granted in this matter is set aside accordingly.

Dated this 15th day of May 2025.

Mr. Vinay Sharma
Resident Magistrate