CIVIL ACTION NO. 5 OF 1970

THE REPUBLIC

v.

NAURU LOCAL GOVERNMENT COUNCIL

Ex parte Dagabe Jeremiah

Decision: T he applicant, a Nauruan, obtained on 16th November, an order nisi for the issue of a writ of mandamus directed to the Nauru Local Government Council to compel it to deal with an application made on his behalf for the Council's consent to his marriage to Miss Maafa Kaa.

It is not disputed that the applicant's father made an application on his behalf to Mr. J. A. Bop, the Councillor for his District, for the Council's consent to the marriage; nor that Mr. Bop failed to bring the application before the Council to be dealt with. It is not disputed that the applicant's father spoke to the Head Chief and the Secretary of the Council and that they declined to take any steps to compel Mr. Bop to bring the matter before the Council.

The applicant's claim to be entitled to have his application dealt with by the Council rests on the provisions of paragraph (d) of subsection (1) of Section 23 of the Births, Deaths and Marriages Ordinance 1957-1967. That paragraph makes it unlawful for any person to solemnize a marriage to which either party is a Nauruan, unless the consent of Council to the marriage has been obtained. The failure to obtain such consent does not invalidate the marriage if it is in fact solemnized; so that the capacity of Nauruans to marry is not affected. Mr. Eoaeo submitted, as one of his grounds for resisting the order sought, that the applicant was not in fact prevented from marrying Miss Kaa by the failure of the Council to deal with his application as his capacity to do so was not affected. But any person solemnizing his marraige in Nauru would be committing an offence by doing so and the applicant would be his accessory. Only by travelling away from Nauru, therefore, could he lawfully have the marriage solemnized. He can marry lawfully in Nauru only if the Council has consented to his marriage.

Clearly, if the consent of a body such as the Council i required to a marriage, the Council must have a discretion whether or not to give that consent. Such discretion must doubtless be exercised reasonably and fairly and not on the basis of whim but, if the Council decides that consent should be withheld, it has power to withhold it. It is not the Council's case, however, as presented by Mr. Eoaeo, that an individual Councillor has authority to exercise the Council's powers in thi matter. So any rejection of the application by Mr. Bop was not the action of the Council. As Mr. Eoaeo has agreed, the Council has not dealt with the application.

The fact that the Council has a discretion to refuse t give its consent to a marriage does not mean that it can refuse to deal with the application, that is to consider it and exercis its discretion properly in respect of it. On the contrary, where a person wishing to marry is obliged to seek the consent the Council to do so, it is clear that he is entitled to have h application dealt with properly and that the Council is obliged

has admitted that the normal practice is for a person wishing to marry to present his application to the Councillor of his District who then places it before the Council. The Councillor may be acting as either the agent of the Council or the agent of the applicant in receiving the application. In view, however, of the fact that the Council has apparently established no other means by which an application can be presented to it, I am satisfied that the Councillor is acting as the agent of the Council and that the receipt of an application by him is to be regarded as receipt of the application by the Council, requiring the Council to deal with it unless the Councillor can persuade the applicant to withdraw it.

Mr. Eoaeo has submitted, however, that the application presented on behalf of the applicant was novel and that the normal mode of application was not to be followed. I am unable to accept this contention; the applicant as a Nauruan is entitled to place his application before the Council and, unless the Council specifies some other way of doing so - and Mr. Eoaeo has admitted that he himself does not know how he should have applied - an application made in the normal manner must be regarded as properly made.

In his affidavit Mr. Eoaeo pointed out that an application should be made by the person wishing to marry and not by his father. However, he admitted that applications made by fathers had been accepted in the past and stated that he did wish to submit that, because the application was made by the applicant's father, it was for that reason not a proper application.

On the facts agreed and my construction of the law relating to those facts, I find that an application was properly made to the Council on the applicant's behalf for the Council's consent to his marriage, that the Council is bound by law to deal with that application and that to date the Council has not done so.

It is, therefore, a proper case for the issue of a writ of mandamus. However, as the facts have now been agreed and the whole question of the Council's obligation to deal with the application has been fully argued, it would be pointless to have a further hearing on the return of a writ. It is, therefore, an appropriate case to deal with under O. 81 r. 27 of the Supreme Court Rules of the State of Queensland (Adopted) that is to direct that the comman shall be premptory in the first instance without issue of a writ. I shall, therefore, order accordingly.

20th November, 1970. Chief Justice

Order: Order to issue commanding the Nauru Local Government Council forthwith to deal with and determine the application made to Mr. Bop for consent to the applicant's marriage to Miss Maafa Kaa, such command to be premptory in the first instance.

19th November, 1970. Chief Justice.