

**REPUBLIC OF NAURU**

**In the Supreme Court**

**Civil Action No.5/2002**

BETWEEN:        JOHN MOP GAIROE            PLAINTIFF  
AND                EIDERAIDID DOWEDIA            DEFENDANT  
AND                JOHN AKUBOR                    THIRD PARTY

Reuben Kun for Plaintiff

P. Aingimea for Defendant

P. Nimes for Third Party

Hearing Dates Re Estate IAT-KONOBO 11 Feb 2004, 20, 28<sup>th</sup> April 2004

---

**DECISION**

---

Following my interim decision on the will of Lily Grundler deceased which I delivered on 17 February 2003, there was one remaining area of dispute. The Nauru Lands Committee had refused to rule on the land known as IATKONOBO which was portion 174 CL Yaren. Its reason for so doing was that it believed the dwelling on Akubor land was subject to the Nauruan Housing Scheme. This was a statutory scheme still under operative legislation, the Nauruan Housing Ordinance 1957 (the Ordinance). The Nauru Lands Committee declined to exercise jurisdiction over such land with the result that the matter was brought before the Supreme Court.

It is accepted fact that the deceased was in occupancy of the house prior to her death. It was also proved to my satisfaction that the Akubor family own the land on which the house was built at a time around 1950. On balance of probability the house was built by the Nauru Local Government Council. It was an original Type 1 house that was later extended from two to four rooms, and it also appears that that extension was carried out by the N.L.G.C.

As to the original occupants, on balance I accept the evidence of John Akubor that the house was originally built for the Akubor family and his two brothers occupied it. At a later stage Deirok Gairoe, who had been brought up within the Akubor family but had deserted the household and later married Ubanaba, a Gilbertese. In the early nineteen fifties, so it would appear, Ubanaba, now newlywed to Deirok G, approached Akubor and asked for a house to live in for himself and Deirok. Akubor then made the house at IATKONOBBO available to them and the only brother of John Akubor then living there left the dwelling. It was John Akubor's contention in his evidence that the house was granted to the Ubanabas for the time being and that in due course they would find their own place. In other words, it was a temporary arrangement. I have accepted the evidence on this history of John Akubor as against that of Eidaina O'Brien which was based on recollections told her by her grandmother.

Owing to the lack of records, there was no documentary evidence before the Court that would have confirmed or otherwise not only the occupancy but also the tenancy of Deirok G at the IATKONOBBO house. I am assured by all parties that such documentary evidence does not exist. However, it appears from the evidence that Deirok G. was in continuous occupancy following her marriage to Ubanaba.

The house was not specifically built for the Ubanabas but was given to them as a residence after the brothers Akubor had been living there. If it were a Nauruan Housing Scheme dwelling, it would have been most useful to know who paid the rent to the NLGC and whether Akubor was compensated pursuant to section 18 of the Ordinance. Of course, if the house was not part of the Scheme then it would be no more than a house leased on whatever terms and subject to S.3 of the Lands Act 1976 by the landowners of the Akubor land. Such a result would enable the Akubor landowners to terminate any lease involved and determine who the occupants should be.

The benefit of the Scheme itself was that it coped with a housing shortage and enabled Nauruans to be housed on liberal terms. But this depended on good administration and keen control of the termination and assignment provisions. Once control was lost it resulted in a situation where the tenant and his successors could occupy in seeming perpetuity with little redress to the landowner who for the most part was not the tenant. It

amounted almost to an improper seizure. This situation, of course, could be overcome if the scheme was administered and brought up to date. In the meantime, the landowners are in a difficult position, with ownership without the benefit of rental and no ability to remove the tenant.

One has to say that in this case, the landowners of the Akubor land have not pressed unduly to resume the dwelling but have been properly concerned with the disputes and unruly behaviour which has emanated from the occupiers of the dwelling on the Akubor land. Indeed under the original tenancy agreement pursuant to S.12 of the Ordinance the tenant has agreed 'not to do or permit to be done therein any act or thing which may cause discomfort or annoyance to the neighbours'.

It may be the case that the house was first built for Akubor but fell within the housing ordinance after 1957. But it is certainly not absolutely clear, though the most probable scenario. I, therefore, hold that the Ordinance should apply until clear and decisive evidence is produced to the contrary.

At the very least on the evidence Deirok G. and her family have been the occupants for fifty years. There being no action under S. 17 of the Ordinance to terminate the tenancy, the tenancy will survive to the legitimate successors under the intestacy. On the basis of leasehold interest it would seem that it should be distributed in a similar manner to the other realty, coming through Ubanaba and Deirok, that is, shared between the surviving children of Deirok G. equally. That is not, perhaps, neatly the most desirable outcome but at least is in line with the distribution of the real property under the intestacy. Some of the present surviving children have long since moved to other properties. Even the Defendant is not herself in permanent residence in IATKONOBO, but rather her children. She has stated that she would welcome the Plaintiff or other sisters or brothers back, but there is some dispute whether such a welcome is slightly tongue in cheek. It is extraordinarily difficult for a Court to determine such an issue.

In all circumstances, the Court in making its finding on the tenancy has been unable to restore ownership of the dwelling to the Akubor land interests. It does not appear to me that the Akubor interest was

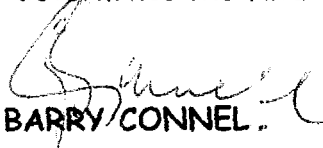
necessarily advanced by the death of Deirok G. though mindful of the history of the case. In time, when the government makes its position clear as to the future of the scheme and the position of houses under contention, no doubt, the Akubor interest will be revived in one form or another.

Evidence was given by the Acting Secretary for Justice that the Ordinance was still operative though administration of the rents, maintenance and compensation had fallen into abeyance for some number of years. It was also stated that records were deficient and it could not be determined with any certainty whether a particular house fell under the scheme or not though architectural Type may be of assistance. The Secretary stated that the Cabinet, the successor to the NLGC or Council under the Ordinance, would be giving consideration to some of the difficult questions now raised with a view to some possible statutory revision.

In the meantime, as the house has had continuous occupancy by the Ubanaba/Gairoe interests such interests will continue to occupy until the government makes its intention clear as to the future of the scheme.

So far as who should occupy the tenancy, the Court leaves this to a family meeting conducted by the Nauru Lands Committee taking into account the remarks of the Court. In particular attention should be paid largely to the surviving children of Deirok G., and some allocation on basis of need and hardship as was the requirement under the Nauruan Housing Ordinance Section 11.

It may be necessary to revive the matter under a liberty to apply particularly when the Government determines the future of the Scheme.

  
BARRY CONNEL  
CHIEF JUSTICE

29.4.04