IN THE SUPREME COURT OF NAURU

Civil Action No. 13/2004

BETWEEN:	EIGABWEATSI DICK	PLAINTIFF
AND:	KAURA IKA	DEFENDANT

Pres Nimes for Plaintiff
Reuben Kun for Defendant

Dates of hearing 6 and 7 June 2005

DECISION

---

1. In issue was the occupancy of a dwelling house, known as MQ1. This house was situated within Idurige PL Portion No. 259 Denigomodu otherwise known as Ideruge Portion No. 2P Denigomodu. On that portion, rather larger than most were two houses, MQ1, and MQ2, and a small part of MQ3, though MQ3 was by agreement, apparently, taken to fall within an adjoining portion.

2. Both MQ1 and MQ2, as their designation implies, were houses built by the British Phosphate Commissioners in prime positions at the top of the escarpment commanding extensive views of the Nauruan western coastline. Both houses had been occupied by senior employees of the BPC and then the NPC. However, in more recent times following the mining of the government settlement, MQ1 had been occupied by the Chief Justice when in residence in Nauru.

3. As befell other NPC housing on the escarpment, when leases ran out, the landowners resumed possession of the land together with the improvements that were fixtures, namely, house, garages, shedding and other fixed accoutrements such as swimming pools, ponds and paving but, presumably, not chattels which remain with the leaseholder.

4. In the case of MQ1 and MQ2 the leases were apparently terminated though the manner of such termination, so far as the Court was informed, was odd to say the least. In the case of MQ2, the Court was told that as soon as the Works Department or NPC had carried out some

repairs on the departure of a tenant, one or some of the landholders simply walked in and occupied the house.

5. The situation with MQ1, with which this case has the prime concern, was a trifle more complicated. Before the lease was terminated, the house was occupied by caretakers, the last of whom was Krystal Dick, daughter of the Plaintiff. At various times, the defendant Kaura Ika had attempted to occupy but had eventually been prevented from so doing by an interim injunction granted to the plaintiff with the result that the daughter of the Plaintiff currently enjoys occupancy and the defendant is attempting to have the injunction discharged and for the Court to declare him the appropriate person to occupy the house with the approval of other landowners. The interim injunction restraining the defendant from occupation still persists.

6. At an earlier stage, the defendant had commenced an action No. 4 of 2004 against the plaintiff. In that action the defendant had sought, perhaps rather bravely, to seek an opinion of the Supreme Court by way of case stated under Order 63 of the Civil Procedure Rules 1972, submitting four questions with the concurrence of the present plaintiff. However in Chambers, dated 29 September 2004, there was a sticking point, namely, that at that time there was a current lease upon which rent was being paid to landowners by the government. The lease had a twenty years term. The caretakers had reason to feel safe under their tenancy and proper tenant rights. The matter was then stood over until further discussions between the families and any further instructions. This action was not revived and was, as it were, by-passed by the injunction dated 8 October 2004 granted to the present plaintiff in civil action No.13/2004, following the seizure and forced entry of 7 October 2004, upon the alleged termination of the government lease.

The Landowners

7. As with most portions of land in Nauru there is a multiplicity of landowners and Portion 259 is no exception in that there are some 26 landowners holding shares from 1/3 to 1/165 of the portion. However, as evidenced in the plaintiff's testimony the original owner was Amwano and upon his death the three beneficiaries were Eivaoeda, Dargegauw, and Bumagim. The plaintiff is the granddaughter of Amwano through Dargegauw, and, holds a share of 1/3 of the substantial portion. The shares through Eivaoeda and Bumagim have been more widely distributed and are fractionally, therefore, more diverse. The seized occupancy of MQ2 was through the family of Eivaoeda and it was in evidence that the defendant derived his 1/96 share from that source. The family of Bumagim have no house occupancy in this portion.

The Land

8 The portion 259 is described as PL and some of the eastern part has been mined which is shown on the ArcExplorer map (Exhibit 'E'). Presumably, it is not now envisaged that this settled area will be mined although a similar residential area in the government settlement was mined. On portion 259 about 1/5 of the area has been mined but with the exception of portion of MQ3, there are only two houses that have been built MQ1 and MQ2. Even given the road access there is still room to construct at least one further substantial house in the area of the disused playground which would not interfere with the spaciousness of both MQ1 and MQ2.

Landowner attitudes

9 Both parties have canvassed the views of the landowners with more or less similar results. Prior to termination of the MQ1 lease, and possibly MQ2, in a poll conducted by the defendant landowners indicated that they 'have no objection whatsoever for Mr. Kaura Ika to accommodate any house situated in the portion'. All the landowners, except the Plaintiff holding a 1/3 share, supported the proposition. Later, Krystal Dick, the daughter of the Plaintiff conducted a poll of landowners for consent to occupancy of MQ1 on the portion. She achieved approximately a 68% approval without canvassing the Eivaoeda group. The result then was almost a draw. However, the question asked by the defendant was rather broader and not at all specific to MQ1 although, in her evidence, the plaintiff exercised concern as she saw the value of her substantial holding being diminished by comparatively small landholders and from the same family.

10 Over and above this, there were allegations in evidence and in print of political interference with the process. I have chosen to ignore this as the matter I believe can be otherwise decided and the parties concerned were not called by either side in the action. However, the manner of termination of a government lease as revealed to the court appeared to be most irregular. Governments and instrumentalities of governments can only get themselves into problems when clear and unambiguous procedures are not followed. I drew attention to this matter with reference to the Nauru Phosphate Corporation in Civil Action No. 18/2003 between Auwog Abemama & Ors, Prentice Adu & Ors and Rosa Kun & Ors v NPC. When one enters a written contract or lease then it behoves all, particularly a government and its instrumentalities, to perform in accordance with their rights and duties within the terms of the written instrument.

Land legislation and control

11. Whilst action has been taken in the Supreme Court recently, in the first instance, mainly to secure an injunction, there is no statutory regime that controls the matter of the occupancy.

12. The Nauru Lands Committee Ordinance 1956 -63 gives jurisdiction to the Nauru Lands Committee to determine questions as to the ownership of, or rights in respect of, land (S.6) but that is all that Committee is empowered to do. The Committee in another case has properly refused to consider a matter falling under the Nauru Housing Scheme. 'Rights in respect of land' may cover customary access, and usufructure such as trees, or fruits, but not decisions as to occupancy of dwellings erected on the land. Such a matter, one would believe, lies with the owners of the land and any family rules made thereon. (See Deci Temaki v Rene Harris unreported 10 December 2004).

13. Apart from Government leasing of land for public purposes contained in the Lands Act 1976, there have been no attempts in reality to control land by legislation. There are no planning laws, no laws with respect to the rights and duties of landlord and tenant, or control of buildings that abut or cross landholdings such as is common in the location and, in fact, is a factor in portion 259 Denigomodu, though not of concern in this case.

14 Land on Nauru is almost without exception privately owned resulting in a society that uses land often for the accumulation of rents. As population rises which it has at a considerable rate in Nauru since Independence, vacant land is at a premium and through the inheritance laws individual wealth through rent is considerably diminished, even with the absence of taxation, due to the increasing number of shareholders in land who often have fractions that are minute.

15. Ultimately, the only control that may be exercised over any particular land, which has not been leased or acquired, rests with the totality of landholders themselves. In some cases, landholders have developed their own principles with respect to occupancy or development (See Deci Temaki v Rene Harris), but in most cases there is no set procedure and certainly no governing legislation.

16. In the course of the hearing, I took the opportunity of remarking that a composite group such as in PL 259 Denigomodu deriving tightly from Amwano has an excellent opportunity to consider and control estate management for the benefit of all the landowners. Ideruge PL 259 is a classic case being a substantial portion of prime land valuable in itself

which has had the benefit of substantial development by the BPC and NPC without cost to the landowners. Properly managed and maintained along with its present vacant land it could, with entrepreneurial skill, be a developing capital asset with a good commercial return. It is not the task of this Court to become creative but to produce answers to disagreements but in the present context of Nauru, some sensible private initiative and development would not go amiss.

The Injunction

17 An interim injunction was granted on 8 October 2004 by the learned Acting Registrar ordering the defendant to vacate MQ1 which was then occupied by the plaintiff's daughter and to restrain the defendant from interfering in the quiet enjoyment of MQ1 by the plaintiff, from removing chattels, or in any way restricting access. This order was enforced by the Police and the injunction still operates. Apparently there has been no breach of the injunction to this point of time.

18 The defendant sought a discharge of the order. Given the evidence of disruption by the defendant both from the Plaintiff and Krystal Dick and from the defendant himself as to his manner of entry of MQ1, I have found that the interim injunction was entirely justified and it has remained in force.

Licence or Right to Occupy

19 Though the evidence produced in Court was scanty it would appear that the lease or leases on Ideruge PL 259 Denigomodu negotiated by the Government have been terminated both with respect to MQ1 and MQ2. It was unfortunate that no lease was produced in evidence nor evidence given how and why these twenty year leases were terminated. What was exhibited was a letter from the Acting Director of Lands & Survey dated 6 October 2004 indicating that the lease 'will now be terminated'. From the letter, it appears to reflect that there was a composite lease involving both MQ1 and MQ2, that it was a government lease, and that it was a lease for the purpose of housing government employees. This may or may not be accurate. If it is, then it is all the more remarkable that nothing was done with regard to MQ2 when it was landowner occupied well before the lease terminated. This case would have been much assisted had all the materials been produced and the relevant witnesses produced. By whatever means which was not clear, the Court now accepts that the lease or leases are terminated.

20. As earlier recounted, both parties polled the landowners to gain support for occupancy. Neither attempt was convincing or assisted the Court to come to a clear answer. Neither side achieved unanimity and

the 'Bumagim' group supported both parties. In any event, what is meant by 'occupying House No. 1' in the case of the plaintiff or 'to accommodate any house in the above portion' in the case of the defendant?

21. In the first case of the plaintiff, 'occupying House No. 1' there is no statement as to the term or rental. This note was distributed after the presumed termination of the lease. So far as the defendant is concerned it is clear that he wanted to be a preferred candidate for either house MQ1 or MQ2 but with what rights. So far as the Court is concerned these slips of paper mean very little. The landowners own the land which includes the houses, garages and sheds. There are, at last count, twenty six of them, and, at this point, I believe a few more. With significant landholdings, quite apart from Ideruge, I would have thought that best practice would have at least required some form of estate management that required a decision maker and clear directions as to terms including upkeep, lease period and possibly rental. Benefits should be expected from land but none will come unless organized and administered. Such remarks certainly apply to the larger estates and those commercially held. Any occupancy does not bestow of itself permanency or any form of ownership of the house. The conditions of any occupancy need to be set in writing by the owners.

22. This case is a dispute between Plaintiff and Defendant as to the right to occupy a house on property to which the plaintiff and defendant are amongst the landowners though in widely different shares. The Court should not exercise judgment on this. It should be the landowners themselves once they are clearly appraised of the issues. The Court properly can control the scene so that order is maintained, hence the injunction and offer considered views that can be taken into account. During argument, it was apparent that both parties had no real objection to the matter being sent to a family meeting of the landholders. I am proposing such a course.

23 Giving full scope to the nature of the property 'Ideruge', its position and quality, the landowners should consider its future development for the benefit of all. Where a decision is made either for MQ1 or MQ2 to allow occupancy then the decision should set in writing in unmistakable terms matters relating to the term of occupancy, the duties of the owners and tenants with respect to the house and property, the rental to be paid and to whom, and any termination clauses for both the owners and the tenants.

24 So far as selection of any occupying tenant who is a landowner or relative of a landowner, consideration may be given in the case of Ideruge to a balance between the three groups of the original Amwano family,

Eivaoeda, Dargegauw and Bumagim. Also may be considered in Nauruan terms the strength of the landholding of the applicant or relative and seniority. Requirements for the upkeep and preservation of the property as required for an ongoing valuable capital asset may be another consideration.

Conclusion

25. I accept that the interim injunction was properly granted, and that it still operates. I shall order that the injunction remain in place until the family meeting of landowners of Ideruge and that if it needs to be discharged thereafter application may be made to the Court. In the meantime, the plaintiff and her daughter Krystal Dick will remain in occupancy of residence MQ1.

26. So far as the right to occupancy, that matter is to be considered as soon as possible by a family meeting of the landowners of Ideruge. The details of such family meeting are to be determined by a meeting in Chambers of senior members of the three groups of the family Amwano. That meeting is to be held on Monday 13 June 2005 at 12 noon in Chambers at the Supreme Court, or some other appropriate time by agreement of parties.

27. Costs of the injunction are to be given to the Plaintiff. No costs awarded on the question of right of occupancy. This will be determined as costs of obtaining the interim order on 8 October 2004 and Writ under Order 36 Rule 5 on 12 October 2004, and one half of the costs of hearing on 6 and 7 June 2005.

BARRY CONNELL
CHIEF JUSTICE
9/06/05