

**IN THE SUPREME COURT OF NAURU**

CIVIL ACTION NO. 4/2005

BETWEEN : Ronald Deduna PLAINTIFF  
AND Brendaz Eobob DEFENDANT

Hearing 20,21<sup>st</sup> September 2005  
Decision Reserved

Mr. Rueben Kun for Plaintiff  
Mr. D. Gioura for Defendant

Date of Decision 22<sup>nd</sup> September 2005

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**DECISION OF CONNELL C.J**

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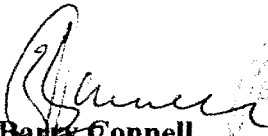
1. An earlier decision of this Court dated 6<sup>th</sup> September 2001 established that there had been an imperfect gifting of the land to the defendant and that, as there was no gift that was effective in either law or equity, the Court reached the conclusion that portion 24 Denigomodu still remained within its present ownership of fourteen landowners.
2. There was some acrimony between the two families of landowners and it was decided subsequently to negotiate a way out with a family meeting conducted by the Nauru Lands Committee (NLC).
3. The present matter has arisen as a consequence of the sub-division of portion 24 Denigomodu which came about through a decision of the Nauru Lands Committee on 6<sup>th</sup> March 2002 to subdivide equally following the family meetings of the landholders of portion 24 Denigomodu with the N.L.C on 5<sup>th</sup> March 2002. The subdivision was subsequently published in the gazette in G/N 357/2003 and G/N 13/2004.
4. When subdivided the easterly portion remained as portion 24, whilst the western portion was cited as portion 288 Denigomodu.

5. This civil section was brought by one of the large landowners, the plaintiff, of new portion 288 to remove one of the large landowners, the defendant, of sub-divided portion 24 who remained in occupancy of a dwelling in portion 288.
6. Evidence was given that the defendant whilst at one stage he occupied an area with his family in portion 24, as it now is, he had been in occupancy with his family of a dwelling in new portion 288 since 2001 or thereabouts. The defendant does not pay rent for the occupancy. Following the gazettal of the sub-division, he can claim no ownership rights to land situated in portion 288.
7. There does not appear to have been any objection raised at the meeting or subsequently to the decision to sub-divide. The defendant did express at the meeting that he proposed to stay in residence where he was, namely, in a dwelling in portion 24 which became portion 288.
8. One of the assertions of the defendant was that he was not aware of the sub-division that had taken place. Specifically, the Court sought from the Chairman of NLC when the decision to sub-divide was made and whether this was conveyed to the parties. He said, as the translated Minutes held in the Court indicate, that the decision was taken unanimously by the NLC the day following the family meeting but was not conveyed to the parties. Following the carrying out of the survey by the Director of Lands and Survey on the instructions of the NLC the sub-division was gazetted.
9. The Court is at a loss to know why the sub-division decision was not directly conveyed to the parties. That would indeed seem to be good, and necessary, administrative practice. There may be an explanation that, at one point, the NLC, by letter dated 22<sup>nd</sup> July 2002, sought a decision of the Supreme Court to, as it were, verify the decision of the NLC to the sub-division. At that point, however, the Court was 'functus officio'. It had given its earlier decision, as stated above, and it was now left to the parties to sort out their grievances and 'modus operandi' in conjunction with the NLC. Of course, the NLC realised it was their decision and acted upon it.

10. Before dealing with the main issue of the case, the Court raised the question whether a sub-division of land required the consent of the President pursuant to section 3 subsection 3 of the Lands Act 1976 in that there was a transfer of an estate or interest in Nauru land, or a contract or agreement for a transfer. The matter was not fully argued by either party and the Court is prepared, without the benefit of argument of the parties or by intervention of the secretary for justice for the Republic or the NLC, to allow a sub-division between parties where the rights subsequently granted by the sub-divisional transfer remain the same in essence. However, as I remarked in the course of the hearing, such a ruling would unlikely to be given if, in the circumstances of the case, there was a significant shift in the landholding.
- 11 In explanation, the NLC in its minutes noted that in one of the families, namely Eobob, two of the landowners indicated that they would gift these share to the defendant. Whilst such a gift would not upset the balance of the sub-division, as between the parties, it would remain imperfect without the consent of the President in terms of the Lands Act.
- 12 A further point to be noted here was raised by the Court in the course of evidence given by the Chairman of the NLC. For the purposes of Nauru land a gift inter vivos has to have been perfected, through the procedure of the Lands Act. Given the statutory requirements, there must be some question particularly in matters of inheritance whether a Court could place reliance at some future date, often many years, upon donors comments that have been minuted by the NLC as satisfactory evidence of the gift. It is far better to have a gift of land perfected by the proper statutory action.
- 13 In relating to the sub-division, so far as the defendant is concerned, he had been prepared to hand over a store within new portion 288 to the plaintiff in January 2004. This was some evidence that his assertion of lack of knowledge of the sub-division may have been inaccurate. In any event, the fact of the matter is that there is a sub-division in place. The defendant is residing without a tenancy agreement without a tenancy at will or even without even any license or consent of the owners.

- 14 No notice to vacate has been yet served on the defendant. The plaintiff is simply seeking an order from the Court to evict the defendant.
- 15 The defendant in his evidence has indicated that he has nowhere else to go as remaining rooms available in portion 24 are not fit, in his estimation, for habitation. Evidence was given by two tenants that the defendant had generously provided them with accommodation in portion 24 without charging rent. The absence of rent was done, as the defendant asserted, because of the acute financial position in Nauru where there was little work available. The defendant himself, however, holds a position as a security officer at Fisheries.
- 16 As against such evidence, the defendant since the family meeting with NLC in 2002 when he asserted he would stay where he currently is living, he has done nothing to make a move and has indeed offered free accommodation to two families in his own apartment block within portion 24. Also, the fact that he now has some managerial control over present portion 24 should be sufficient encouragement to carry out some renovation of the well-placed site to improve its habitability to one of tenantable repair.
- 17 I accept that the defendant has been living in his present quarters for some years, probably four or five, but the solution of sub-division from which both parties are meant to benefit will not succeed if there is a continuation of his habitation in a prime position of portion 288. Furthermore, as earlier noted he presently has no tenant rights.
- 18 That said, the Court feels there should be some time granted, but not an inordinate time, that may allow for the orderly moving of his extended family, probably into portion 24.
- 19 The Court will, therefore, order that the defendant and his family vacate the current residential accommodation in portion 288. and move to accommodation otherwise than in portion 288. The vacation of the premises must be undertaken no later than Thursday 17<sup>th</sup> November 2005.

I shall hear the parties on costs.

  
**Barry Connell**  
**CHIEF JUSTICE**

