

The size and state of the building and its contents when the defendant and his workmen pulled it down are in dispute. Mason Dick said he was using:-

“the house as a laboratory for my tissue culture plants...had my equipment in it. Building secure.”

The building consisted of –

“toilet, two rooms, lounge and kitchen.”

He didn't know what happened to his equipment etc.

To the contrary Paul Finch and his wife, Mrs. Krystalmaine Finch, said the building was derelict. Paul Finch said a willing purchaser might pay between \$1000 and \$1500 for the materials: that was all.

I cannot in the state of the evidence come to a conclusion on value of the building and contents, if any, lost. If necessary I shall assess damages later.

In fact the building is only the focus of the plaintiffs' complaints. Douglas Audoa produced a sketch showing the defendant having fenced off about 85% of the whole Portion. Yet Douglas and his side of the family own half.

The question I have to answer is whether Mrs. E.E. Dick and her family members had in law an obligation to consult and agree with other land owners before demolishing the building and (apparently) appropriating more than half the Portion to their own use.

No doubt they have acted high handedly in not consulting. They had, I suggest, at least a moral obligation to consult. Courtesy, good manners, sensitivity for the feelings of others demanded it. I have come to that conclusion despite Mr. Nimes' submission that it's not the Nauruan way. I reject Mr. Nimes submission. From my observation of Nauruan people, they as much as any other community practice the courtesies common to all civilized people.

Indeed their institutions (for example Nauruan Lands Committee) assume that disputes should be settled by discussion, conciliation, agreement and good will. The defendant has acted quite to the contrary.

Is that moral obligation also a legal duty? Counsel have not been able to cite any authority. I myself have found none.

The whole ethos of Nauru is toward consideration for the feelings and rights of others. The institutions of the country are based on that ethos. It is more than moral obligation. It should be and is a legal obligation as well.

One may look at in another way. Paul Finch, on behalf of his family, demolished the building which belonged as well to his family as to other people. He interfered with property belonging partly to others. A trespass to property. He acted unlawfully.

The answer to the question I had posed is "Yes". Mrs. Finch and her family had an obligation in law as well as a moral obligation to consult and agree with other land owners before making changes in the use of Portion 107. They did not and are liable to the plaintiffs' for their failure to do so.

I shall hear counsel as to the Orders I shall make.

Robin Millhouse
THE HON. ROBIN MILLHOUSE QC.,
CHIEF JUSTICE
12th March 2008
REPUBLIC OF NAURU