



IN THE SUPREME COURT OF NAURU

[LAND APPEAL]

Civil Suit No 7 of 2014

BETWEEN SYLVANUS KAM & OTHERS

APPELLANTS

And NAURU LANDS COMMITTEE

1ST RESPONDENT

And ESTATE OF EINGARA OLSSON

2ND RESPONDENT

Before: Khan, J

For the Appellants: Mr V Clodumar

For the 1st Respondent: Mr G E Leung

For the 2nd Respondent: Mr L Scotty (Not present)

Date of Hearing: 24 February 2015

Date of Ruling: 27 February 2015

CATCHWORDS:

Land Appeal to Nauru Lands Committee – filed by way of writ and statement of claim – objections taken that no notice of appeal filed in accordance with the requirements of the Practice Direction 1 of 2015.

Appeals – filed by Barristers and Solicitors and Pleaders shall be in accordance with the requirements of Practice Note 1 of 2015.

Appeals – filed in person shall be accepted by the Registry in the form that it is presented – although it may not be in full compliance of Practice Note 1 of 2015.

Directions – issued as to the conduct of the Appeal – no hearing date to be assigned unless pre-trial conference conducted to identify issues and to ascertain the number of witnesses to be called.

RULING/DIRECTIONS

1. In a full court sitting of the Supreme Court comprising of Madraiwiwi CJ, Hamilton-White J and Khan J the issue of Practice Note no.1 of 2002 (PN 2002) was raised.
2. The arguments advanced on behalf of the Nauru Lands Committee (NLC) by Mr. Leung, the Solicitor General was that by virtue of PN 2002 the NLC should not be made a party to the proceedings, whilst the Appellants/Plaintiff submitted that notwithstanding the PN 2002, the practice in this Court was that NLC continued to be a party to the proceedings in which all aggrieved parties filed appeals against the decisions of NLC.
3. The full bench at paragraph 16 stated as follows:

“Taken together with the other reported cases in the last few years in which the 1st Defendant featured, it appears to us the Practice Note has been honoured more in the breach rather than the spirit and the letter thereof. It therefore makes little sense to now insist the 1st Defendant be removed as a party in this similar proceedings when the practice for a number of years has been otherwise. We therefore accept Counsel for the Plaintiffs’ contention that there has been a change in approach by this Court as regards the involvement of the Nauru Lands Committee in legal proceedings”.

4. The full bench ordered that PN 2002 should be withdrawn and that new guidelines were to issue in due course.
5. On 18 February 2015 Madraiwiwi CJ issued Practice Note No. 1 of 2015 (PN 2015) which has many similarities to PN 2002, except that now NLC is a respondent in the appeals.

CHRONOLOGY OF FILING DOCUMENTS AND COURT APPEARANCES

6. I will set out a chronology of events of filing of documents and the court appearances which are as follows:
 - i. 27 January 2014 – The Appellants/Plaintiff through Mr. Clodumar filed an appeal in this matter by way of writ of summons.
 - ii. 12 September 2014 – Matter called before Madraiwiwi CJ when orders were made that the defence to be filed within 14 days and the Plaintiff to file reply within 7 days. Mr. Clodumar appeared for the Plaintiff and Mr. Daurewa appeared for the 1st Defendant (NLC).

- iii. 28 October 2014 – The matter was called before Khan J. Mr. Clodumar appeared for the Plaintiff and Mr. Yoli Tom'tavala for the NLC, Ms. Percy Star for the 2nd Defendant. Orders were made that the Plaintiff was to file an amended writ within 21 days to include all the beneficiaries as the parties.
- iv. 6 November 2014 – Mr. Clodumar filed amended writ and statement of claim
- v. 18 November 2014 – Matter called before the Registrar Mr. David Toganivalu. Mr. Clodumar appeared for the Plaintiff, Mr. Tom'tavala for NLC and Mr. Scotty for the 2nd Defendant/Respondent.
- vi. 24 November 2014 – Secretary for Justice filed motion to remove NLC as Respondent. In the motion the Plaintiff was described as Appellant, NLC as the 1st Respondent and the Estate of Einganga Mary Olsson as 2nd Respondent.
- vii. 2 December 2014 – Matter called before full court and adjourned to 4 December for hearing of the motion to remove NLC as a party.
- viii. 4 December 2014 – Hearing before full court and ruling reserved.
- ix. 11 December 2014 – Ruling delivered and order made that PN 2002 should be withdrawn.
- x. 16 January 2015 – Matter called before Registrar Mr. Toganivalu. Mr. Clodumar appeared for the Plaintiff, Mr. Daurewa for the 1st Defendant and Mr. Scotty for the 2nd Defendant. Registrar made an order for the Defendants to file statement of defence within 21 days, that is 6 February 2015 and the Plaintiffs to file a reply within 7 days thereafter. Matter adjourned to 20 February 2015.
- xi. 20 February 2015 – Matter called before Registrar Mr. Toganivalu. Mr. Clodumar appeared for the Plaintiffs; Mr. Leung appeared for NLC and Mr. Scotty for the 2nd Defendant. The matter was adjourned to 24 February 2015 before Khan J for the determination of issues and for hearing on 26 February 2015.
- xii. 23 February 2015 – Mr. Leung wrote a letter to Mr. Vinci Clodumar and copied it to the Registrar. The letter reads as follows:

Dear Mr Clodumar

“Land Appeal No 7 of 2014: Sylvanius Kam & Ors Nauru Lands Committee & Estate of Einganga Olsson

We Act for the Nauru Lands Committee.

We have spoken about this matter recently.

You have purported to file an Appeal against determination of the Nauru Lands Committee's decision in this matter dated 8 January 2014 published as Gazette Notice No 29 of 2014.

A statutory right of appeal is provided for under section 7 (1) of the Nauru Lands Committee Act 2012.

Although the Act is silent, an appeal does not amount to a re-determination or rehearing of the evidence. Furthermore, on an appeal, no witnesses are called.

We reiterate that the procedure you have employed in this appeal, namely commencement by way of Writ of Summons, is irregular and inappropriate.

As one of the Respondents to the Appeal, we request that you file specific and proper grounds of appeal indicating how and where the Nauru Lands Committee has erred in law.

For the foregoing reason, we have chosen not to file a Defence to the Writ.

In our view, to do so would compound a procedural error. We are aware of your view that this was how matters were conducted in the past. Be that as it may, this does not mean that such an approach was correct and should be continued. Indeed we consider it to be erroneous and would be arguing that it should be discontinued.

For the record, we will also object to the calling of any witnesses in light of the fact that this is appeal (as opposed to a trial). We also advise that we hold the opinion that this matter is not in a position to be heard this Thursday before His Honour Justice Khan in the Supreme Court.

I would also like to draw your attention to the Practice Note 1 of 2015 issues by His Honour the Chief Justice. According to the Practice Note, an appeal "shall be by notice". We have not received any Notice.

By copy of this letter, the Registrar of the Supreme Court is advised of the position of the Nauru Lands Committee."

- xiii. 24 February 2015 – matter listed before Khan J, Mr. Clodumar appeared for the Plaintiff and Mr. Leung appeared for NLC. Mr. Leung raised the issue that the appeal was not filed in compliance with PN 2015 and both parties advanced their arguments.
7. In advancing the argument on behalf of NLC, Mr. Leung conceded that when the matter was called before the Registrar, he had agreed to have it being listed for hearing, and on reflection he felt he should not have done so. He drew my attention to PN 2015, in particular, to paragraph 3 that the notice shall contain the following:
 - a. Name of the Appellant;
 - b. Name of Land, Portion No and District;

- c. No. of Government gazette in which the Committees decision is published;
- d. Grounds of Appeal.
8. Mr. Leung pointed that Mr. Clodumar had filed his Appeal by way of writ of summons with a statement of claim, rather than a Notice of Appeal as he was required to do under PN 2015. He conceded that he had no qualms with the approach taken by Eames CJ in the case of ¹*Marissa Cook & Ors v Arubuwe Fritz & Ors & NLC* in which his Honour took the view that appeals under section 7 were not confined to a determination *stricto sensu* but were treated as hearings or hearings *de novo*. He submitted that the practice direction should be observed and Mr. Clodumar should have filed a notice of appeal rather than a writ of summons and a statement of claim.
9. Mr. Clodumar in response submitted that irrespective of the fact that he had filed a writ and statement of claim, it contained all the elements that is required under PN 2015, and therefore is in compliance with it. He highlighted that the writ contains the names of the appellants, the respondents, the land has been identified, the gazette no has been described and the grounds of appeal have been filed.
10. He further submitted that in the past appeals were filed in the form of writ and statement of claim and were accepted without any objections. I see that there is some merit in his submissions, as the appeal filed in this matter was not in the format as required by both PN 2002 and PN 2015. I said earlier that there are huge similarities between PN 2002 and PN 2015 and that the paragraph in relation to the notice of appeal is almost identical. I say that Mr. Clodumar's submission has some merit in that when Mr. Leung argued that NLC should not be a party in proceedings before the full bench, it escaped his attention that the appeal was not in compliance with the PN 2002. Likewise, it escaped the attention of other practitioners that appeared on behalf of the Secretary for Justice as well as the Registrar and the Judges who presided over this matter.
11. It simply fortifies our observations and findings expressed at paragraph 3 above that:
- ".....it appears that the Practice Note has been honoured more in breach rather than the spirit and letter thereof".*
12. Having said that I think the time is now correct to ensure that all Practice Directions and the Rules of the Court are to be observed. I say this particularly, in light of the fact that some 32 candidates are currently partaking in the Pleaders Course. I think that there is an onus on each one of us including, more so, on Mr. Clodumar, who is the President of the Law Society of Nauru, to ensure that all his members comply with the Practice Directions and the Rules of the Court.
13. The other thing that I shall add is that compliance of the rules ensures a quick flow of the cases whereas noncompliance has the potential of matters being side tracked and bogged down in which case the litigants are the ultimate losers by paying unnecessary costs. This unfortunately is one such case, as if the documents were in order then the

¹ 2013 NRSC 2

trial could have taken place on the 26 February 2015, instead of this matter being adjourned to the next Court session.

14. Mr. Clodumar has very graciously conceded that corrections to the writ and statement of claim can be made for it to comply with the requirements of the Practice Direction. I order that he should file a Notice of Appeal which is in compliance of PN 2015 within 7 days.
15. Mr. Leung has called upon me to issue directions in relation to the conduct of the Appeal in between the filing thereof and the date of hearing. I issue the following directions:

NOTICE OF APPEAL FILED BY LAWYERS AND PLEADERS

- a. All Notices of Appeal filed by Pleadings and Lawyers shall be in compliance with PN 2015, in particular paragraphs 1 to 4 thereof which should include the Grounds of Appeal in sufficient details.

NOTICE OF APPEAL FILED BY APPELLANTS IN PERSON

- b. All Notices of Appeal filed by the Appellants in Person shall be accepted in the manner in which it is presented to the Registry regardless of whether it is in full compliance with paragraphs 1 to 4 of the PN 2015 or not;
- c. The Secretary for Justice in accordance with paragraph 7 of the PN 2015 shall provide all the information contained therein to the Registrar of the Supreme Court which shall then be provided to the Appellants and all other parties;
- d. In accordance with paragraph 10 the Appellant is entitled to file amended Grounds of Appeal 7 days prior to the date of hearing;
- e. The Respondent shall file an answer to the Grounds of Appeal within 7 days of the receipt thereof or any amendment thereof;
- f. The Registrar and or the Presiding Judge shall thereafter conduct a pre-trial conference to identify the issues, get the parties to prepare and sign agreed facts and issues for determination, including issues that are in dispute. The parties shall agree on the number of witnesses to be called;
- g. A hearing date should only be assigned by the Registrar and or a Judge after the pre-trial conference has been conducted.

DATED this 27th day of February 2015.

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 Mohammed Shafiullah Khan
 Judge