



IN THE SUPREME COURT OF NAURU  
CIVIL JURISDICTION

Civil Case No. 34 of 2017

BETWEEN

Anthony Audoa

Plaintiff

AND

Masako Appi

Defendant

Before: Khan J  
Date of Hearing: 29 November 2017  
Date of Ruling: 30 November 2017

Case may be cited as: *Audoa v Appi*

**CATCHWORDS:**

Where houses built under Nauru Housing Ordinance 1957 under Nauru Housing Scheme managed by Nauru Local Government Council which was repealed by Nauru Local Government Council Dissolution Act 1997 vesting all the properties in the Republic-Plaintiff in occupation of house acquired by his late father under the scheme- Whether he has locus standi to file this action- Whether he acquired a right under Successions Probate and Administration Act 1976.

Held: injunction granted as plaintiff may have acquired an interest by Successions Probate Administration Act 1976 and serious question of fact to be tried.

**APPEARANCES:**

Counsel for the Plaintiff: V Clodumar  
Counsel for the Defendant: PE Ekwona

**RULING**

**INTRODUCTION**

1. The plaintiff seeks an interlocutory injunction to restrain the defendant from entering onto the property described as 'Yaren Lodge'.
2. The plaintiff is the son of the late Joseph Detsimea Audoa (plaintiff's father). His father acquired a house from the Government of Nauru under the Nauru Housing Scheme. The Scheme was set up under the provisions of the Nauru Housing

Ordinance 1956. Prior to acquiring the house, the plaintiff was required to and obtained the consent of the land owners to enable the Government of Nauru to build the house on the land for him.

3. The house was built in the early 1960's and the plaintiff's father lived in it until his death (the date of death is not known) and after his death the plaintiff took up occupation of the house and lived in it until 2010 when he left for Australia to seek medical treatment. The plaintiff currently resides in Australia with his wife and children.
4. When the plaintiff went to Australia he left the house in the care of his sister-in-law, Sheila Kanga.
5. In 2010 the house was burnt down and is not in a habitable condition; and because of lack of funds the plaintiff was unable to rebuild the house; and it remains in that condition. The defendant recently started clearing the land around the house and started building thereon. He has laid the bricks for the foundation and the foundation is yet to be laid.

#### CLAIM

6. The plaintiff claims that he is entitled to the use of the land and entitled to rebuild the house to the exclusion of the defendant. The defendant has obtained the consent of the majority land owners to build his house on the land where the 'Yaren Lodge' was situated.

#### CONSIDERATION

7. Mr Clodumar opposes the application for injunction and submits that the plaintiff has no cause of action as the Nauru Housing Ordinance has been repealed by the Nauru Local Government Dissolution Consequential Amendment Act 1997. He further submitted that the issue currently before the court was dealt with by Crulci J in the following matters:

- a) *Deireragea v Kun*<sup>1</sup>
- b) *Robertson v Cain*<sup>2</sup> (*Robertson v Cain*)
- c) *Deiranauw v Dannang*<sup>3</sup>

8. In *Robertson v Cain* the defendant was the descendant of Arbuda deceased who had entered into the original agreement with Nauru Local Government Council and the defendant was Arbuda's great granddaughter who was in occupation of the house. Crulci J stated at [25], [26], [38], [40] and [41] as follows:

[25] *Attached to NHO is a schedule, section 12, which detailed the tenancy agreement between the tenant and the Nauru Local Government Council (NLGC) wherein amongst other matters, the tenant agreed to pay rent fortnightly in advance; not to assign the tenancy or sublet without the consent*

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<sup>1</sup> [2017] NRSC 35; Civil Suit No. 53/2016 (14 June 2017)

<sup>2</sup> [2017] NRSC 68; Civil Suit No. 107/2016 (31 August 2017)

<sup>3</sup> [2017] NRSC 83; Civil Suit No. 35/2016 (19 October 2017)



*of the Council; and not to erect any building or any additions without written permission.*

[26] *It is clear that NHO provided for a formal tenancy agreement between NLGC and a tenant. The defendants were not the original tenants agreed under the NHO and managed by NLGC Housing Scheme. The defendant, Leona Cain, has no tenancy agreement; there has not been any rent paid by her, and on the evidence for many possibly decades.*

[38] *The Court notes letter dated 30 March 2012 from the then Chairperson of the NLC, Tyran Capelle, referenced 'NLGC Housing Scheme' in which he seeks guidance from the then President, His Excellency Sprent Dabwido, as to resolutions involving disputes between those tenants who occupy a house built on another land owners land, and the issue of the payment of rents pending. There is no indication of what, if any, response was received. The existence of the letter clearly indicates that difficulties surrounding this issue have existed for some time and that the matter was of such importance as to require the guidance of the President of the Republic of Nauru.*

[39] *The defendants are 3rd generation occupants of the house. In law the plaintiff is the land owner of Portion 59 with a 1/3 share. Any determination on this issue will have wide-ranging social impacts on the lives of many people living on Nauru, far beyond the parties involved in this matter before the Court.*

[40] *In the view of this Court the situation in relation to tenancies formally overseen by NLGC is for Parliament to resolve.*

[41] *In answer to the questions put before the Court at [7], above, the answers are as follows:*

a) *The house occupied by the defendants on Portion 59 was previously vested in the Council under section 7(1) of NHO, is now vested in the Cabinet and the Republic pursuant to sections 4(a) and 5(3) of the Nauru Local Government Council Dissolution Consequential (Amendment) Act 1997;*

b) *The defendants do not hold any legal tenancy in the house on Portion 59; at most they are tenants at will;*

c) *No, adverse possession, does not apply. The rights of land owners are protected under section 8 of the NHO.*

9. Mr Ekwona submits that under the Nauruan custom, once the land is given to another Nauruan the land remains with him or her until the land is surrendered or returned to the land owners. He further submitted that when the plaintiff's father died he did not assign his benefits to the plaintiff in the house and that the plaintiff acquired an interest in the house by operation of law and custom.

10. In the case authorities relied on by Mr Clodumar and in particular in the matter of *Robertson v Cain* it is quite clear that counsels did not make submissions on the Successions Probate and Administration Act 1976 and therefore Her Honour Crulci J

did not consider the implications of that Act. In the Succession Probate Administration Act under interpretation in Section 2 property is defined as:

‘Includes real and personal property, and any state or interest in any property real or personal, and any debt and anything in action or any other right or interest’

11. In my respectful opinion the agreement entered into between the plaintiff’s father and NLGC Housing Scheme will come within the definition of ‘property’ as described in Succession Probate and Administration Act.
12. Section 15 of the Succession Probate and Administration Act deals with succession to estate on intestacy when reference is made to ‘property’ of person dying intestate.
13. It is not known whether the plaintiff’s father died testate or intestate. If he died testate, then his property which includes this house at ‘Yaren Lodge’ would be distributed in accordance with his last will or otherwise under the provisions of Section 15. In either case the property which includes the ‘Yaren Lodge’ was acquired by the plaintiff by operation of law (not sublet or assigned to him by his late father), therefore the plaintiff has the necessary locus standi to file this claim. I refer to [38] - [40] in *Robertson v Cain* where Crulci J expressed concerns about the uncertainty surrounding the tenancies previously overseen by NLGC and the need for the Parliament to resolve the uncertainty.
14. The issues to be determined in this case are two-fold:
  - 1) Firstly, what kind of interest did the plaintiff’s father acquire when he obtained the consent of the land owners. Was the consent only confined to the use of the land during his lifetime or was it to continue during the lifetime of his wife and his children and his descendants?
  - 2) Secondly, whether the plaintiff acquired an interest in the house upon the death of his father under the Succession Probate Administration Act and if so, whether he can continue to be in occupation of the house; and further, whether he can rebuild the house or whether it has to be rebuilt by the Government of Nauru.

#### SERIOUS QUESTION OF FACT TO BE TRIED

15. I am therefore satisfied that there is a serious question of fact to be tried.
16. I note that the plaintiff has not given an undertaking as to damages and Mr Clodumar is quite correct in his submissions that it is a requirement in applications for injunctions. However, failure to provide an undertaking does not mean that the application will be declined but it will weigh against the granting of an order for injunction<sup>4</sup> generally; and in exceptional cases an order for injunction can be made without an undertaking<sup>5</sup>.

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<sup>4</sup> *Donnelly v Amalgamated Television Services Pty Limited* (1998) 45 NSWLR 570 at 575

<sup>5</sup> *Optus Network Pty Limited v Boroondara City* (1997) 2 VR 381; (1996) 136 FLR 117



17. In my respectful opinion this is an exceptional case as it not only affects the plaintiff but many other Nauruans who acquired houses under the Nauru Housing Scheme which is either occupied by themselves or their descendants. Their rights as well as the rights of the landowners needs urgent clarification by the courts within the framework of the existing legislations. My concerns are shared by Crulci J when she expressed similar sentiments in *Robertson v Cain* at [37]:

*“[37] ... This is the third case before the Court this year which raises questions of tenancy rights of those living in the houses on land who are not land owners.”*

18. In the circumstances, I grant the orders sought by the plaintiff and order that the defendant his servants or agents shall be restrained from entering on the property where ‘Yaren Lodge’ was situated and further restrained from carrying out any construction work thereon until the determination of this matter by this Court.

DATED this 30 day of November 2017



Mohammed Shafiullah Khan  
Judge

