



SUPREME COURT OF NAURU

[CIVIL JURISDICTION]

Civil Suit No. 33 of 2017

Between **SALOTE KEPAE & ORS**

PLAINTIFFS

And **ROSALINDA HARRIS**

1st DEFENDANT

And **JANDI KAM**

2nd DEFENDANT

Before: Judge Vaai
Plaintiff: J. Olsson
1st Defendant: A. Lekenaua
2nd Defendant: A. Lekenaua

Date of Hearing: 07 December 2017
Date of Decision: 13 December 2017

DECISION

Introduction

1. 1. On the 10th October 2017 the Registrar issued ex-parte an interim injunction which :
 - a. restrained the defendants from further construction works on houses or parts of houses on "Abio" Portion 333 in Meneng until further orders of this court.

- b. restrained the defendants from entering into, or dealing with or building on the plaintiff's half share of Abio Portion 333 until further orders of this court.
2. The injunctive order was amended and re-issued on the 22nd October 2017. It reads:
 - 1) That the injunctive orders on the 10th October 2017 is hereby revoked.
 - 2) That Egigu Holdings Corporation workers are permitted to complete repairs to the building in Portion 333 occupied by its employees, specifically the building behind Rhynna Kepae's house.
 - 3) That all rental for the said building due after today be paid into court by Egigu Holdings Corporation from today until the ownership of the said buildings are determined by this court.
 - 4) That once repairs in order 2 are complete, the defendants by themselves and by their agents, servants or contractors or tenants be restrained from further construction works on houses or parts of houses at the Abio Portion 333.
 - 5) That the defendants be restrained from entering into or dealing with or building on the plaintiff's half share of Abio until further orders of the court.
3. These proceedings are concerned with the application by the defendants to vary the injunctive order of the 23rd October 2017, in particular to remove conditions 3, 4 and 5.

Background

4. The plaintiffs are the children of the deceased brother of the first defendant. The second defendant is the son of the deceased sister of the first defendant. All the parties are joint owners of the land Abio.
5. Prior to obtaining the injunctive order the plaintiffs had lodged with the Supreme Court an application for leave to appeal out of time the decision of the Nauru Land Committee which determined that the second defendant's mother is part owner of Abio.
6. Prior to the commencement of these proceedings there were on the land thirteen dilapidated rental units once owned by the Nauru Local Government Council. There was also an uncompleted house built about six years ago by the son in law of the first defendant, and a burnt down family home.
7. The defendants have renovated nine of the rental houses and rented out some of them. The remaining four were allocated to the plaintiffs to renovate for their use. They were not happy. Instead of renovating they instituted these proceedings.

The plaintiffs claim

8. The plaintiff's first cause of action is in trespass. They allege the defendants have commenced to build two houses on the plaintiffs half share of the land.
9. The second cause of action alleges breach of agreement. It is contended that the first defendant did agree and undertake to employ the plaintiffs in the rental business as security officers, caretakers and cleaners but that agreement has been breached by the defendant by failing to pay wages for most of the work performed by the plaintiffs.
10. Unjust enrichment as the third cause of action is related to the second cause of action. Through her failure or refusal to reward the plaintiffs for their work, the defendants allege that the first defendant has been unjustly enriched as a consequence.

Submissions

11. It is contended by the defendants that one of the construction which commenced several years ago was put to a stop by the order. It was not objected to six years ago. The restraint order was unreasonable in the circumstances.
12. The order also prevented the defendants from entering their own buildings; this is because condition 5 of the order prevented them from entering the buildings on the plaintiffs half share and the plaintiffs were claiming the buildings were on their half share.
13. It is maintained by the plaintiffs that the orders were necessary and warranted as the first defendant has treated all of the land as hers, and she has deliberately refused to consult the plaintiffs concerning the use of the land.

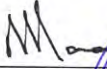
Discussion

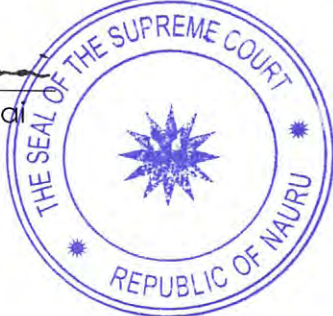
14. It is my respectful view that the interim injunction should never have been granted. There was no urgency to consider it ex-parte. It was not necessary and not warranted to issue the order.
15. If the plaintiffs succeed in trespass the court will issue an eviction order irrespective of the existence of any fixture. If any building of the defendants is on the portion of the land from which the defendants are ordered to vacate the plaintiffs will benefit by the eviction order.
16. If the plaintiffs succeed on the breach of agreement and unjust enrichment they will be sufficiently compensated by an award of damages which will be met by the rental monies.
17. There was no injury of a nature which required the protection of an injunctive order while the hearing of the substantive action is pending.

Result

- a) The injunction granted on the 23rd October 2017 is discharged.
- b) Costs follow the event. Plaintiffs will pay costs of \$600.

This 13th day of December, 2017.


Rapi L Vaai
JUDGE



The seal of the Supreme Court of the Republic of Nauru is circular. It features a central star with eight points. The text "THE SEAL OF THE SUPREME COURT" is written in a circle around the top, and "REPUBLIC OF NAURU" is written around the bottom. There are small stars on either side of the central star.