

APPEARANCES:

Counsel for the Appellant: V Clodumar
Counsel for the First Respondent: J Udit, Solicitor General
Counsel for the Second Respondent: PN Ekwona
Counsel for the Applicant: J Olsson

RULING

INTRODUCTION

1. The appellant filed a Writ of Summons on 27 July 2012 seeking an order for certiorari to quash the decision made by the first respondent in Government Gazette No.(GNN) 79/1992 over Portion 94 Buada District otherwise known as Abotijij (part).
2. On 19 June 2015 the appellant filed an application for leave to file an appeal out of time in which he stated that the second respondent are the land owners recorded in GNN 79/1992; and that in Government Gazette No. 428/1992 the land owners are Tsitsi Family, Darcy Deigaruk, Sam Akaruwo, Milton Dube and siblings, Sam Deidenang and siblings and Akiri Family.
3. On 5 August 2015 the appellant filed a Notice of Appeal after leave was granted listing the first and second respondent as parties.
4. On 3 March 2016 the appellant filed an amended Notice of Appeal adding the persons as respondents named in Government Gazette No. 79/1992 namely:
 - 1) Darcy Deigaeruk
 - 2) Dantes Tsitsi and others
 - 3) Sam Deidenang and others
 - 4) Sam Akaruwo
 - 5) Milton Dube and others
 - 6) Louise Akiri.
5. Some of the beneficiaries to the Government Gazette No. 79/1992 are deceased so the Registrar, Mr Jitoko, made a representative order on 19 June 2016 in respect of persons who could not be located and appointed Dantes Tsitsi as the representative of the beneficiaries who were ascertained and the ones who were not ascertained; and Dantes Tsitsi who was joined as a respondent to the proceedings.
6. In 2012 Nauru Lands Committee(NLC) made a determination in respect of the other half of Abotijij and the applicant in this matter filed an appeal against that determination representing the Agigo clan (Agigo).
7. The Agigo challenge is not in relation to the other half of Abotijij but the whole of Abotijij which includes Portion 94 and the Buada District which is the subject of this appeal.

APPLICATION

8. On 28 September 2017 the applicant filed a notice of motion pursuant to Order 12 Rule 17 and the inherent jurisdiction of this Court to be joined as a respondent in this matter. In support of the motion the applicant filed an affidavit deposing that he is a land owner of Abotiti Land Portion 90 of Buada District; and that he is an interested party as his family are the rightful owners of the land through their grandfather, Abuami; and if he is not allowed to be joined as a party then he and his family will lose the right over the land.

CONSIDERATION

9. Miss Olsson in her submissions submitted that the applicant wants to be joined as a party so that he can challenge the decision in respect of the land determination in GN 79/1992 which is the subject of this appeal.
10. Mr Udit submits that he has no objections to the applicant being joined as a party if he is defending the decision of the NLC in this appeal. He further submitted that if the applicant wants to challenge the decision of the NLC then he should file an application for leave to file appeal out of time under the provisions of the Nauru Lands Committee Act 1956 and the amendments made in 2012 (the Act).
11. Mr Ekwona on behalf of the second respondent submitted that the appellant cannot be joined as a party as he has no interest in the land which is the subject of this appeal and also agreed with Mr Udit's submissions that if he is challenging the decision of NLC in GNN 79/1992 then he should file an appeal against that decision.

JOINDER

12. Miss Olsson relies on Order 12 Rule 7 of the Civil Procedure Rules 1972 (CPR) which is titled 'mis-joinder or non-joinder of parties'. The joinder of the parties is governed by Order 12 Rule 5 which reads:
 - 5(1) *Subject to paragraph (1) of Rule 6, two or more persons may become joined together in one suit as plaintiffs or defendants with the leave of the Court or where:*
 - a) *If separate suits were brought by or against each of them, as the case may be, some common question of law or fact would raise in all the suits, and*
 - b) *All rights to relief claimed in the suit, whether they are joint, several or alternative, or in respect of or arise out of the same transaction or series of transactions.*
13. Miss Olsson is attempting to join the applicant as a party under the CPR which is not applicable for matters on appeal under the Act. Under the original Act an appellant was required to file an appeal within 21 days of the decision made by NLC and if appellant failed to do so within the time frame then he/she lost the right to appeal. The original Act was amended in 2012 which now empowers this court to grant an extension of time and in granting an extension of time it is guided by certain principles and if those principles are not met only then leave will not be granted.

CONCLUSION

14. This application by Miss Olsson is an attempt to circumvent the provisions of the Act which is in my respectful opinion is an abuse of process of Court and the application is therefore dismissed.

DATED this 13 day of December 2017



Mohammed Shafiullah Khan
Judge

