



NAURU SUPREME COURT

IN THE SUPREME COURT OF NAURU

[CIVIL JURISDICTION]

Civil Suit No. 85 of 2016

Between **UNIQUE NARAYAN (nee DETAGOUWA)** Plaintiff

and

BRIAR ROSE ALONA (nee SCOTTY) Defendant

and

SECRETARY FOR JUSTICE AND BORDER CONTROL

Interested Party

Before: **Crulci, J.**

Plaintiff: **V. Clodumar**

Defendant: **A. Lekanaua**

Republic: **J. Udit**

Date of Hearing: **19, 20 October 2016, 18 January 2017**

Date of Decision: **6 February 2017**

CIVIL – Land determination – section 3 of the Lands Ordinance 1921-1968 – section 6 Nauru Lands Committee Act 1956 – section 3 Lands Act 1976 – requirements of customary Gift of Land – Lawful owner of land

JUDGMENT

1. This is an action commenced by Writ of Summons on the 27 September 2016 in relation to the ownership of land, Portion 168, in the Nibok District.

BACKGROUND

- The Plaintiff's great-grandmother was called Eba (also spelt Eva) and after she passed away her land was determined by the Nauru Lands Committee and published as follows:

Gazette No 46 of 14th November 1961
COCONUT LANDS – NIBOK

Name of Block	Portion	Ref. No.	Former Owner	Share	Proposed Owner	Share
Anakawiduwa	168	Reg Book Page 50	Eva (dec'd)	All	Detageauwa	All

- Detageauwa (also spelt Detageouwa) inherited all the shares in Portion 168 following the death of his mother Eba. Detageouwa is the Plaintiff's maternal grandfather; he passed away in September 1982.
- Detageauwa's estate was determined as follows:

GNN 336/1983 No. 40 20th July 1983

Determination of the Beneficiaries of the Estate of the late Detageauwa of Nibok District

ESTATE

- The Nauru Lands Committee has ascertained that the late Detageauwa had been determined by the decisions of the Nauru Lands Committee (or its predecessor the Lands Committee) to be the owner of the following lands:-

District	Portion No.	Type of Land	Name of Land	Gazette Notice of Ownership	Share
Nibok	135	c.l.	Anuwongan	49/61	All
Nibok	168	c.l.	Anakawiduwa	46/61	All

GNN 337/1983 No. 40, 20th July 1983

DETERMINATION OF BENEFICIARIES

- The Nauru Lands Committee has determined that the beneficiaries of the estate of the late Detageauwa are:-

(a) in respect of the land shown in paragraph 1 above:

District	Portion No.	Name of Land	Beneficiaries	Share
Nibok	135	Anuwongan	Eidowuro Agir	1/11
			Trucia Raidi	1/11
		Eikakia D. T/ee	Daiwea Detageauwa	1/11
			Bugineida Detageauwa	1/11
			Harden Detageauwa	1/11
			Eibaoneno Detageauwa	1/11

			Regigo Kepae	1/11
			Eibina Detageauwa	1/11
			David Detageauwa	1/11
			Sigoro Detageauwa	1/11
			Eikakia Detageauwa	1/11 LTO
Nibok	168	Anakawiduwa	Eidowuro Agir	1/11
			Trucia Raidi	1/11
		Eikakia D.	Daiwea Detageauwa	1/11
		T/ee	Bugineida Detageauwa	1/11
			Harden Detageauwa	1/11
			Eibaoneno Detageauwa	1/11
			Regigo Kepae	1/11
			Eibina Detageauwa	1/11
			David Detageauwa	1/11
			Sigoro Detageauwa	1/11
			Eikakia Detageauwa	1/11 LTO

5. In 1992, after a submission to Cabinet, the land subject of this case (Portion 168 in Nibok District) was considered and the ownership of the land transferred to the Plaintiff:

GNN528/2012, No. 130 19th September 2012

LANDS TRANSFER

As according to Cabinet Submission No. 316/2012 – consent for Transfer of Land Ownership to Mrs Unique (Mirri-Jay) Narayan (nee Detageouwa) was considered and approval has been granted in which she is now the owner of the land mentioned in the table below.

DISTRICT	PORTION No.	TYPE OF LAND	NAME OF LAND	ORIGINAL OWNERS	SHARES	CURRENT OWNER	SHARES
Nibok	168	c.l.	Anakawiduwa	Bugineida Detageouwa	1/10	Unique Mirri-Jay Narayan	53/60
				David Detageouwa	1/10		
				Eibina Detageouwa	1/10		
				May Detageouwa (LTO)	1/10		
				Sigoro Detageouwa	1/10		
				Eidowuro Detageouwa	1/10		
				Adios Detageouwa	1/60		
				Anna Detageouwa	17/660		
				Handsome Detageouwa	1/60		
				Jolina Adam	1/60		
				Sheeba Scotty	1/60		
Regigo Kepae	1/10						
			Johicia Vunituraga T/TEE	Phoebe Raidi	1/11		
Nibok	135	c.l.	Anuwongan	Bugineida Detageouwa	1/10	Unique Mirri-Jay Narayan	53/60
				David Detageouwa	1/10		
				Eibina Detageouwa	1/10		
				May Detageouwa (LTO)	1/10		
				Sigoro Detageouwa	1/10		
				Eidowuro Detageouwa	1/10		

				Adios Detageouwa	1/60		
				Anna Detageouwa	17/660		
				Handsome Detageouwa	1/60		
				Jolina Adam	1/60		
				Sheeba Scotty	1/60		
				Regigo Kepae	1/10		
				Phoebe Raidi	1/11		

6. The Defendant was born in 1947. In 1974 she was aged 27 and the mother of young children.

7. Nauru Local Government Council (NLGC) was responsible for the renovation and extension of houses in Nauru in the 1970's. The house on Portion 168 was renovated in 1974. It was initially to be rented to another; however the Defendant gained access to the house and after discussions with the NLGC it was agreed that she would be the tenant.

LAND OWNERSHIP, TRANSFER AND REGISTRATION IN NAURU

8. The ownership of land in Nauru is determined by the *Nauru Lands Committee* established under the *Nauru Lands Committee Act 1956*.

6 Powers of Committee

(1) The Committee has power to determine questions as to the ownership of, or rights in respect of, land, being questions which arise:

- (a) between Nauruans or Pacific Islanders; or
- (b) between Nauruans and Pacific Islanders.

(2) (1A) The Committee has power to determine the distribution of the personal estate of deceased Nauruans.

(emphasis mine)

9. The Nauru Lands Committee (NLC) decision is binding unless appealed to the Supreme Court within 21 days of the gazetting of the decision.¹

10. *Lands Act 1976* stipulated purpose is as '*An Act to repeal the Lands Ordinance 1921-1968 and to make new provision for the leasing of land for the purposes of the phosphate industry and other public purposes, and for the removal of trees, crops, soil and sand and the payment of compensation and other moneys*'. It lays out quite clearly what the process is for land to be transferred, sold, leased or the grants of any estate or interest in land in Nauru:

¹ Nauru Lands Committee Act 1956, sections 6 and 7

3 Prohibition of certain transfers, etc., of land

(1) Transfer inter vivos of the freehold of any land in Nauru to any person other than a Nauruan person is prohibited, and any such transfer or purported transfer, or any agreement to execute any such transfer, shall be absolutely void and of no effect.

(2) Any person who transfers, or agrees, attempts or purports to transfer, the freehold of any land in Nauru to any person other than a Nauruan person is guilty of an offence and is liable to imprisonment for six months.

(3) Any person who, without the consent in writing of the President, transfers, sells or leases, or grants any estate or interest in, any land in Nauru, or enters into any contract or agreement for the transfer, sale or lease of, or for the granting of any estate or interest in, any land in Nauru, is guilty of an offence and is liable to a fine of two hundred dollars.

(4) Any transfer, sale, lease, grant of an estate or interest, contract or agreement made or entered into in contravention of the last preceding subsection shall be absolutely void and of no effect.

(5) Any transfer, sale, lease, contract or agreement made or entered into in contravention of section 3 of the Lands Ordinance 1921-1968 shall continue to be absolutely void and of no effect.

(6) For the purposes of this section the expression '**transfer inter vivos**' includes transfer to a corporation or an unincorporated body of persons and the expression '**a Nauruan person**' does not include a corporation or an unincorporated body of persons of whom some are not Nauruans.

11. Prior to this Act, in place of the consent in writing of the President, any land transfer required the consent in writing of the Administrator.
12. The transfer of land either upon the death of the previous owner or if it is to be given to another is set out in the *Lands Act* 1976. In particular section 3 outlines the conditions governing the transfer of land from one Nauruan to another.

EVIDENCE GIVEN TO THE COURT

13. The Plaintiff's relevant evidence to the Court is as follows:

- She is 29 years of age, married since 2008 with four children between the ages of one and seven years of age;
- She has lived in Nauru for all of her life
- She is residing at her Uncle David Detageauwa's place
- Uncle David's father is her maternal grandfather
- She wishes to build her own house on her land, being Portion 168 given to her by her aunts and uncles
- On Portion 168 there is a house which is occupied by the defendant
- They went to the land to see the defendant and told her they're going to put a house on the land
- She visited a number of times with Uncle David and understands her uncle's been there alone to visit without her
- There was a plan to commence clearing the land for the house on 17 September 2016
- The defendant came out and stood in front of the machinery and so they could not work
- On the 17th September 2016 there were also piles of crushed rock on the land that were not there two days before
- Although the police attended, the plaintiff did not call the police
- The cost of hiring equipment was \$250.
- She didn't know the Defendant until she wanted to build a house and the land was transferred to her, in January 2012
- She doesn't know how long the defendant has lived there nor that the defendant has been living there since 1974
- They went to speak to the Defendant because her Uncle said it's a matter of respect for her as she is an old lady and so that there would be no tension or issues.
- She has no knowledge of land gifting in the olden days and didn't know that land could be gifted in the olden days

14. The second witness for the Plaintiff, David Detageouwa, gave evidence as follows :

- He lives in Baitsi District, is married with 7 children living in the one house (3 bedrooms)
- His father passed away in 1983 and the Plaintiff is his niece
- He knows the Defendant, Briar Rose, and states that she is a respected lady in the community
- The Defendant is a tenant of the property at portion 168
- Portion 168 belonged to his father, and when he passed it was handed down to his brothers and sisters and himself as one of the beneficiaries

- The family identified the needs of Unique and transferred the land to her, as outlined in the government Gazette
- He has visited the defendant several times since the land transfer, maybe six times
- He's also discussed with the Defendant, the Plaintiff building a house on the BOE side or the hill side
- The Defendant said it is her land and 'you can't build on it'
- He tried to discuss the situation with the Defendant and offered to try and convince his family to give Briar-Rose the house she is in to give it to her and the land it is on, so that the Defendant would be happier about the Plaintiff building at the back, however the Defendant said that it was her land
- He went to talk to her out of respect because she has been there for a long time
- On the day they were to clear the land there was a pile of rocks there and the police arrived, the Defendant prevented them from working
- He never knew his grandmother Eba, and his father passed away when he was young so never had any conversations about land matters
- He knows nothing about land being given to the Defendant
- He doesn't know about the olden day ways of land giving to others. Didn't really know his father as he was young when he passed so didn't have any conversations about land issues

15. The third Plaintiff Witness is another of her uncles, John Detageouwa. His evidence related to conversations between his father and the Defendant:
- He was born in 1958, and knew Briar Rose, the Defendant, from when they were young
 - In relation to Portion 168 he used to play on that land when they were young, there was a house but there was no one living in it. It was a regular house which looked like an old building
 - He believed a David Bagaga was living in that house at the time.
 - Prior to that he understood from his father that Patrick Akubor and his wife lived in the house
 - On one occasion he recalled the Defendant coming to speak to his father, he was told to leave the room whilst they spoke. After the Defendant left the witness asked his father why was she there? His father replied that the Defendant 'had come to ask for the land to be transferred into her name and he would not be able to transfer it into her name as he had children and grandchildren'
 - The second time the Defendant came was around 1978. The witness was outside the house and the Defendant asked for his

father, she went into the room his father was in. They didn't speak for long and then she left the house

- The witnesses' father said that they spoke about the house not the land 'Briar Rose asked for the house'
- The witnesses' father mentioned that she could live in the house for a while until they could find other accommodation
- The father never said anything about giving land away, nor about his mother Eba giving land away
- He used to go to Portion 168 a lot when he was young
- On many occasions his father would send him to get Breadfruit from the two trees on Portion 168, this happened when the Defendant was living in the house.
- After his father died the witness continued for a while to get Breadfruit for his mother from the land, however later the Defendant chased away the witness's children who were sent to get Breadfruit from the land
- Witness doesn't know anything about giving land verbally; his father never told him that his grandmother had given land to the Defendant
- When the witness goes to Portion 168 there is rubbish everywhere
- The reason that Portion 168 was transferred to the Plaintiff was because the Plaintiff's husband is a foreigner; the land transfer will prevent any future disturbance to the Plaintiff and her children

16. The fourth witness for the Plaintiff was her aunt, Verna Haddad (nee Detageouwa), who has been living overseas since 1975, and returns regularly to Nauru to visit family:

- The witness recalls the Defendant visiting her father's house as she was there at the time. The Defendant brought food and then the Defendant spoke with the witness's father about the land that the Defendant stays on
- The witnesses father said that 'he could not give her the land because he had a lot of children'
- The Defendant came a couple of times to talk to the witness's father, about the time she was 16 years of age
- On the day the land was to be cleared there was a bulldozer there, however the police had been called as they had been told there was a fight, but there was no fight
- The land was not cleared as the Defendant stopped them, she was sitting in front of the bulldozer to stop it
- The witness's father never told her that her grandmother had given land to the Defendant

- The witness is unaware of when the Defendant lived at the house on Portion 168

17. The Defendant gave evidence relevantly as follows:

- She has lived at Portion 168 since 1974, when she was 27 years of age. At the time she had three children
- She was told by Detageouwa that his mother (Eba) told him about when the Defendant's father came to ask Eba for some land for his daughter (the Defendant)
- At the time of this conversation the Defendant would have been a baby, still crawling
- The Defendant believed the reasons for Detageouwa telling her this was because the NGLC had just renovated the house at Portion 168, and were going to give Gino the key to the house as the tenant
- The Defendant did not live in the house prior to it being renovated
- Detageouwa urged the Defendant to fight for what was hers and so she broke into the house through the window and subsequently changed the locks
- This action resulted in her being interrogated by the NLGC who were upset that she entered the house without their permission; only after much discussion was she allowed to remain in the house by the local counsellors
- About a year later Detageouwa came around to Portion 168 and showed the Defendant where the boundaries of the land were, and that at one point the boundary goes straight through a neighbouring house; Detageouwa said a Field Day should be held to determine the correct boundaries
- The Defendant understood the action of Detageouwa as confirmation of the intention of Eba to gift the land to her
- The Plaintiff and her uncle David Detageouwa have visited and spoken to the Defendant about the Plaintiff building a house on the land
- The Defendant had tried to save up money to build a house for her children on the land and to put this into effect had a Breadfruit tree and 50 to 60 banana trees removed from the land
- The Defendant is of the view that the land and house are hers as in custom it is the 'word' that is relied upon, and word of mouth was sufficient for her
- The Defendant objects to the position chosen by the Plaintiff for her new house as it will interfere with others accessing the cliffs to catch the Noddy birds

- The Defendant hasn't up until this time registered her interest in Portion 168 as she wanted to keep the fact that it was a gift from Eba to remind her children to be humble and grateful; however she now would like it to be legally hers
- On the 17th September 2016 she was notified by her children that people and a bulldozer were at the land, so the Defendant telephoned the police
- There followed an argument between the Defendant and the Plaintiff and her family which took place on the land
- The Defendant had some money saved for a holiday overseas and instead paid to have rocks delivered to block, and plans to subsequently use these as a foundation for a house constructed by the Defendant
- The Defendant denies going to speak to Detageouwa and asking for the land (and / or the house) as attested to by the Plaintiff's witnesses
- She accepts that the land was registered in other's names by publication in the Government Gazette but maintains that it is still hers by way of a gift from Eba
- She didn't challenge any of the gazette notifications as to the lawful ownership of 168
- Both her parents had land in which they had shares

18. Mr Ludwig Scotty was called on behalf of the Defendant to assist with customs relating to land:

- The NLC Act 1956 authorises the committee in relation to ownership and rights to land
- The decision of the NLC is final unless appealed
- Since 1956 custom lands must be registered
- The witness agrees that the law stands above custom and that if there is a disagreement with a NLC decision it should be appealed
- The President has the final power to approve land transfers, prior to that it was the Administrator
- Many generations back one might have put a cross on a piece of paper and said 'good alright'

19. Violet Mackay gave evidence on behalf of the Defendant, whom she has known since she was born. The witness is 82 years of age and was approximately 13 years of age when the Defendant was born. She gave evidence as follows:

- Eba worked as a housekeeper to the witnesses Great-Uncle and Great-Aunt

- The witness lived with her Great-Uncle and Great-Aunt for many years
 - The witness's house was built by the Nauru Housing
 - The land was shared with those who needed it
 - Land may be given for a number of reasons including: the person is related; there is a commitment to the person; or a father feeding the other side of the family, for example a widow
 - One would be shown the boundaries of the land then that belongs to you for life, it doesn't go back
 - The witness's father told her that Eba had said that the house was for Briar Rose, however the witness was not present when this was said
 - Eba passed in the 1950's
 - The witness stated that after WWII a lot of land was exchanged as people were destitute and families were broken and the population wasn't very large
 - Registering land with the Committee after 1956 was a modern way
 - The witness is of the view that the Nauruan custom of giving land continues to today, with people agreeing first and then going to the NLC to have it registered
20. The submissions by the Solicitor General helpfully set out the law as it applies to the transfer of ownership of land and the requirements in Nauru.
21. The Republic submissions highlighted the fact it was the NLGC which was responsible for the renovation of the derelict house on Portion 168 and likely that (although not given in evidence) rents paid would have been to the NLGC.
22. A number of cases from other jurisdictions are put before the Court to illustrate that non-compliance with requirements of land conveyance renders the transfer not legal and of no effect.

CONSIDERATIONS

23. Other jurisdictions have provisions for a tenant to become the owner of the land they have been living on for a long period of time, for example 'squatters rights' or 'adverse possession'. The requirements for the tenant to become the owner vary from jurisdiction to jurisdiction but put simply require a long period of obvious occupation with little or no exercise over the property by the original owners.
24. In Nauru however, the situation is quite different, with the determination of land ownership within the province of the NLC since the 1920's. The

Committee received legislative approval in 1956 by the enactment of the *Nauru Lands Committee Act 1956*². Initially the written consent of the Administrator was required when person wished to 'transfer, sell or lease, or grant any estate or interest in, any land'; after Independence the requirement was the written consent of the President.

25. The Defendant has pleaded before this Court that Portion 168 subject of this case is hers by custom, in that it was a gift to her from the owner Eba. When examining what is Nauruan customary law in relation to the ownership and transfer of land upon intestacy I have considered the evidence before the Court and articles written by Camilla Wedgwood³ and Peter H MacSporran⁴.

26. McSporran notes that:

*'There appear(s) to be no authoritative accounts of Nauruan custom in the holding and dealing of land before the advent of colonisation' and that 'It bears repeating that while what people do usually (that is, customarily), may look like some kind of rule, it does not follow that it is, or that if it is a rule, it is followed inflexibly.'*⁵

27. MacSporran goes on to quote from the 1910 Ninth Annual Report of the Nauru Mission in relation to how Nauruans dealt with their land:

"Children inherit from parents, uncles and aunts. People who have no children leave their property to nephews and nieces. Rich landowners give part of their land to poor relatives, even if they have children of their own...many fathers give their land to their sons before death if they take good care of them".⁶

28. Wedgwood noted the following in the section under The Kinship Organization:

*"In no sense were such homesteads clan property; they were individually owned and might even pass into the possession of a member of another clan – for in Nauru, both men and women own land and can give it while they are still alive or by will after death to both sons and daughters and even to unrelated friends. I was constantly assured that the clan as a group never owned any land; that individual ownership, not merely tenure, was fully recognized and carried with it full rights of disposal."*⁷

² See paragraph 8 above

³ *Report on Research Work in Nauru Island, Central Pacific* Camilla H. Wedgwood, *Oceania*, Vol VI June 1936, Number 4 and Vol VII September 1936, Number 1

⁴ *Land Ownership and Control in Nauru*, Peter H. MacSporran, *Murdoch University Electronic Journal of Law* Vol 2, Number 2 (July 1995)

⁵ *Ibid*, page 2

⁶ *Ninth Annual Report of the Nauru Mission*, 1910, page 28

⁷ *Supra*, Footnote 2, at page 374

29. In relation to 'what is the custom' on a particular subject matter, McSporran puts forward this view:

"It is possible that custom varies in different places in Nauru but that is part of the vitality of custom. What is important is that as the values of the community changes, as needs change, so custom can change. Rather than being seen as writ in stone it is alive, vibrant and growing.

Can anyone seriously contend that the customs and practices of a small community of some 1500 persons in a.d. 1890 cannot and must not be different from those of a complex, industrialised community of 5000 or more a century later?"

30. The question before the Court is who is the rightful owner of Portion 168, and in considering this, the following matters are persuasive:
- (a) The witnesses for the Plaintiff recall the Defendant approaching their father Detageouwa on a number of occasions, for ownership of the land and house, and Detageouwa refusing to give it to the Defendant because he had his own children and grandchildren;
 - (b) The Defendant's evidence was that Detageouwa said that his mother Eba wished for the Defendant to have the land, however Detageouwa did nothing to inform his family of this, nor formalise the transfer with the NLC, when he was alive;
 - (c) When the Defendant forced entry into the house at Portion 168 and took possession of it, it was she who persuaded the NLGC to allow her to stay as a tenant - there is no evidence that Detageouwa spoke on her behalf supporting her claim;
 - (d) The Defendant has lived in the house for some four decades but hasn't taken any steps to formalise her position, despite having opportunities when the ownership of the land was gazetted in 1983 and again in 2012 to challenge the determination;
 - (e) For many years the Defendant allowed Detageouwa's children to come onto the land and pick fruit from the Breadfruit trees;
 - (f) In light of all the evidence before the Court the credibility of the Defendant's account of the conversations she maintains took place between herself and Detageouwa regarding the ownership of Portion 168 is in doubt.

DETERMINATION

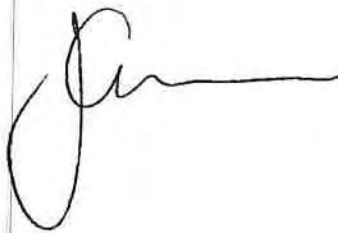
31. The Court considers that had she wished to do so, there was nothing in custom that would have prevented Eba from gifting land to the Defendant. Nor was there anything preventing Detageouwa, in compliance with any

request from his mother, to have transferred the land during his life time to the Defendant.

32. In either of the above situations, in order to perfect that gift or transfer of ownership, compliance with section 3 of the Lands Ordinance 1921-1968 or the *Lands Act* 1976 is required.
33. The Court determines that the land gazetted as Portion 168 in the Nibok District is owned by the Plaintiff Unique Narayan.
34. That the house in which the Defendant is living, is on the Plaintiff's land, and as such belongs to the Plaintiff.
35. That the Defendant does not have any rights over the land of Portion 168 in relation to the construction of other structures or construction of another dwelling house.
36. The Court notes that the Plaintiff and her family have indicated that the Defendant is able to remain as a tenant living in the house.
37. For clarity, the Defendant is not to do anything to interfere with the Plaintiff's use of Portion 168 and this includes obstructing the building of a house for the Plaintiff and her family on the land.

HELD

38. Land Portion 168, Nibok District is the Plaintiff's property.
39. No one is to interfere with the Plaintiff's rights to use the property and to reasonable access and enjoyment of the property.
40. Costs awarded to the Plaintiff (Costs to be taxed by the Registrar)



JUDGE JANE CRULCI



Dated this 6th of February 2017