



THE SUPREME COURT OF NAURU

[CIVIL JURISDICTION]

Civil Suit No. 12 of 2017

Between: Jenna Chen and Eigemeij Egaton

PLAINTIFFS

AND: Francis Akaiy

RESPONDENT

Before:

Judge Rapi Vaai

APPEARANCES:

Appearing for Plaintiff:

V. Clodumar (Pleader)

Appearing for the Respondent:

V. Detenamo (Pleader)

Date of Ruling:

18th October, 2019

Ruling

Background

1. The delay in the completion of this action was due to the court file disappearing after the evidence was completed. It has not been recovered. This ruling is based on copies of the pleadings, documentations and submissions provided by counsels. Copy of the transcript which was requested some eight months ago has not been provided.
2. This action is concerned with the use of and ownership of the land known as Portion 54 in Anetan District (the land)
It was inherited and owned by the mother Etoe and her five children namely:

- Ekanaiya
- Agere
- Engamaiy
- Reyeitsi
- Einagajin

They will be referred in this judgment as the original land owners.

3. According to the agreed summary of facts, the five children of Etoe inherited the land in 1961 pursuant to a Nauru Land Committee determination published in the Government Gazette of 21st June 1961. No appeal was lodged against the decision. Pursuant to the provisions of the Nauru Lands Committee 1956, the 1961 decision is final.
4. Except for Agere and Engamaiy the other three original land owners have passed away.
5. Engamaiy (or Eigemeij) is the second plaintiff; her granddaughter Jenna Chen is the first plaintiff. The first plaintiff, intending to build a home on the land, obtained written consents of at least 75% of the other land owners including Agere and Engamaiy; but her efforts were disrupted by the defendant who placed shipping containers on the part of the land where the first plaintiff intended to build.
6. The defendant is living on the land. He built and lived on the land over forty years. He is the son of Eingajin. The defendant claimed that the land was gifted to her mother Eingajin and her brother Reyeitsi by Etoe.
7. There is a second house on the land which was built by one Douglas Apad the grandson of one of the original land owner, Ekanaiya. The defendant claimed this house was built with his permission. Douglas Apad signed the consent form for first plaintiff's house.

Consent of 75% land owners – Allegations of deceit and false misrepresentation

8. The defendant alleged that the first plaintiff obtained the written consent of some of the land owners by fraud. It is contended that the first plaintiff deceived or misrepresented to some landowners that she wanted to build a home when in fact it was a business she intended to build.
9. One of these land owners was Juanita Ika. She signed a letter dated 6th June 2017 to the Department of Lands and Survey to withdraw her consent as well as the

written consent of nine other siblings. She alleged in the letter that she and nine other were misled and deceived by the first plaintiff who led them to believe that the plaintiff was to build a residential house when in fact it was a business house.

10. Juanita Ika testified. She did not explain what led her and nine others to believe that the first plaintiff intended to operate a business on the land.
Neither was she asked why the other nine did not sign the letter.
11. The defendant in his testimony admitted he prepared the letter at the request of the people concerned. He also alleged that the first plaintiff told the land owners who consented that he would sign the consent form. None of those land owners testified.

Evidence of plaintiff concerning allegation of false misrepresentation and deceit

12. When the first plaintiff circulated the consent form for two days she was accompanied by Joella Aboubo on the first day and Remo Maaki on the second day. All three of them testified.
13. The first plaintiff denied that the building was for business. Joella told the court that some of the landowners she and the plaintiff visited included Eigud, Juanita Ika, Emika and others. Eigud told the first plaintiff that her sister Emika handles all her matters relating to land and will sign for her.
Joella denied under cross-examination that the plaintiff told Emika that the plaintiff was starting a business on the land.

Evaluation of the Evidence supporting false misrepresentation.

14. Other than Juanita Ika who testified the other nine land owners did not. Juanita did not tell the court how she came to know or suspect that the first plaintiff was intending to operate a business on the land.
15. The only attempt by the defendant to establish the allegation was through the cross-examination of the plaintiff's witness Joella Aboubo, who rejected the suggestion.
What is established by the evidence is that it was the defendant himself who wrote the letter containing the allegations.

Allegations of Forgery

16. The signatures of land owners Eigud and Elizabeth the defendant alleged were forged by the first plaintiff.
17. Eigud testified. She told the court that the signature on the consent form is not hers. She also stated that her sister Emika usually signs on her behalf for land matters.
18. Elizabeth stated in evidence she did not sign the consent form and did not know who signed her name.
Under cross-examination she admitted she told the first plaintiff to sign for her after the plaintiff has obtained the consent of the two surviving landowners.

Response by plaintiff to forgery allegations

19. The first plaintiff testified Eigud did sign. She also confirmed Eigud told her to give the form to her sister to sign as her sister handles and signs for both of them on land matters.
Joella confirmed what Eigud said about giving the form to her sister Emika to sign.
20. Both the plaintiff and Maaki confirmed the testimony of Elizabeth which authorized the first plaintiff to sign on her behalf.

Discussion of fraud, forgery, misrepresentation, deceit.

21. Fraud was not pleaded in the statement of defense and should therefore not be entertained in this action.
But the parties did file a memorandum of Agreed Facts and Issues to be determined. The first issue for determination was:

"whether the plaintiff fraudulently gained the consent of some of the Landowners who signed the consent for her to build her house on land porion 54 in Anetan district;"

22. The court therefore assumed that sufficient particulars of the allegations of fraud were given to the plaintiff to explain the basis of the allegations.

23. To deceive and to defraud was explained by Buckley LJ in *Re London and Globe Finance Corp*¹.

“To deceive is, I apprehend, to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believe to be false. To defraud is to deprive by deceit, it is deceit to induce a man to act to his injury. More tersely it may be put that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action”

This statement was described by Lord Goddard in *R v. Wines*² as the locus classicus on the subject.

24. It is well established that fraud or dishonesty must be distinctly alleged and distinctly proved³.
25. It must be stated with confidence that the evidence tendered by the defendant to prove dishonesty is totally unreliable and insufficient even to amount to an averment or to infer dishonesty.
26. In respect of the allegations of misrepresentation to the landowners concerning the use of the land for business venture there is absolutely no evidence of any misrepresentation being uttered by the first plaintiff, accordingly there is no evidence anyone being deceived. It was not the land owners alleging they have been deceived, it was the defendant who instigated allegation.
27. Similarly with the two allegations of forgeries the same conclusion cannot be avoided.
Eigud’s sister usually signs for Eigud concerning land matters; that fact was admitted by Eigud. The plaintiff did visit Eigud and there was discussion. She either signed or her sister did for her.
28. Elizabeth did not refuse her consent. She told the first plaintiff to sign for her if and when the two surviving land owners gave their written consents, which they did.
29. I had a great difficulty in accepting Mr Clodumar’s response, when I enquired during oral submissions, if it is normal for siblings to sign on behalf of other siblings on land matters.

¹ (1903) 1 Ch 728 at 732 - 733

² (1953) 2 All ER 1497 at 1498

³ *Three Rivers District v. Bank of England* (2001) 2 All ER 513

I have since been informed by affidavit in a separate proceeding that it is a practice which the Nauru Lands Committee accepts. I quote from paragraph 12 of the affidavit of a member of the Nauru Lands Committee who has since resigned.

*“ The only family group that had their form signed by their eldest sibling was the family of ...
The mothertold us that her son... would sign for all siblings... When I spoke to ... he confirmed that he has been signing leases and other documents relating to land for an on behalf of his siblings. Therefore I did not question his authority to sign.”*

30. So when the signatures of Eigud and Elizatbeth were entered on the consent form after discussions with them and in accordance with their wishes there was no element of dishonesty by the first plaintiff.
31. The practice of siblings signing for others and writing the signatures of other siblings on documents must be discouraged and stopped. The Nauru Land Committee should cease the practice. Consent must be freely and voluntarily given by each individual land owner.

Was the land gifted

32. The defendant claims that the land was gifted by Etoe in 1976 to the defendant's mother Eingaijin and defendant's uncle Reyeitsi (two of the original land owners).

He says his statement of Defense:

“ That the claimant has surrendered her legal ownership of portion 54 some forty years ago when her grandmother Etoe (owner of the land) asked Eingaijin and Reyeitsi to leave the family house behind the Capelle main store to start their new lives on portion 54 Anetan. This was agreed by both parties and the rest of the siblings including Eigamaiy. This remained true in the family circle and known throughout the populous of Anetan for forty years. It is a practice consistent with Nauruan Traditional Customs and Practices and common when gifts are exchanged and properties are given amongst Nauruans ”

33. In his testimony the defendant said he was told by his mother and by Etoe that the family, that is Etoe and her children, have agreed to give the land to the defendant's mother and defendant's uncle. He has been living on the land ever since (1976) up to now.

34. Elizabeth's testimony in this issue was confusing. She alternated between gift of the house and gift of the land.
35. Counsel for the defendant in a rather powerful language attempted to establish the existence of a gift granted in a customary manner. The submissions commenced as follows:

" The suit at hand will show an attempt by a granddaughter (1st plaintiff) to sway her grandmother (2nd plaintiff), an elderly individual in her eighties through deceit and false representation for her 1/5th share of land which had been gifted out to two of her five siblings under Nauruan Customs and practices some forty five years ago."

36. Later on the submission mounted a personal attack. It contended that the first plaintiff:

" who knew of her grandmothers old age and erratic behavior and the indifference she has with her sister Engeiyin when the property was gifted to the two siblings because her own children one of whom is a single mother cannot access the property because of the family agreement"

At page 7. second sentence from the top, it is stated:

" It should be a point of concern that the plaintiff through deceit hoodwinked her family who themselves are in need of home when all the time she is trying to secure a land for her business. The plaintiff has already a roof over her head and one child in her possession with another in China with her husband family"

Plaintiff's opposition to the gifting.

37. Plaintiffs contended that the evidence, the history of the land and the surrounding circumstances negates any suggestion of a gift. If there was gift it was no completed. One of the events is the decision of the Nauru Lands Committee of the 21st June 1961 which determined ownership of the land. If the defendant was serious about the gifting, he or his mother or uncle should have appealed the 1961 decision to reflect the wish of the mother.
38. Failure by the defendant to appeal the 1961 decision is not a relevant factor here because the gifting by Etoe was supposedly made in 1976.
39. Other grounds will be discussed in the course of this ruling.

Discussion

40. General and unfounded submissions and statements unsupported by facts, however strongly may be the words in which they are stated, cannot supplement the unsatisfactory depleted evidence required to prove an allegation.
41. The evidence does not in any way suggest there was a gift of the shares of Etoe and her three children to her other two children Reyeitsi and Eingajin.
42. In the first place when Ekanaiya, one Etoe's children and original land owner died her shares in the land were inherited by her heirs.
When Etoe died her shares were given to her other two daughters. So the shareholding has remained with the original landowners and their heirs since 1976 when the gift was supposedly made.
43. Douglas Apad, the grandson of Ekanaiya, one of the original land owners, has also built on the land. Although the defendant told the court that Douglas Apad built on the land with his permission, suggesting that Douglas Apad knew about the gifting in 1976, it does not appear to be the case because Douglas Apad signed the consent form for the first plaintiff.
44. Both Agere and Engamaiy, the surviving land owners, have signed the consent form.
Eigud and Emika, Etoes two children from her second husband have also signed the consent form.
45. More importantly, other siblings of the defendant did sign the consent form. He therefore does not have the support of his immediate family for his crusade.
46. For over forty years the Reyeitsi and Eingaijin family have not taken steps to complete and formalize the gift by seeking the approval of the Administrator pursuant to the requirement of the Nauru Lands Ordinance 1921 – 1968, or of the President under the Nauru Lands Act 1976. They did not do so because there was no gift.
47. Due to the conclusions I have reached, I consider it unnecessary to address other side issues in counsels joint memorandum

Orders

1. The Defendant, his servants, agents and family member are ordered to refrain from interfering with first plaintiff's construction on land portion 54 Anetan District.

2. If the parties cannot agree on the site for the house, the Registrar of the Court shall identify the site.
3. The building shall be for residential purpose only.
4. Costs for the plaintiff shall be fixed by the Registrar if not agreed upon.

Dated this 18th Day of October, 2019



Judge R. Vaai

