



SUPREME COURT OF NAURU

CIVIL JURISDICTION

Civil Suit No. 128 of 2015

Between: **Enrico Solomon & Letima Adire** PLAINTIFF

And: **Ali Kakiouea** 1st DEFENDANT

And: **Capelle and Partner** 2nd DEFENDANT

Before: Chief Justice Filimone Jitoko

APPEARANCES:

Appearing for the Plaintiffs: D. Aingimea

Appearing for the First Defendant: D. Cecil

Appearing for the Second Defendant: V. Clodumar

Date of Hearing: 17 January, 2019

Date of Decision: 2 February, 2019

DECISION

The facts of this case are well- known to the parties and or had been decided by the court in its judgment on 16 August 2018. The Court in ruling in favour of the plaintiff found and held inter alia, as follows:

1. *“That the building on Land Portion 50 Anibare District on which the Restaurant is located remains the property of Enrico Solomon, the first named plaintiff.*
2. *That the Land Lease Agreement in 29 December 2014 between Ali Kakiouea the first defendant and Capelle and Partner the second defendant is without legal effect and is invalid.”*

In addition, the court further ordered that two-thirds (2/3) of the rent money that have been collected with the court be paid out to the plaintiffs and:

“That Ali Kakiouea, the first defendant file into court, within 30 days his claim(s) if any, to share the rent money.”

The first defendant did file, a motion on 17 November, 2018 applying for the payment to him of the 1/3 balance of rent money in the court’s custody. In support of his application, the first defendant re-filed his affidavit he had filed in the earlier hearing of the case. This was objected to by counsel for the plaintiffs in the ground that it did not introduce any new matter that would assist the court in assessing the merit of the first defendant’s claim of entitlement to the balance of the rent.

The first defendant did finally on 10 December 2018 file a new affidavit in support of his motion.

Matters Decided

In the evidence before it, the Court on 16 August, 2018, concluded and decided the following:

1. That the plaintiffs had properly obtained the majority of the landowner's permissions to build on land Portion 50.
2. That the building on land Portion 50 is and remains the property of the plaintiffs.
3. There are no evidence, documentary or otherwise, to prove that the ownership of the building constructed on land Portion 50 had been transferred to anyone else by the plaintiffs.

There were documents produced into court claiming that the costs of the construction of the building on land Portion 50 were paid for by Anthony and Antonio Dimapilis. The document further stated that since the Dimapilis had paid the major portion of the cost of the building, and that they had paid the first named plaintiff in kind compensating for his contribution to the building, the Dimapilis had inherited the ownership of the building. However, there are no supporting documents or evidence to show that the Dimapilis had inherited the building nor is there evidence to prove that the landowners had agreed to such change in ownership to the building.

The Dimapilis document also stated that their investment into the construction the property on land Portion 50 was \$43,400. They added that this sum of money was "paid in full to us by Mr Ali Kakiouea" and it was on this basis that they gave him the full ownership right to the building on land Portion 50. Again no document was presented to the court to prove this transaction.

The financial relationship and arrangements between the first defendant, Ali Kakiouea and Anthony and Antonio Dimapilis as to payment of the \$43,000 to the latter has not been substantiated either through testimonies of any of them before the court, or documentary evidence such as receipts. Neither Anthony Dimapilis nor Antonio Dimapilis were prepared to give evidence in court; nor did the first defendant, Ali Kakiouea. In fact the first defendant failed to make any appearance at all in the course of the preparation and hearing of this case.

The Courts application of the law of equity gave the first defendant the opportunity to present arguments before the court as to whether he is entitled to a portion of the rental money for the commercial use of the building on land portion 50.

On 17 September, 2018, the first defendant filed into court a motion with a prayer asking that:

“ The first Defendant is granted his claim for 1/3 interest in the land and the properties builded in land portion 50 in Anibare district, pursuant to the orders 5 and 6 contained on the judgment of His Honor Chief Justice dated 16 August, 2018... ”

The first defendant affidavit that was filed in support was the same affidavit filed earlier and referred to by the court above. It was as stated, objected to by Counsel for the plaintiffs on the grounds that issues and alleged facts raised in the affidavit had already been dealt with and ruled upon by the court.

The first defendants' claim to shares on the land and his holding powers of attorney over his sister's shares have yet to be proven, but in any case, it does not effect the finding by the court that the building erected on land portion 50 legally belongs to Enrico Solomon, and that the consent of the majority of the land owners of the land in question, had properly been obtained by him for the construction of the building.

In the court's view, the first defendant has failed to prove that he is entitled to any portion of the rental money. On the contrary, as borne out in the affidavits by Kenneth Oppenheimer, the operations manager of the second defendant filed into court on 17 January, 2019, the first defendant had on the 29 December, 2014 already received from the second defendant an advance rental payment of Aud\$14,155.05 under their lease agreement, which lease the court had in its earlier decision, found to be invalid. Mr Oppenheimer stated also that between 2015 and 2018, the second defendant had spent a further Aud\$24,393.00 in refurbishment of the building.

The fact that the second defendant had extended and made improvements to the building can only be to the benefit of the owner of the building, namely, Enrico Solomon, notwithstanding the belief by the second defendant, supported by the

contents of the agreement upon which the belief is based, that the building was the property of Ali Kakiouea, the first defendant. The benefits of any unauthorized improvements that becomes fixed to the building, accrue to the owner. This is a fundamental principle of property law.

As to whether the second defendant can be compensated and/ or reimbursed for costs of extension and refurbishment of the building, is not before this court, but a matter between it and the plaintiffs. The same goes to the advance rental payment made by the second defendant to the first defendant.

In the end, the court finds that the plaintiffs are entitled to all the rental money from the property on land portion 50, Anibare district, including the balance of the rental money that is in the custody of the court.

Order is made for the payment out to the plaintiffs of the remaining 1/3 portion rent in the courts custody.

I make no orders as to costs.

Dated this 2nd day of February, 2019

