



IN THE SUPREME COURT OF NAURU
AT YAREN DISTRICT

CIVIL SUIT NO. 17 OF 2019

BETWEEN

YOLAND JEREMIAH (NEE HUBERT) OF MENANG DISTRICT Plaintiff

AND

ROSANA DETUDAMO OF IAWO DISTRICT Defendant

Before: Khan, ACJ
Date of Hearing: 20 November 2020
Date of Ruling: 1 December 2020

Case is to be known as: Jeremiah v Detudamo

CATCHWORDS: Application for interim injunction – Plaintiff claims the defendant is building a house on an area allocated to the plaintiff's family – Common land owners – Defendant obtained consent of the land owners to build a house – Dispute is whether the defendant is building on the site allocated to the plaintiff's family – Interim injunction sought – Balance of convenience – damages not adequate remedy.

APPEARANCES:

Counsel for the Plaintiff: V Clodumar
Counsel for the Defendant: J Olsson

RULING

INTRODUCTION

1. The plaintiff has filed an application for interlocutory injunction to restrain the defendant from building a house on a dilapidated building known as MQ79 (MQ79) on Portion 63, in Aiwo District.

BACKGROUND

2. The plaintiff states that she is the daughter of Ita and Arube Hubert and Arube Hubert holds 9/32 shares in Portions 61 and 63, whilst the defendant's family (Halstead) holds 15/32 shares in Portions 61 and 63.
3. The British Phosphate Commission (BPC) built three houses each on Portions 61 and 63 for its employees. BPC was succeeded by Nauru Phosphate Corporation (NPC) after independence in 1968 which leased the two portions of land until the year 2000.
4. Upon expiry of the lease with NPC the Hubert and Halstead families divided the six houses as follows:
 - 1) Hubert family was allocated MQ79 (which was in a dilapidated state), MQ80 and MQ82.
 - 2) Halstead family was allocated MQ77, MQ78 and MQ79.
5. In February 2018 the defendant obtained the consent of the landowners and started to build a house.
6. The plaintiff saw the defendant storing building material in late 2018 on the site of MQ79 and approached her and told her that MQ79 was allocated to the Hubert family. She also told her not to build on that site on numerous occasions but the defendant persisted in doing so and the plaintiff filed these proceedings in July 2019.

FILING OF THE ACTION

7. Although this action was filed on 11 July 2019 it was only called before the Registrar on 4 October 2019. This matter was called before me on 18 November 2019 and Mr Clodumar complained that he was not able to serve the defendant as the documents had not been issued. According to the file notes the documents had not been issued by 11 March 2020 when I made an order that it should be issued forthwith.
8. This matter was listed before the Registrar from 22 April 2020 to 28 October 2020 when it was set down for hearing before me on 13 November 2020. On that day Mr Clodumar filed a supplementary affidavit and Miss Olsson was given time to respond to it, and the matter was set down for hearing on 20 November 2020.
9. The defendant in her affidavit dated 14 July 2020 was very adamant that she was not building on the MQ 79; and that she was building a new house on a new site and she was not using the MQ79 site to build her house.
10. In a supplementary filed by the plaintiff on 12 November 2020 and in the photos attached thereto it is shown that the external walls are old and paint has flaked. The plaintiff alleges that this is the wall of MQ79.

CONSIDERATION

11. Having heard the matter on 20 November 2020 I was satisfied that there was a serious question of fact to be tried and I made an order that all construction work shall stop forthwith.
12. The issue for determination is as to whether MQ79 belongs to the Hubert family or to the Halstead family. According to the plaintiff, the families had divided 6 houses between them as stated above and if that is so, then MQ79 belongs to the Hubert family. In *Pitcher v Ronphos and NRC*¹ Eames CJ stated at [7] as follows:

[7] Mason ACJ in *Castlemaine Tooheys Ltd v South Australia*² held:

“The principles governing the grant or refusal of interlocutory injunctions in private law litigation have been applied in public law cases, including constitutional cases, notwithstanding that different factors arise for consideration. In order to secure such an injunction the plaintiff must show (1) that there is a serious question to be tried or that the plaintiff has made out a prima facie case, in the sense that if the evidence remains as it is there is a probability that at the trial of the action the plaintiff will be held entitled to relief; (2) that he will suffer irreparable injury for which damages will not be an adequate compensation unless an injunction is granted; and (3) that the balance of convenience favours the grant of an injunction”.

13. The question of ownership of MQ79 has to be determined, and if it belongs to the Hubert family, then the defendant has no right to build on that site.
14. I am satisfied that damages would not be an adequate remedy and the balance of convenience favours the grant of injunction.

CONCLUSION

15. I make an order for injunction against the defendant restraining her, her servants or agents from continuing with the construction of the house until the determination of this matter. The parties are to sort out their pleadings, as I will fix an early date for the trial of this matter.

DATED this 1 day of December 2020.



Mohammed Shafiullah Khan
Acting Chief Justice



¹ [2012] NRSC 6 Civil Case No. 14 of 2012, 12 June 2012

² (1986) 67 ALR 553, at 557