



IN THE SUPREME COURT OF NAURU  
AT YAREN

Civil Suit No. 1/2018

BETWEEN

Janet Deireragea (nee Eongen) of Baitisi District, Widow  
Iban Rodiben of Anabar and Susan (Zola) Quadina (nee Eongen) of Anabar

Plaintiffs

AND:

Rickson Herman of Anabar, Security Guard

Defendant

Before: Khan, J  
Date of Hearing: 4 March 2020  
Date of Judgement: 10 March 2020

Case may be cited as: *Deireragea and others v Herman*

CATCHWORDS: Whether Life Time Only interest acquired under Administrative Order No. 3 of 1938 can be transferred to another person – Whether the act of granting possession is to be treated as an act of surrender of Life Time Only interest – Whether the person acquires any lawful interest by taking occupation.

APPEARANCES:

Counsel for the Plaintiffs: V Clodumar  
Counsel for the Defendant: S Valenitabua

## JUDGEMENT

### INTRODUCTION

1. This is the plaintiff's claim for an order that the defendant is in illegal occupation of the house (as a squatter) situated on land Portion 46 in Anibare District; and a further order

that the defendant is trespassing on Portion 56 and an order that the defendant vacates the house.

## BACKGROUND

2. The plaintiffs are the children of Rodiben Eongen (Rodiben) and Lingue. Their father Rodiben owned Portion 46 in Anibare District (portion 46) and upon his death the plaintiffs together with four others which included Robert Ijaeb Rodiben (Robert) inherited portion 46.
3. The plaintiff's brother Robert married Teneke Rodiben (Teneke) on 6 October 1979 in Nauru. Teneke was from Kiribati. They did not have any children and Robert died intestate in 2011 survived by his widow, Teneke.
4. A family meeting was called by the Nauru Lands Committee on 27 July 2011 which was attended to by Robert's siblings, his nieces and nephews. The minutes of the meeting was recorded in Nauruan language and translated in the English language and it states as follows:

Chairman: (Addressing this question to Teneke)  
You're to inherit all his estate ? (indicating Realty and Personalty)?

Teneke: Yes.

Chairman: To the siblings, nieces and nephews of the late Mr Robert,  
is there anything you would like to say in this?

Janet: I would like to say something.  
I would like everything that belonged to our late brother,  
I mean including his house, store and everything else he owns to  
be given to his wife (Teneke).  
For all we know that in the future, everything returns back to us,  
his siblings.

Chairman: That's a fact for she is an "LTO".

5. At the meeting Teneke was granted a Life Time Only interest in respect of Portion 46 (1/24 share) together with the following:
  - 1) Janet Deireragea - 1/24 share
  - 2) David Dedagrin Eongen- 1/24 share
  - 3) Helen Herman – 1/24 share
  - 4) Iban Eongen - 1/24 share
  - 5) Teneke Robiden (LTO) 1/24 share
  - 6) Lageo Eongen – 1/24 share

- 7) Susan Quadina – 1/24 share
6. Following the meeting Teneke took occupation of her husband's house and was collecting rent from the restaurant which was let out to Chinese.
  7. Teneke continued to live in the house and sometime in 2015 she invited the defendant to move in with her.
  8. The defendant Rickson Herman is the plaintiff's sister, Helen Herman's (nee Rodiben) son and is their nephew and the nephew of the deceased brother, Robert.
  9. At some point in time, the exact date is not clear, the defendant and Teneke went to the Nauru Lands Committee as Teneke intended to transfer her rights in the house and the Chinese restaurant in favour of the defendant. The Chairperson of Nauru Lands Committee, Tyran Capelle, told Teneke that she could not do so as she was only a Life Time Only beneficiary.
  10. The defendant and Teneke lived together in the house for some time and then she moved to Location Compound, as she was feeling weak and wanted to be closer to her family from Kiribati. In or about June 2015 Teneke left for Kiribati.

#### THIS ACTION

11. This action was filed by the plaintiffs on 8 January 2018. In the Statement of Defence filed by the defendant by his pleader, Miss Julie Olsson, she pleaded as follows in [1e], [1f] and [1g] as follows:
  - [1e] The defendant received the plaintiff's Writ of Summons in January 2018. He consulted with Mrs Teneke Rodiben's I-Kiribati family living in Location Compound to make contact with her in Kiribati for her to return to Nauru on account of the court proceedings. The Defendant was informed that Mrs Teneke Rodiben had passed away while she was in Kiribati sometime in 2017.
  - [1f] The Defendant has been trying to confirm the death of Mrs Teneke Rodiben with legal documentation with I-Kiribati family in Nauru and in Kiribati; the Kiribati Births, Deaths & Marriages, and, also with the assistance of Nauru Births, Deaths and Marriages.
  - [1g] There is reasonable grounds to suppose that Mrs Teneke Rodiben has died in Kiribati; and, she has property in Nauru.
12. After this action was filed the defendant's mother, Helen Herman, transferred her 1/24 share in portion 46 in favour of the defendant and this transfer was registered in G.N. No. 192/2018.
13. The parties have agreed to the following issues for determination:

### Issues for Determination

The parties have agreed to the following issues for determination which are:

- 1) Whether the defendant was occupying the house without any legitimate right prior to 21 March 2018?
- 2) Whether the illegitimate occupation by the defendant is secured by Land Transfer published in Government Gazette No. 3 of 21 March 2018 as G.N. No. 192/2018?
14. Mr Clodumar submits that Teneke's act of allowing the defendant to move into the house and later going to the Nauru Lands Committee to transfer the house in favour of the defendant was to surrender her Life Time Only interest. He further submitted that despite Nauru Lands Committee's advice that as Life Time Only interest she had no powers to transfer the house, she allowed the defendant to remain in there.
15. Mr Clodumar further submits that the defendant admits that Teneke died in 2017 and that admission is sufficient to prove her death. He also submits that immediately upon the death of Teneke the Administrative Order No. 3 of 1938 came into play and in particular paragraph 3(b) – that 'the property to be returned .... to the nearest relative of the deceased' and they are amongst others the plaintiffs.
16. Mr Valenitabua agrees that the Administrative Order No. 3 of 1938 applies to this case and that the plaintiffs by filing this action was compelling this court to usurp the functions of the Nauru Lands Committee. He further submitted that notwithstanding the admission in the defence that Teneke had died he could not concede that she is indeed dead in the absence of her death certificate.
17. He conceded that the plaintiffs as part landowners have the necessary standing, that is, locus standi to institute this action. He reiterated that the plaintiffs should have gone to the Nauru Lands Committee and by failing to do so this action is premature and should be struck out.

### CONSIDERATION

18. On the issue of the death of Teneke the onus is on the plaintiffs to prove her death for the purposes of Administrative Order 1938 but by the defendant's admission that is no longer necessary for the purposes of this action, however, Nauru Lands Committee may need to see the proof of death by way of a death certificate.
19. Teneke as a Life Time Only beneficiary was entitled to the exclusive use of the house and there were no restrictions as to who lived in the house with her, however, as Nauru Lands Committee advised her when she visited them to transfer the house in favour of the defendant that she did not have any powers to do so as a Life Time Only beneficiary. Notwithstanding, that advice which in my opinion was correct, she allowed the defendant to continue with the occupation of the house. If she had asked the defendant to stay in the house on a temporary basis whilst she visited Kiribati would have been proper but her intentions were otherwise, in that she wanted to transfer the ownership of the house to the

defendant and in respectful opinion at that point in time she surrendered her interest as a Life Time Only beneficiary.

20. Mr Valenitabua's submission that this court has usurped the function of the Nauru Lands Committee is not correct – it is his client who usurped the function of the Nauru Lands Committee by moving into the house and remaining in there against their advice.
21. This case falls within the ambit of Administrative Order 1938 and I refer to the case of *Wanda Wiram v David Mwardaga and NLC*<sup>1</sup> where he discusses in detail the implications of the Administrative Order No. 3 of 1938 at [19], [20], [21], [22], [23], [24], [27] and [28] where he states:

[19] By its terms the Order applies to both real and personal property. Paragraph 1 of the Order provides for the preparation of a list of all property of the deceased by the Chief of the District, but in more recent times since the passing of Succession, Probate and Administration Act 1976 this function is likely to have been carried out by the Curator, though nothing turns on this. Paragraphs 2 and 3 relevantly provides:

- (2) The distribution of the property shall be decided by the family of the deceased, assembled for that purpose. The distribution of the property agreed to by the family of the deceased shall be reviewed by the Government Surveyor to ensure that there is no apparent irregularity, who will refer any doubtful matter to the Administrator.
- (3) If the family is unable to agree, the following procedure shall be followed:
  - a) In the case of an unmarried person, the property to be returned from whom it was received, or if they are dead, to their nearest relatives in the same tribe.
  - b) Married – no issue - the property to be returned to the family or the nearest relatives of the deceased. The widower or widow to have the use of the land during his or her lifetime if required by him or her.
  - c) Married – with children – the land to be divided equally between the children, and the surviving parent to have the right to use the land during his or her lifetime. When an estate comprises only a small area of land the eldest daughter to receive the whole estate and other children to have rights to use the land during their lifetime.

[20] Mr Kun argued that the Order does not stipulate that the spouse is to be the sole beneficiary of the estate or any part of it. Rather, the estate should be shared by the nearest blood relative of the deceased (in this case by the nephews and the nieces). The Order was intended to incorporate principles of custom. He

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<sup>1</sup> [2013] NRSC 7 – a decision of von Doussa, J

submitted 'the inclusion of a spouse as a beneficiary may be construed to give him/her a share, both of reality and personalty, insofar as to ensure the surviving spouse is to be provided sufficiently to survive. It was never the intention of the 1938 Order to enrich this surviving spouse at the expense of blood relatives. The LTO concept is based on need and not a right per se. In fact the 1938 Order clearly favoured blood relatives to be given priority as beneficiaries in a deceased estate'.

- [21] Two points arise from these submissions. First, the submissions recognise that the words in par 3(b) 'family or nearest relative' include the spouse. That is correct. The meaning of the word 'family' is dictated by the context in which it is used and by its association in the phrase with 'nearest relative'. The word 'family' is in that context used in a sense sufficiently wide to include a spouse. Thompson CJ so held in *Ikirir v Duburiya and Ors Land Appeal No. 10 of 1971* after detailed examination of the Order. I respectively agree with his reasoning.
- [22] Secondly, the submissions recognise that par 3(b) gives a broad power to distribute the estate in a way that takes into account all the circumstances of the parties involving the needs of a spouse. By its terms par 3(b) does not require priority to be given to any particular member of the 'family or nearest relatives'.
- [23] In my opinion the Order requires the NLC to consider all the circumstances and to distribute the property of the deceased in whatever way the NLC considers fairly balances the different interest of each of the potential beneficiaries, in this case, the surviving spouse, and the nephews and the nieces. The NLC is given a broad discretion constrained only by the second sentence dealing with Life Time Only entitlement of a surviving spouse.
- [24] Relevant circumstances are likely to include the extent of the property in question, the ages of the parties, their economic circumstances and matters such health issues which could impose particular burdens on one or some of them. The closeness of the blood and family relationship is likely to be another consideration. In its evaluation of all the circumstances, the NLC must also follow the dictate of the Life Time Only entitlement of a widow or widower in respect of the use of the land.
- [27] Mr Mwardaga is an old man, disabled and in poor health. Before his wife's death he and the deceased had a way of life dependant on the rental and Ronwan Interest income that the NLC has treated as personalty. The Determination made by NLC would ensure the continuation of the stream of income which Mr Mwardaga and his wife would have enjoyed but for her early death. Having regard to the age and health of Mr Mwardaga his entitlement under the Determination will not be of long duration. On his death, the land interest which gives rise to the rentals and interest will revert to the nephews and nieces. In *Clara Agir v Daniel Aeomage and Ors* [2013] NRSC 14, Eams CJ held that under section 19 of the Nauru Phosphate Royalties Trust Act 1968 a Life Time Only holder 'while living' has the right to Ronwan Interest to the exclusion of the beneficial owners of the land, but on the death of the Life Time Only holder that land and the interest arising in respect of its reverts to the landowner. It will be necessary to return to this topic later after considering the appeal in the land.

[28] By Determination G.N. 300 of 2012 published on 6 June 2012 the NLC identified numerous parcels of land in which the deceased had an interest, and determined that the deceased's interest in each case would be redistributed as a Life Time Only interest in one ninth share to Mr Mwardaga and to each of the eight nephews and nieces another one ninth share each. On the termination on Mr Mwardaga's life interest, the one ninth share in respect of which he held his Life Time Only interest would be redistributed to the nephews and nieces such as that they thenceforth each held a one-eighth share.

22. I agree with what von Doussa J stated above. Upon Teneke's attempts to transfer her as Life Time Only in favour of the plaintiff and upon her death which took place in 2017, the 1/24 share which she held as Life Time Only would have to be distributed to the plaintiffs and the remaining landowners which included the defendant's mother.

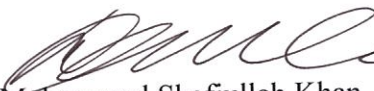
### CONCLUSION

23. The defendant has not acquired any lawful right to the house when he took occupation in 2015 and his right as a licensee or invitee came to an end immediately upon Teneke's attempted act of surrendering her interest, and definitely so when Teneke died in 2017. And further, his occupation has not been cured by his acquiring his mother's 1/24 share on 21 March 2018.

24. In the circumstances I declare that the defendant is a trespasser and I order that he should vacate the house forthwith.

25. I order the defendant to pay the costs of these proceedings which I summarily assess in the sum of \$2,000.00.

DATED this 10<sup>th</sup> day of March 2020

  
Mohammed Shafiullah Khan  
Judge

