IN THE SUPREME COURT OF NAURU
AT YAREN
CIVIL JURISDICTION

Land Appeal No. 05/2017

BETWEEN : EBENI TOM & ORS

1st Appellants

AND : ANTONIUS HEINRICH & ORS

2nd Appellants

AND : JOHN JULIUS & ORS

3rd Appellants

AND : DARREN TSIODE & ORS

4th Appellants

AND : BENEFICIARIES OF ESTATE EDIRIBAINA THOMA

1st Respondents

AND : BENEFICIARIES OF ESTATE OF GADABU

2nd Respondents

AND : BENEFICIARIES OF ESTATE OF GUMWARE JONES

3rd Respondents

AND : NAURU LANDS COMMITTEE

4th Respondent

Before: Khan, ACJ
Date of last written submission: 12 November 2022
Date of Ruling: 20 April 2023

Case to be known as: Tom & Ors v Estate of Thoma & NLC & Ors

CATCHWORDS: Recusal - Application for recusal under section 22 of the Supreme Court Act 2018 – Where judge presided over a related matter setting aside determinations of Nauru Lands Committee – Where following the setting aside Nauru Lands Committee re-determined the matter, which is subject of appeal in this matter – Whether the judge should continue to preside in this matter or recuse himself

APPEARANCES:

Counsel for the 1st Appellant:	J Olsson
Counsel for the 2nd Appellant:	PN Ekwona
Counsel for the 3rd Appellant:	J Julius (in person)
Counsel for the 4th Appellant:	A Lekenaua
Counsel for the 1st Respondent:	T Tannang
Counsel for the 2nd Respondent:	No appearance
Counsel for the 3rd Respondent:	T Lee
Counsel for the 4ht Respondent:	P Grundler

RULING

INTRODUCTION

1. This matter relates to an appeal against the determination of Nauru Lands Committee in respect of Gazette No. 70 published on 5 May 2017 in G.N.N 301/2017 ("Gazette 301") which dealt with one half share of Abotijiji land portion 94 in Buada District ("Land Portion 94").

2. On 25 May 2017 an appeal was filed by Mr Clodumar against Gazette 301.

3. Mr Clodumar also filed an appeal in respect of Nauru Lands Committee's determination in Gazette No. 79/1992 which related to the other half portion of 94 in the matter of *David Peter Gadaroa & Ors v Nauru Lands Committee & Darcy Deigaeruk & Ors* in Land Appeal No. 26/2012.

4. In this appeal the appellants are seeking the following reliefs:

    a. Declaration that the decision of the Nauru Lands Committee in Gazette 301 was ultra vires the orders of Eames CJ in the matter of *Jerome Reweru & Ors v Nauru Lands Committee and others*.
    b. The decision of the Nauru Lands Committee in Gazette 301 be set aside.
    c. That this court shall hear the appeal de novo and make a decision.

5. On 16 June 2016 I made orders in *Heinrich v Jones* [2016] NRSC 7 which included the case of *Jerome Reweru & Ors v Nauru Lands Committee and others* in which I made orders at [11][a][b][d] as follows:

"11 I hereby make order as follows :-

(a) All the decisions published in the Gazette by Nauru Lands Committee Portion 94 Buada District, the land commonly known as Abotsijiji following the decision of Eames CJ delivered on the in which His Honour directed are hereby quashed:-
(i) Government Gazette No 124/2012 under Gazette Notice No 501/2012
(ii) Government Gazette No 131/2014 under Gazette Notice No 611/2014
(iii) Government Gazette No: 165/2015 under Gazette Notice No 746/2015
(iv) Government Gazette No: 5/2016 under Gazette Notice No 2/2016

(b) The status quo be returned to the decision of Eames CJ where His Honour after quashing the decision of the Nauru Lands Committee published in Government Gazette No: 161/2010 under Gazette Notice Number 690/2010 directed the Committee:

"to convene all family members meeting to resolve the issues and to determine the owners of the said land."

...

(d) The members of the Committee so selected are to consider the matter de novo or afresh..."

6. Following the orders made in *Heinrich v Jones* the Nauru Lands Committee heard all the parties and made re-determinations and published it in Gazette 301 which is subject of the appeal in this matter.

7. After the appeal was filed this matter was allocated to Vaai J and he presided over this matter until the end of his commission as a judge in 2020 and thereafter this matter was put before me.

8. I am also presiding over the matter *of David Peter Gadaroa & Ors v Nauru Lands Committee & Darcy Deigaeruk & Ors* in Land Appeal No. 26/2012 which deals with, as I stated earlier, the other half of portion 94.

RECUSAL APPLICATION

9. An application for recusal was made by the first and third appellants under section 22 of the Supreme Court Act 2018 that I should recuse myself from hearing this matter because of the role that I played in the matter of *Heinrich v Jones*. Section 22 relevantly provides:

(1) Where a judge has a conflict of interest, he or she shall declare such interest and shall recuse himself from adjudicating in the cause or matter as a single Judge or as a member of the full Supreme Court.

(2) A party to any cause or matter may seek the recusal of a Judge from adjudicating in a cause or matter.

(3) The Chief Justice shall develop and publish guidelines on recusal to assist Judges to properly effect recusal.

10. I have considered the application for recusal and agree with the appellants that because I had previously dealt with the matters relating to portion 94 in the matter of *Heinrich v Jones*. I shall recuse myself in this matter.

DATED this 20th day of April 2023

Mohammed Shafiullah Khan
Acting Chief Justice