



IN THE SUPREME COURT OF NAURU
AT YAREN
CIVIL JURISDICTION

CIVIL CASE NO. 22/2020

BETWEEN

LEILANI GADEANANG

Plaintiff

AND

JEFFERY IKA

Defendant

Before:

Khan, ACJ

Date of Submissions:

29 November 2022

Date of Ruling:

18 July 2023

Case to be referred to as: *Gadeanang v Ika*

CATCHWORDS: Enforcement proceedings – An order for costs made against the defendant to be paid within 30 days – Where the defendant failed to pay the costs – Where the plaintiff filed contempt proceedings – Whether the plaintiff was entitled to file contempt proceedings or whether the plaintiff should have filed enforcement proceedings.

APPEARANCES:

Counsel for the Plaintiff:

L Scotty

Counsel for the Defendant:

B Duburiya

RULING

INTRODUCTION

1. On 12 November 2021 Fataki CJ delivered a judgement and made the following orders at [60] and [61] as follows:

[60] Accordingly, the Court grants a permanent injunction against the defendant as follows:

“The defendant, his servants and agents are restrained from further interfering directly or indirectly with the construction of the plaintiff’s house on the disputed land.”

[61] Standard costs are summarily assessed at \$1000 payable to the plaintiff within thirty (30) days.

EX PARTE APPLICATION FOR ENFORCEMENT

2. On 14 April 2022 the plaintiff filed an ex parte application for enforcement of the judgement for the costs order of \$1,000.00 under Order 36 of the Civil Procedure Rules 1972. The application did not have a returnable date and was therefore never listed before a judge or the registrar to deal with it.
3. On 8 April 2022 the plaintiff filed contempt of court proceedings against the defendant for failure to pay the costs of \$1000 as ordered by Fataki CJ.
4. On 20 April 2022 the defendant’s counsel informed the court that an application for leave to appeal out of time was filed. The plaintiff’s counsel informed the court that contempt proceedings had been filed against the defendant. Miss Duburiya informed the court that the costs of \$1,000.00 was paid into the plaintiff’s account with Bendigo Bank on 4 April 2022.
5. On 6 May 2022 Mr Scotty asked for time to consider his position with regard to the contempt proceedings and the matter was adjourned to 1 June 2022 when he informed the court that the contempt proceedings had been withdrawn and discontinued.

COSTS OF CONTEMPT PROCEEDINGS

6. Miss Duburiya asked for costs for taking part in the contempt proceedings and it was objected to by Mr Scotty.

ISSUES RAISED BY THE COURT

7. I asked both counsels to address me on whether the defendant’s failure to pay the costs of \$1,000.00 as ordered by Fataki CJ – whether the defendant was:
 - a) In contempt of court for failure to pay as per the order? Or

- b) Whether the plaintiff should have filed proceedings to enforce the order for the payment of \$1,000.00 costs?
8. Both parties filed very useful written submissions in respect to the issues raised by me.

CONSIDERATION

9. S.6(1) of the Administration of Justice Act 2018 provides:

A party who has obtained a judgment, decision or order under this Part may apply for an order to compel the other party to comply with the orders of the court in the manner provided for in the rules of the court.

10. S.28 of the Civil Procedure Act 1972 allows the decree holder to apply for enforcement orders of the judgment as follows:

- a) by delivery of any property specifically decreed;
- b) by attachment or seizure and sale, or by sale without seizure or attachment, of any property;
- c) by attachment of debts;
- d) by arrest and detention in prison of a person;
- e) by appointing a receiver; or
- f) in such other manner as the nature of the relief granted may require.


11. Order 36 Rule 1(1) of the Civil Procedure Rules makes provision for the enforcement of judgment and it provides:

- 1) A decree holder wishing to enforce the judgment or order of a Court shall make application ex parte by summons:
 - a) where the method of enforcement sought is the arrest and detention of a person or the attachment of salary or wages of the judgment debtor, for leave to issue a summons under Section 32 of the Act or a notice to show cause under Rule 10, as the case may be;
 - b) where the method of enforcement sought is the attachment of debts, for a garnishee order nisi; and
 - c) in any other case, for an order for the issue of the process of the Court appropriate to the method of enforcement sought.

12. The failure by the defendant to comply with the order for the payment of \$1,000.00 costs after the 30 day period was in my respectful opinion not in contempt of the court in itself. Since the defendant had not paid the costs, the plaintiff was at liberty to file enforcement proceedings as outlined above and not simply and directly file contempt proceedings as was done in this case.

13. The defendant is entitled to be compensated for taking part in the contempt proceedings instituted by the plaintiff and I have already found that it was wrongly instituted and in the circumstance, he is awarded costs against the plaintiff, which is summarily assessed in the sum of \$350.00.

DATED this 18 day of July 2023


Mohammed Shafiullah Khan
Acting Chief Justice

