



IN THE SUPREME COURT OF NAURU  
AT YAREN DISTRICT  
CIVIL JURISDICTION

CIVIL ACTION NO. 11/2020

BETWEEN

BARRY DEIRERAGEA  
of Anetan District, Nauru

Plaintiff

AND

CELESTINE BURAMAN  
Of Anetan District, Nauru

Defendant

Before:	Khan, ACJ
Date of Submissions by Plaintiff:	29 June 2023
Date of Submissions by Defendant:	12 July 2023
Date of Judgement:	31 July 2023

Case to be referred to as: *Deireragea v Buraman*

CATCHWORDS: Access way – Naoero Roads Act 2017 – Prescriptive right.

APPEARANCES:

Counsel for the Plaintiff:	R Tagivakatini
Counsel for the Defendant:	L Scotty

## JUDGEMENT

### INTRODUCTION

1. The plaintiff and defendant are neighbours and are owners of land portions 60 and 58 Anetan District respectively, which is adjacent to each other.
2. The plaintiff claims that he was using an access way through portion 58 for access to his land portion 60.
3. The plaintiff claims that the access way has been in use since the Second World War and the defendant disputes the claim.

### PRE-TRIAL CONFERENCE

4. In a pre-trial conference held on 8 September 2020 the parties agreed to the following:

#### Agreed facts and issues

The following facts are agreed upon between the plaintiff and the defendant:

- 1) At all material times the plaintiff and the defendant are landowners of their respective land at Portion 60 and Portion 58 at Anetan District.
- 2) There was a disputed access road that crosses through Portion 58 onto Portion 60. The access road is now closed.

#### The following issues are to be determined at trial:

- 1) Whether the Plaintiff has acquired a prescriptive right to the usage of the access road?
  - 2) Whether the Defendant has provided an alternative route?
  - 3) Whether the alternative route is sufficient for such purposes?
5. On 4 October 2021 this matter was set down for trial and Mr Tagivakatini informed the Court that he will be relying on the affidavit of the plaintiff filed on 18 August 2020 together with the pleadings and Mr Scotty also stated that he will be relying on the affidavit of the defendant filed on 20 August 2020 as well as the pleadings. Both parties invited me to conduct a site visit to view the disputed access way. I agreed to their request and stated that after the site visit I will advise the parties if I needed further evidence in addition to the materials before.
  6. I visited the site on 5 November 2021 in the presence of the parties and their legal representatives and adjourned the matter to 17 November 2021.
  7. On 17 November 2021 the following transpired in Court:

R Tagivakatini: Accept that there are two alternative routes but we claim that they are not safe – the route that the Court vehicle went

through goes through the garage. The other road is very close to the houses. Don't have the measurement of the width of the road going to the defendant's house – between the coconut and the container on the defendant's land.

L Scotty: There is another route going past Anetan Infants School – you did not go through that road.

Court: I need to look at the Anetan Infants School road – maybe we should do another site visit.

8. On 16 June 2023 a second site visit was carried out by me in the presence of both counsels and after that both counsels agreed to file written submissions. The plaintiff's counsel filed his written submissions on 29 June 2023 and the defendant's counsel filed his written submissions on 12 July 2023. The plaintiff's written submissions clarified his position in that he seeks a declaration under s.24 of Naoero Roads Act 2017 (the Act) that he has acquired a prescriptive right by usage of the access way on the defendant's land.
9. In accordance with the pre-trial conference the access way through the defendant's land is in dispute. I sought clarifications from Mr Tagavakatini as to whether he would call any further evidence in support of the plaintiff's claim for the prescriptive right. He stated that he would not be calling any further evidence and will rely on the pleadings and the affidavits filed.
10. The plaintiff's affidavit relates to the discovery of documents and does not make any reference to any evidence of the usage of the access way that allegedly created the prescriptive right. The onus is on the plaintiff to adduce evidence to establish his claim and no evidence has been adduced by him or on his behalf in that regard.
11. In the absence of any evidence, I am unable to make any declaratory orders sought by the plaintiff as to the prescriptive rights that he alleges to have acquired by over the defendant's land portion 58.
12. The plaintiff would have had further difficulties overcoming the provisions section 24 of the Act as there is in existence two alternative routes which provide access to the plaintiff and other road users.
13. For the reasons given above the plaintiff's claim remains unsubstantiated and is therefore dismissed.
14. I make no orders as to costs and I order that each party shall bears their own costs.

DATED this 31 day of July 2023

  
Mohammed Shaifullah Khan  
Acting Chief Justice

