



NAURU COURT OF APPEAL
AT YAREN
APPELLATE JURISDICTION

Civil Appeal No. 2 of 2022
Supreme Court Civil Case
22 of 2022

BETWEEN:

JEFFREY IKA OF ANETAN DISTRICT

Appellant

AND:

LEILANI GADEANANG OF ANETAN DISTRICT

Respondent

Before: Mr. Makail JA

Date of Hearing: 6th September 2022

Date of Ruling: 9th September, 2022

CITATION: Ika v Gadeanang

CATCH WORDS: *Court of Appeal – Practice & Procedure – Application for extension of time to appeal – Appeal in civil proceedings – Thirty days to file appeal – Proposed appeal late by three months – Reasons for not filing appeal within time – Arguable or appealable grounds of appeal – Prejudice to rights of opposing party – Nauru Court of Appeal Act, 2018 – Sections 22(1) & 27(c) – Lands Act, 1976 – Section 6 – Nauru Lands Committee Act, 1956 – Sections 3 & 6 – Custom and Adoption Laws Act, 1971 – Sections 3 & 4(2)*

LEGISLATION: Nauru Court of Appeal, 2018, Lands Act 1976, Nauru Land Committee Act, 1956, Customs and Adopted Laws Act, 1971.

APPEARANCES:

Counsel for the Appellant: Mrs. B. Duburiya

Counsel for the Respondent: Mr. L. Scotty

RULING

1. **MAKAIL, J:** This is an application for extension of time to appeal a final judgment of the Supreme Court by seven days pursuant to Section 27(c) of the *Nauru Court of Appeal Act, 2018*. Section 27(c) states:

“(1) *The powers of a Justice of Appeal under this Part are to:*

- (a)
- (b)
- (c) *extend time within which notice of appeal or application for an appeal may be given.*
- (d)..... ”.

Appeal Period

2. It will be observed that in appeals in civil proceedings, the statutory time limitation to file an appeal or application for an appeal is thirty days of the date of delivery of final judgment, decision, or order of the Supreme Court pursuant to Section 22(1) of the *Nauru Court of Appeal Act, 2018*.

Extension of Time to Appeal

3. It will be further observed that where time to file a notice of appeal or application for leave an appeal has expired, Section 43(1)(b) of the *Nauru Court of Appeal Act, 2018*, confers power on a Justice of Appeal to, amongst others, extend time within which a notice of appeal or application for an appeal may be given.
4. The power to extend time is discretionary and must be exercised based on proper principles. In the exercise of the power, the Justice of Appeal will be guided by the following principles, regard must be had to public interest in ensuring there is finality in litigation, and if there is to be further litigation, a reasonable explanation for allowing the time to appeal to expire, that there are arguable or appealable grounds of appeal, and no prejudice will be caused to the interest of the opposing party.
5. The undisputed facts are, the parties litigated a dispute over land in a civil action in the Supreme Court. The piece of land is known as Atomaneab Portion 108 located in Anibare. The appellant was the defendant then. The respondent was the plaintiff. They are both extended members of the Ika family and are Nauruans. The appellant alleged he had a prior authority in the form of a consent form from the landowners to use the disputed land between 1993 and 1994. He commenced building a house but has not completed it due to lack of funds. The respondent made a same claim to the disputed land based on a consent form obtained from landowners in 2016. She alleged that apart from commencing

building the house, the appellant did nothing to complete it for the last thirty years. In 2020, she commenced building a house, but the appellant interfered with it. She sought a permanent injunction against the appellant for the use of the disputed land.

6. After a trial the Supreme Court presided by Chief Justice Fatiaki delivered the decision on 12th November 2021. At [59] of the judgment, the learned Chief Justice held that “*In the light of the foregoing, the defendants’ earlier equitable interest in the disputed land is postponed to the later equitable interest of the plaintiff.*” At [60], his Honour further ordered that “*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’.*” Finally, at [61] his Honour assessed and awarded costs at a standard rate of \$1,000.00 payable by the appellant within thirty days.
7. The statutory time limitation of thirty days to file an appeal expired on 12th December 2021. The appellant did not file an appeal by that date. After three months and twenty-five days had lapsed, on 6th April 2022, he filed this application.

Reasons for allowing time to expire

8. Mrs Duburiya learned counsel for the appellant relied on the affidavit of appellant Jeffery Ika sworn 5th April 2022 and filed 6th April 2022 and another by his wife, Melissa Ika sworn 5th April 2022 and filed 6th April 2022 and submitted that the appellant has provided a reasonable explanation for allowing the time limitation of thirty days to expire.
9. Learned counsel further submitted the appellant had engaged the services of Ms Julie Olsson as his legal representative in the civil suit in the Supreme Court. However, the relationship between them became strained due to Ms Olsson’s approach to the case and lack of communication with the appellant. She had advised the appellant to let her deal with the matter and she will only engage him where it was absolutely, necessary which were rarely. As a result, the appellant was kept in the dark and was not aware of the progress and outcome of the proceedings.
10. After the judgment of the Supreme Court was handed down, Ms Olsson explained to him that the decision allowed him and his wife to build on the disputed land and there were no issues. This representation led him to believe that all issues regarding the disputed land had been resolved by the Court and he could proceed to use it.
11. It turned out that the judgment was against him, and he terminated Ms Olsson’s services. She advised him to obtain copies of the documents from the Court registry to prepare his appeal. He sought legal advice from another legal representative on the matter and confirmed the engagement of Mrs Duburiya to represent him in the appeal of the judgment.

12. Given that the appellant engaged new counsel, this required a handing over of his file from Ms Olsson which was not forthcoming. As a result, it took time for the appellant, his wife and Mrs Duburiya and the Court registry to obtain enough of documents on the Court file to commence necessary legal analysis and work for the eventual appeal.
13. Another cause for the delay was the unavailability of the transcript of the Supreme Court proceedings which the Court registry staff had advised would be made available provided once the appeal was afoot.
14. The respondent filed two affidavits in response to the application and to the matters deposed to in the affidavit of the appellant Mr Ika and his wife, Mrs Ika. She pointed out that if the appellant had difficulty accessing his legal representative in the Supreme Court and not been regularly briefed on the progress and final outcome of the proceedings, it was open to him to engage services of another legal representative who would adequately attend to his case.
15. She further asserted that as there are two consent forms between the parties, the one she held is the valid one because it was signed by more than 75% of the landowners while the one held by the appellant is flawed because it was not signed by 75% of the landowners and does not bear the official stamp of the Land Management Division of the Republic. In essence, the appellant had no authority to put up the cement slab for the foundation of the house and has misled the Court.
16. Mr Scotty learned counsel for the respondent submitted that the reasons given by the appellant for allowing the appeal period to expire are “flimsy” and unreasonable. They amounted to nothing but excuses to delay and protract the conclusion of the dispute between the parties and deprive the respondent from the fruits of the judgment of the Supreme Court.
17. Learned counsel further reinforced the assertions of the respondent in submissions and emphasized that the appellant is shifting the blame to his former legal representative and the Court registry to avoid blame for the situation he is in. Moreover, the appellant has not complied with the Rules of the Court to file an appeal within time as well as failing to comply with the judgment of the Court where he has failed to pay the Court ordered costs of \$1,000.00 to date.
18. It will be observed that there is no contest to the assertion that the relationship between the appellant and his former legal representative had gone strained and the former legal representative’s failure to regularly keep him informed of the progress and outcome of the proceedings in the Supreme Court.
19. Given this, there is some merit in the learned counsel for the respondent’s submission that the reasons given by the appellant are unreasonable and that he should accept the

blame for being late to file the appeal. He should have also engaged services of another legal representative to attend to the matter in the Supreme Court including the preparation of an appeal following the judgment.

20. Moreover, the respondent should not be penalized for the appellant's former legal representative's mishandling and tardiness of the proceedings in the Supreme Court. These are valid grounds. However, it is also equally important not to hold the appellant squarely responsible for the belatedness of the appeal given that he was represented by a legal representative in the Supreme Court and relied on her to defend the matter on his behalf including giving proper advice of a possible appeal following the judgment of the Court.
21. It will be noted that as the aggrieved party, the appellant has taken steps to appeal the judgment of the Supreme Court. This is apparent from the effort put in by the appellant, his wife, and his current counsel Mrs Duburiya to mobilise documents which were not readily available and accessible and assess the prospect of success of an appeal and prepare the eventual notice of appeal and this application. The combined effort demonstrate that the appellant is genuine in pursuing an appeal, but for his belatedness.
22. The Court is satisfied that the appellant has provided a reasonable explanation for allowing the time limitation to appeal to expire.

Arguable or Appealable Grounds of Appeal

23. The next matter for the Court to consider is whether the appellant has demonstrated that there are arguable or appealable grounds of appeal. Learned counsel for the appellant submitted that the proposed appeal raised significant legal and public interest issues relating to land rights and usage in Nauru and the application of the principles and rules of equity in the context of land disputes in Nauru. There is an apparent conflict between two laws and the question of which law shall apply is one that is pivotal to the proposed appeal and should be appropriately decided by the Court of Appeal if the appellant is granted an extension of time to file an appeal.
24. The two laws are Section 6 of the *Nauru Lands Committee Act*, 1956 and the principles of equity including doctrine of laches as adopted under Section 4 of the *Custom and Adoption Laws Act* 1971.
25. Learned counsel for the respondent submitted that Section 6 of the *Nauru Lands Committee Act*, 1956 does not apply to this case and emphasized that the appellant's consent form is flawed and gave him no authority to use the land. The one held by the respondent is valid because it was signed by more than 75% of the landowners in accordance with Section 6 of the *Lands Act*, 1976 has been executed by a public officer and registered.

26. Without descending into the merits of the proposed appeal, it is sufficient to note that the learned Chief Justice accepted two propositions advanced by the respondent. First, based on past decided Supreme Court cases, his Honour accepted that a consent form signed by 75% of landowners conferred authority and right to the holder to access and use land. Second, his Honour accepted that there was a prolonged inactivity on the land by the appellant in not building or doing anything on the disputed land after having obtained consent to building a house and was guilty of laches.
27. While it is an accepted rule and practice in this jurisdiction that 75% of the landowners must sign a consent form to authorize the holder to access and use the land, it is arguable that on a close construction of Section 6 of the *Lands Act*, 1976, it has no application to disposition of land between Nauruans. That, it has a limited application and that is to land which Nauruans wish to dispose or part with for the purposes of the phosphate industry and other public purposes and for the removal of trees, crops, soil, and sand and so forth associated with that industry: See Preamble of the *Act*.
28. The application of Section 6 in the context of land disposition between two Nauruans or two groups of Nauruans raises a significant legal issue for further consideration. In addition, as learned counsel for the appellant had submitted, the other significant legal issue is where there are competing claims to the same piece of land between two Nauruans such as in this case, the dispute fell within the jurisdiction of the Nauru Lands Committee pursuant to Section 6(1)(a) of the *Nauru Lands Committee Act*, 1956.
29. Section 6 of the *Nauru Lands Committee Act*, 1956 states:
- “Powers of Committee*
- (1) *The Committee has power to determine questions as to the ownership of, or rights in respect of, land, being questions which arise:*
- (a) *between Nauruans or Pacific Islanders.*
- (b) *Between Nauruans and Pacific Islanders.*
- (1A) *The Committee has power to determine the distribution of the personal estate of deceased Nauruans.*
- (2) *Subject to Section 7, the decision of the Committee is final.”*
29. In the alternative, the next significant legal issue is whether the Supreme Court should have applied the custom and usage of Nauru under Section 3 of the *Custom and Adopted Laws Act*, 1971 as opposed to the principles and rules of equity including the doctrine of laches under Section 4(2) of the *Custom and Adopted Laws Act*, 1971. Section 3 refers to application of the institutions, customs, and usage of the Nauruans to the extent that

they immediately existed before the commencement of the Act and in the context of land, how they applied.

30. Laches is an equitable doctrine. It operates as a bar to a civil action on the grounds of unreasonable delay to make a claim. As an equitable doctrine, it falls under the principles of equity which has been adopted and may be applied from time to time in this jurisdiction under Section 4(2) of the *Custom and Adoption Laws Act, 1971*.

31. Section 4(2) states:

“Subject to subsection (4), the principles and rules of equity which were in force in England on the 31st day of January, 1968, are hereby adopted as the principles and rules of equity in the Republic.”

32. It is arguable that according to Nauru custom and usage of land, unless it is expressly revoked, land is not disposed or parted with by a Nauruan for inactivity on the land over a long period of time. This custom and usage may be in direct conflict with the adopted principles and rules of equity where the equitable doctrine of laches arises.

33. These legal issues have a wide significant public interest considerations and of public importance because they will determine the legal foundation in the relevant law to be applied by Nauruans in disposition of land, the requirements to satisfy and the appropriate authority or body to resolve any conflict that may arise between Nauruans.

34. It will be noted that they formed the basis for the relief which the appellant had pleaded in the proposed notice of appeal and will seek amongst others, an order to reverse the judgment of the Supreme Court of 12th November 2021, a declaration that the rights of the parties in relation to their interest in the disputed land be determined by the Nauru Lands Committee and further, a declaration that the application of the principles of equity including the doctrine of laches do not apply to dealing of parties interest in land in Nauru. In the alternative, if the Court finds that the principles of equity including the doctrine of laches applied, that they be altered and adapted to best suit the circumstances of rights and interests of Nauruans in land consistent with Section 4 of the *Custom and Adoption Laws Act, 1971*.

35. The appellant has sufficiently demonstrated that there are arguable or appealable grounds of appeal.

Prejudice to interest of opposing party

36. Learned counsel for the respondent made no submissions in relation to whether the grant of the application will prejudice the interest of the respondent. The only submissions received was from learned counsel for the appellant who pointed out that the respondent had commenced building a house on the disputed land and it has taken up a large portion of it.
37. However, it is common ground that both parties intend to use the land to build their respective family homes. The appellant had started but has not completed it. Likewise, the respondent. This is an indication that the competing interest is evenly balanced.

Order

38. It is noted that the issues raised in the proposed appeal are of significant legal and public interest importance and it would also be appropriate that the Secretary for Justice be requested to appear as *amicus curiae* at the hearing of the appeal to assist the Court on these matters.

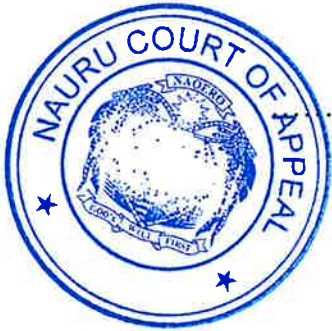
39. The orders are:

1. Leave to appeal out of time of the Judgment of the Supreme Court delivered on the 12th day of November 2021 is hereby granted;
2. The Appellant shall file and serve Notice of Appeal on the Respondent within seven days of this order.
3. The Secretary for Justice shall appear at the hearing of the appeal to assist the Court on the significant legal and public interest issues raised in the Appeal.
4. Costs of the application shall be in the Appeal.

40. And it is hereby further ordered by consent that:

5. Pursuant to leave granted by the Court for extension of time to appeal, the Judgment of the Supreme Court is stayed in the interim pending the final determination of the Appeal.
6. An interim injunction is granted in favour of the Applicant and against the Respondent restraining and forbidding her and/or her servants, agents or nominees from conducting any construction, clearing works whether ongoing or new on any part of the land known as Atomaneab Portion 108 located in Anibare.

7. An interim injunction is granted in favour of the Applicant and against the Respondent restraining and forbidding her and/or her servants, agents or nominees from entering onto the land known as Atomaneab Portion 108 located in Anibare.



A handwritten signature in blue ink, which appears to be "Colin Makail". The signature is written in a cursive style and is positioned above a horizontal dotted line.

Justice of Appeal Mr. Colin Makail