IN THE SUPREME COURT OF NAURU

CIVIL ACTION NO. 19/2001

BETWEEN : **WOLVERSTONE TATUM**

PLAINTIFF

AND : **JAMES SCOTTY**

DEFENDANT

Date of Hearing : 31 July and 1 August 2001
Date of Decision : 1 August 2001

Paul Ribauw for the Plaintiff
Vassal Gadoengin for the Defendant

DECISION OF CONNELL, C.J.

An ex-parte injunction was granted on 5 July 2001 restraining further building by the Defendant on Portion 114 known as "Mueoen" in the Uaboe District. The Writ of Summons seeking the injunction and the affidavit of the Plaintiff in support made it clear that the Defendant was building on the land, which he did not own and was building in prospect of a business project. The Plaintiff was a minority landowner, owning 1/30 of the portion.

On 12 July, application was made by the Defendant for a discharge of the injunction on the grounds that he was building on the instructions of Mrs. Eidodage Teimitsi, a 1/5 landowner of the portion, and that a majority of the landowners in writing had accepted that Portion 114 should be used for construction of a dwelling upon the land for Mrs. Teimitsi.

The Court, upon receiving these papers, ordered that the matter be set down by the Registrar for an early inter partes hearing and that the papers seeking the discharge be served forthwith upon the Plaintiff.

When the matter came on for trial, the evidence of the Plaintiff was to the effect that if the building was simply a dwelling then the Plaintiff has no objection to granting a dwelling to his Aunt, Mrs. Eidodage Teimitsi, free of any encumbrances on the land. However, if the proposed building was to be used now or in the future by Mrs. Eidodage Teimitsi for commercial purposes, he would be prepared that Mrs. Teimitsi be granted by himself and all the other landowners the economic benefit stemming from the commercial use to which the land was put. But, upon her death, the land and its improvements should revert to the corpus of landowners as determined. In other words, as a minority landowner he was willing to

grant an exclusive licence to Mrs. Teimitsi during her lifetime to alone benefit, but there had to be a corpus reversion upon her death.

In the trial itself, it appeared that this might provide a basis for settlement, but the parties could not agree on the procedures to be adopted. On the one hand, the Plaintiff in protection of his minority interest, wanted the injunction maintained until a family meeting had resolved the particular point of the reversion to the corpus of landowners upon the death of Mrs. Teimitsi and for this to be recorded by the Nauru Lands Committee. On the other hand, the Defendant wanted a discharge of an injunction that was, in his view, mistakenly obtained and, with the large percentage of the landowners supporting the project, he wished to finish forthwith the project for Mrs. Teimitsi.

This matter raises some of the acute problems of minority landowners where there is no clearly satisfactory way of dealing with them. In this case, it was clear that the injunction was granted on facts that were false no matter whether at the time the Plaintiff had an honest belief for holding them. He was not helped by the fact that the documents of the Defendant seeking a discharge were held by the Plaintiff and not disclosed to the Pleader for the Plaintiff until the day of trial. Earlier consideration

of those demands could have resulted in amendments to the parties to the action coupled with an application by the Plaintiff to vary the original Order.

As it stood, the Court had little choice but to discharge the injunction restraining the Defendant. It was both clear and admitted by the Plaintiff that the material in his affidavit supporting the injunction was incorrect that the Defendant was building for his own benefit. Once it was accepted that Mrs. Teimitsi was the source of instruction there was no basis for maintaining the injunction as sought against the Defendant. It is now up to the parties to seek an amicable solution. In all the circumstances, the Court, in the exercise of its discretion, made no order as to costs of the hearing or of the two Chamber matters. The Defendant did not attempt to prove or seek damages.

I, therefore, ORDER as follows: -

1. That the ex-parte injunction granted to the Plaintiff on 5 July 2001 is discharged.

2. That there be no order as to costs of the hearing or of matters dealt with in Chambers.

3. That there be liberty to apply.

BARRY CONNELL
CHIEF JUSTICE