

The plaintiff further contends that the signing of the agreement by the Corporation would constitute a breach of statutory duty under the Nauru Rehabilitation Corporation Act 1997 ("the Act") and would amount to a grave dereliction of duty by the second defendants, that is, the Board taking into consideration their powers, functions and objectives.

In seeking an interim injunction, at this juncture, the plaintiff has submitted that if the Corporation and Board are not restrained from executing the agreement at this point, it will prove impractical at a later point to rectify the situation.

The Corporation is a body corporate with perpetual succession, which has a right subject to law to sue and be sued. It has wide powers under Section 4. Amongst its functions is to manage and administer moneys and assets of the Corporation (Section 4(d)) and this is to be done with regard 'to the highest principles and probity in its stewardship of its money and properties' (Section 6). By Section 16 of the Act assets of the Republic listed in the Third Schedule of the Act are transferred to the Corporation upon the coming into the operation of the Act which is a date notified by the Minister in the Gazette in accordance with Section 1. The Third Schedule names all of the assets of the Nauru Rehabilitation Fund administered by the Nauru Phosphate Royalties Trust.

There are other provisions in the Act, which may have a bearing on this matter when it is finally heard, but, for present purposes, it will suffice to indicate the base upon which this matter appears to be founded.

The defence raises one important factor. The agreement is still in draft form and the Corporation and Board have not been approached nor given notice of the Agreement. This may seem somewhat bizarre seeing that the document has apparently been available see plaintiff's statement of claim amongst the papers of parliamentarians. The agreement, of course, substantially deals with the administration of Rehabilitation Fund property and under the present Act (Section 4(d)) is the sole responsibility and function of the Corporation in its dealings with the Trust.

In terms of the law, a plaintiff may be entitled to an injunction even though the infringement has not taken place but is merely feared or threatened. (Lord Cowley v Byas (1877) 5 Ch.D 944.) Also, Fletcher v Bealey (1884) 28 Ch. D 688. This is called a quia timet injunction and it is up to the plaintiff to prove an imminent danger of substantial damage. (Hooper v Rogers [1974] 3 All E.R. 417.) It is also applicable in the case of an anticipated breach of a statutory duty.

However, the present situation as it appears in the pleadings is that the defendant Corporation has not had the matter placed before it and, perhaps surprisingly, has not been in any form of negotiation on the matter with the Trust. Furthermore, the draft agreement has not yet listed the assets to be transferred so an assessment of loss cannot be made. Apart from anything else, there is not, therefore, at this point, imminent danger of substantial damage. It would, therefore, be premature to grant an injunction. Such a result would not, of course, preclude the plaintiff from making further application for an injunction if the circumstances warrant it. However, if the plaintiff did make further application he would have to show substantial loss to obtain the injunction. In this action, based on private right, it is his loss rather than the asset losses that have to be accounted for in order for an injunction to be granted. Alternatively, in seeking an injunction or declaration the plaintiff would need to show special damage peculiar to himself. (See Boyer v Paddington Borough Council [1903] 1 Ch. 109,114, Onus and anor. V. Alcoa of Australia Ltd 36 ALR 425, 149 C.L.R 27).

I would refuse the application for an interim injunction.

I would add, however, a comment on the pleadings to date. So far as the counter-claim is concerned this is based on two misapprehensions. The first is that an injunction has been granted and should be discharged. Of course, there is no injunction in place and this presently is an application by the plaintiff for an injunction.

The first paragraph of the counter-claim talks about an executive proposal, whatever that means. The agreement, by its terms, is purporting to be an agreement between a statutory trust and a statutory corporation. Whatever the legalities of it and the possible necessity for statutory changes by Parliament to two Acts to encompass what is projected, on the face of it, the agreement is simply one between two entities with powers, circumscribed by their Acts, to enter such agreements.

I do not, as it stands, see that the counter-claim raises against the plaintiff a proper claim.


So far as the defence is concerned, it deals with the premature nature of the application, but it may require amendments if the situation changes, what the defence has not addressed, and it has not had to do so as yet, are the statutory breaches of the Corporation and Board that are alleged by the plaintiff. If and when that may be necessary, an amended defence in proper paragraph form to each of the plaintiff's paragraphs should be submitted.

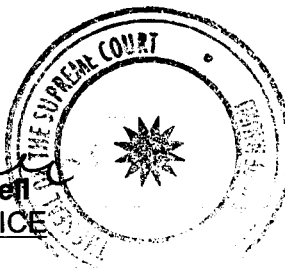
In relation to the statement of claim, the plaintiff may need to particularise the breaches of statutory duty, and plead further on the question of locus standi.

ORDER

The Court orders that -

1. the application for an interim injunction is refused,
2. the matter be brought on for mention in the next sittings commencing ^{July} ~~October~~ 22, 2002, in the event that there has not been further application before that date,
3. costs are reserved.


Barry Connel
CHIEF JUSTICE



25 June 2002