

IN THE SUPREME COURT OF NAURU

CIVIL ACTION NO. 17/1999

BETWEEN : WALLY JAMES HEDMON PLAINTIFF
AND : LAWRENCE STEPHEN & ORS DEFENDANTS

Application to strike out for want of prosecution

In Chambers before His Honour Mr. Justice Barry Connell, Chief Justice

Appearance: P. Aingimea for Defendant
No appearance by Plaintiff (see decision below)

Decision

An application to strike out for want of prosecution calls upon the inherent power of the Court 'to control its own procedure so as to prevent its being used to achieve injustice', (Brewer v South Indian Shipping Corporation Ltd [1981]2 W.L.R. 141 at 147.), and is within the inherent jurisdiction of the Supreme Court.

Mr. Aingimea informed the Court that in accordance with my order dated 20 February 2003, Mr. Peter Ika had been served, that the Kosrae Clerk of Courts had been faxed to serve the documents upon the Plaintiff and that the Secretary of the Clerk, Mrs. Irene Palik, had been contacted by telephone. Mr. Bernard Dowiyogo, who has since died, was not served. I accepted that notice was given to the Plaintiff sufficient to entertain the application. Immediately after the hearing and after delivery of my decision, Mr. Peter Ika arrived as representative of the Plaintiff. With Mr. Aingimea present, I explained what had taken place. Mr. Ika, along with the Plaintiff, will be served with the Order. Mr. Ika informed the Court he would also contact the Plaintiff with regard to the decision.

The Writ of Summons in this matter was first issued on 6 July 1999. An interim injunction was granted by the then Chief Justice on 8 July 1999. On 7 December 1999, the then Chief Justice ordered that the interim injunction would lie until final judgment. On 26 February 2002, upon an undertaking of the defendants that the status quo will not be disturbed, on 7 December 2002. I discharged the interim injunction.

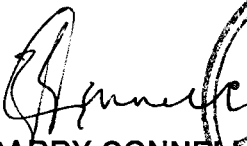
The action which relates to residential property in Nauru has been continuously frustrated from reaching finality through the constant adjournments without hearing of the matter caused by the absence of any presence at Court of the Plaintiff. The original Pleader has handed back his brief and is overseas and the second Pleader has now died. There is a complete lack of proper

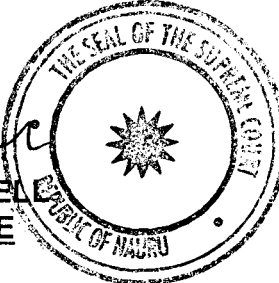
communication with the Court although Mr. Peter Ika, a relation, acts as some sort of lay representative for the Plaintiff. The Court has since the discharge of the injunction adjourned the matter in five occasions. This is not only proving costly to the Defendant but is presenting him with difficulties and inconveniences that he should not have to experience.

On 24 February 2003, I made an Order that I would give leave to proceed upon service with an application to strike out for want of prosecution.

I have now heard the application, and I find that there has been inordinate delay which has caused prejudice to the defendants. The defendants have continuously sought from the Court dates for the hearing of this matter but have been resisted by the Plaintiff seeking adjournments on various grounds that often cannot be adequately tested. I have come to the conclusion that the matter should be struck out. If, indeed, the Plaintiff, who may be within the period of limitation, sought that the matter be reinstated by a further action, then such action should be limited to strict terms and conditions regarding its litigation.

I grant the application with costs. The ultimate costs order will take into consideration the various orders for costs to date, and are to be taxed. I shall also grant leave for a notice to quit issued to those in possession of the property, the subject of the action, upon one months notice.


BARRY CONNELLEY
CHIEF JUSTICE

The seal of the Supreme Court of the Republic of Nauru is circular. It features a central sunburst emblem. The outer ring of the seal contains the text "THE SEAL OF THE SUPREME COURT" at the top and "REPUBLIC OF NAURU" at the bottom.


IN THE SUPREME COURT OF NAURU

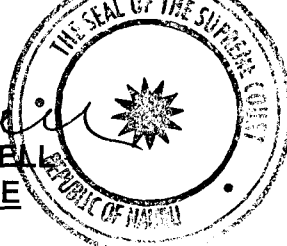
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ORDER

1. The action by the Plaintiff, Civil Action No. 17/1999, is struck out for want of prosecution against the first and second defendants.
2. As a consequence, the Plaintiff's action against the third and fourth defendants is also struck out.
3. Costs of the day are awarded in this application to the first and second defendants as against the Plaintiffs.
4. Costs in the action are to be taxed.
5. Consequent upon the order to strike out, the first and second defendants are given leave to serve a notice to quit upon those presently in possession of the property, the subject of the dispute, upon granting a notice time of one calendar month.


BARRY CONNELL
CHIEF JUSTICE



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