



IN THE SUPREME COURT OF NAURU

[CIVIL JURISDICTION]

Case No 10 of 2013

BETWEEN MELBA AKUA & OTHERS

PLAINTIFFS

And REYNALDO HARRIS & OTHERS

1ST DEFENDANT

And MANAGER REYNALDO RESTAURANT

2ND DEFENDANT

And MANAGER PICK & SAVE STORE

3RD DEFENDANT

And MANAGER TIGER GAS STORE

4TH DEFENDANT

Before: Khan, J

For the Plaintiffs: Mr V Clodumar

For the 1st, 2nd, 3rd and 4th Defendant: Ms A Lekanaua

Date of Ruling: 25 February 2015

CATCHWORDS:

Nauru Lands Committee and the Curator made determinations in respect of land and personalty respectively of the deceased on the basis that the deceased died intestate – and allocated land and personalty to his five children in equal shares –

Defence – 1st defendant pleaded that deceased died testate and made a will giving the shops to him – the will could not be located and the defendant intended to adduce evidence that the will was made – no application was made to Nauru Lands Committee and the Curator to revisit their decision nor were they joined as parties together with one sister who was not a party to this proceedings -

Directions – the 1st defendant not allowed to adduce evidence that the deceased had made a will without first joining the Nauru Lands Committee, Curator – the remaining sibling as parties to this proceedings.

RULING/DIRECTIONS

1. On 10 June 2009 the Curator Mr. Kelson T Tamakin issued a Gazette No. 203/2009 in which he determined that all the personality estates of the Late Rene Harris shall be distributed between all his children as follows:

Eleanor Detsiogo – 1/5

Melba Akua – 1/5

Nancy Harris – 1/5

Wanda Wiram – 1/5

Reynaldo Harris – 1/5

2. On 5 August 2009 Nauru Lands Committee made determinations in respect of the realty of the Estate of Rene Harris that the deceased owned at the time of his death and the determination was published in Gazette No. 310/2009. The beneficiaries of the realty were all the children of the deceased mentioned in paragraph 1 above.
3. Following the determinations the beneficiaries were in receipt of their entitlements except rental from 3 shops which is the subject of this litigation. As a result this action was instituted on 28 November 2012 and Interim injunction orders were made on 21 March 2013 ordering that all rental monies with respect to the properties rented by 2nd, 3rd and 4th Defendants shall be paid to the Supreme Court until the determination of this action.
4. On 4 December 2013 the 1st Defendant filed his defence in person and also filed an affidavit in which he mentioned that he was informed by Mr. Milton Dube that his father had made a Will in 2004 whilst he was hospitalized in Brisbane for medical treatment. He further stated that Mr. Dube informed him that in the Will his sister Nancy Harris was the sole beneficiary of the house in Melbourne and that he was the sole beneficiary in respect of the remaining properties subject to him taking care of his siblings.
5. The 1st Defendant also stated in his affidavit that the Will cannot be located and he wanted to call three witnesses to prove that the Will was prepared and executed.
6. In another defence (which should be referred to as the Amended Defence) filed on 21 November 2014 the 1st Defendant seeks orders that the Plaintiffs' claim should be dismissed in its entirety, costs against the Plaintiffs and an order for uplifting of the Interim injunctions so that all monies held by this Court be paid out to him.

7. The Defendant has not sought any declaratory relief with respect to the Will allegedly made by the deceased.
8. When the matter was determined by the Curator and the Nauru Lands Committee they were not informed that the deceased had made a will and therefore their determinations was made on the basis that the deceased died intestate. According to the Defendant he only learnt much later (the exact date is not mentioned in his affidavit) that his father had made a Will.
9. If the 1st Defendant is able to establish that his deceased father had made a Will than it will affect the decisions of the Curator as well as that of Nauru Lands Committee.
10. Although the 1st Defendant alleged that his father had made a Will he has not made any applications to the Curator or the Nauru Lands Committee to advise them that the deceased had made a Will prior to his death and as a result their decision still stands.
11. This matter was set down for hearing by the Registrar before me on the 23 February 2015. He made orders for hearing after being informed by both Counsels that they were ready for trial.
12. When this matter came before me on 23 February 2015 I raised certain issues as to whether I should allow the 1st Defendant to call his witnesses on the basis of his statement of defence. What concerned me most was that neither the Curator nor the Nauru Lands Committee were made parties to the proceedings.
13. I will not allow the 1st Defendant to call witnesses on the basis of the present pleadings as the Curator and the Nauru Lands Committee have not been made parties to the proceedings and further Nancy Harris is also not a party to the proceedings. If the 1st Defendant were to succeed in establishing that the deceased had died testate then Nancy Harris would be affected with regards to the realty determination by the Nauru Lands Committee which determined that she was a beneficiary in respect to realty.
14. I therefore issue the following directions:
 - a. That if the 1st Defendant still wishes to raise the issue that his late father had died testate then the Curator, Nauru Lands Committee and Nancy Harris should be made parties to the proceedings as they would be affected by any decisions made in regards to the Will; and further the pleading should be amended to clearly state matters in relation to the time, date and preparation of the Will and the execution thereof.
 - b. I order that all such applications be made to the Registrar.
 - c. I order that since the adjournment was caused by the deficiencies in the 1st Defendant's pleadings that the Plaintiffs shall be entitled to the costs suffered by them as a result of this adjournment. I shall summarily assess costs in this matter and I will therefore invite the parties to address me on the issue of costs.

DATED this 25th day of February 2015.

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Mohammed Shafiullah Khan
Judge