



THE SUPREME COURT OF NAURU

[CIVIL JURISDICTION]

Civil Suit No. 03 of 2017

Between: Christopher Quadina & Elmina Quadina

PLAINTIFFS

AND: Everly Tsitsi & Ruskin Tsitsi

RESPONDENT

Before: Judge Rapi Vaai

APPEARANCES:

Appearing for Plaintiff: V Clodumar (Pleader)

Appearing for the Respondent: S Valenitabua

Date of Hearing: 20th, 21st May, 2019

Date of Submissions: 12th July, 2019

Date of Decision: 26th July, 2019

Introduction

1. In these proceedings the court has to deal with another bitter dispute, amongst siblings, concerning the occupation of a family home, built under the Nauruan Housing Scheme and occupied by the parents and some of the children during the parents lifetime.

2. The plaintiffs and the first named defendant are 3 of the children of the late Quadina Aganigan (Quadina) who married three times during his lifetime.
3. The plaintiffs are two of Quadina's 16 children from his first marriage. The first named defendant Everly, is Quadina's eldest daughter from his second marriage. Husband of Everly is the second named defendant.
4. Quadina, his first wife and their children lived in a storey house (house on pillars) built under the Nauru Housing Scheme. After his second marriage, following the death of his first wife, Quadina moved to his second house (house Poe), also built under Nauru Housing Scheme. Living in house Poe were Quadina, his second wife Mary, their four children (including the first named defendant) and Quadina's youngest daughter from the first marriage.
5. When the second wife died, Quadina and his third wife continued to live in house Poe with their one child, the four children from the second marriage, and Quadina's youngest daughter from the first marriage (Philomena).
6. Quadina died in 1990. The plaintiff Elmina moved into house Poe and so did the first plaintiff. Gradually thereafter the original occupants of house Poe moved out. By 2001 the occupants of house Poe were the plaintiffs and their families.

The Dispute

7. In 2015 the defendant Everly returned to house Poe which was then occupied solely by plaintiff Elmina and her family. During 2016, as a consequence of arguments, ill feelings and dispute, house Poe was occupied by the defendants and their family.
8. The plaintiffs in these proceedings seek an order to evict the defendants from house Poe and to grant to plaintiff Elmina exclusive occupancy.
9. Evidence given in these proceedings has been by way of affidavits and oral testimony.

The Plaintiffs claim

10. The plaintiff Elmina, 56 years old is the 8th child of the first marriage. She told the court she moved in to house Poe to live at the instance of her oldest brother (first plaintiff) when Quadina's third wife started befriending a man after the death of Quadina. She moved into the house in 1990 – 1991. The third wife eventually left house Poe to live with her boyfriend. The defendant and her younger siblings also left at different times.
11. She denied allegations of abuse and violence leveled against her and the first plaintiff who had also moved into house Poe. She did admit under cross-examination that she did at times beat the children to discipline them. She also admitted that by 2001 the only people living in the house were herself and her family, first plaintiff and his family. And by 2005 it was just her and her children. But others came and lived at times with her permission.
12. About 2015 the defendants moved back into house Poe while the plaintiff Elmina was overseas. Approval of the plaintiff Elmina was sought and given before the defendant moved in. There was overcrowding at house Poe which eventually lead to disagreements and bad blood after the plaintiff Elmina's return to Nauru.
The bad relationship got worse, developed into confrontations and hostility. Police intervention was called at times.
13. Plaintiff Elmina contended that the defendants were deliberately creating an atmosphere of hostility and animosity towards her and her family by forcibly and physically moving her personal belongings out of the bedrooms and out of the house, and by physically pushing and assaulting her.
14. Although there was a family meeting of the siblings at which the majority agreed to give house Poe to the defendant and her younger siblings, plaintiff Elmina objected as she has been living in the house for about 27 years uninterrupted and peacefully with her family, and it was only in 2015 the defendant moved in and forcibly displaced her and her family.

The Defendants Case.

15. It is contended by the defendant that soon after the death of their father Quadina, the plaintiffs at different times moved in and occupied house Poe.

There was no consultation or discussion before the plaintiff took residency in house Poe.

16. Soon after the plaintiffs moved in with their families, family life at house Poe changed not only for the defendant and her siblings but also for Quadina's surviving 3rd wife and daughter. There was abuse, violence and ill treatment. Eventually the defendant and her siblings left. So did the 3rd wife and her child.

And so by the year 2001 the plaintiffs and their families enjoyed exclusive control of house.

In the meantime the defendant and some of her younger siblings have sought refuge at the home of Eiyamo, the eldest of all the siblings.

17. In 2015 when the defendant experienced domestic problems she moved back into house Poe after consulting plaintiff Elmina who was then overseas. Soon after plaintiff Elmina returned in 2016 a sour, sinister relationship began to develop which eventually spiraled to a violent confrontational episode which necessitated the assistance and involvement of the other siblings to resolve the conflict.

18. A family meeting organized by Eiyamo the eldest of all the siblings was conducted. Nine of the siblings attended the meeting. The brothers and Eiyamo agreed that the defendant and her younger siblings should occupy house Poe.

The plaintiff Elmina and her youngest sister Philomena who testified for the plaintiff did not agree with the majority decision.

19. Eiyamo who summoned the meeting also testified and confirmed the result of the meeting.

She and her brothers agreed that the defendant and her siblings return to the house which they occupied whilst their father was alive. She also confirmed the deliberate abusive conduct of plaintiffs when they moved into house Poe after Quadina's death resulting in the first defendant and others seeking refuge with her.

Findings of facts

20. At the time of his death, Quadina was the tenant of Poe house built under the Nauru Housing Ordinance 1957.

Section 7 (i) of the Housing Ordinance vests the ownership of the house Poe in the Nauru Local Government Council.

21. The Nauru Local Government Council Consequential Amendment Act 1997 and the Native Island Dissolution Act 1999 divested property and funds previously managed under the Ordinances to the Republic, specifically the President and Cabinet. So when Quadina died the ownership of Poe house as well as the storey house were vested in the President and Cabinet as both parties conceded.
22. It is also common ground that at the time of Quadina's death the occupants of Poe house were Quadina's third wife, Quadina's children from his second and third wives and Philomena.
23. Plaintiff Elmina told the court she moved into Poe house in 1990 to 1991. This evidence confirms the evidence of the defendants that plaintiff Elmina moved into house Poe after Quadina's death in 1990. Plaintiff Elmina moved in without consulting the then occupants of house Poe. She moved in at and with the instigation of the first plaintiff who also moved in not long after.
24. By 2005 it was only the plaintiff Elmina and her children living in house Poe. Defendant Everly said she, her siblings and Quadina's third wife were gradually driven out by the abusive and violent conduct of both plaintiffs. Although the abusive conduct is denied by the plaintiff Elmina, the evidence significantly supports the accusations of abuse which both plaintiffs committed against the inhabitants of house Poe. Philomena the youngest sister of the plaintiffs and who testified for the plaintiffs, told the court under cross examination that the plaintiffs, particularly Christopher abused the defendant and her siblings. Eiyamo confirmed, that both plaintiffs did mentally and physically abused the children which prompted them to leave house Poe and seek refuge elsewhere. Some of them came to her house.
25. It follows, as the court finds, that the original occupants of house Poe were driven out and displaced by the plaintiffs enabling the plaintiff Elmina and her family to exclusively occupy house Poe in or about 2005.
26. The defendants and their families currently occupy house Poe. The plaintiff now claim she has been displaced and seek order of the court to evict the

defendants and to restrain them from interfering with the plaintiffs peaceful occupations of house Poe.

The Family Meeting.

27. Both parties agree that the majority of those who attended the family meeting, agreed that house Poe should be occupied by the children of Quadina's second and third marriage.

The plaintiff Elmina and Philomena did not agree.

28. The significance and importance of family meeting to resolve any issue or dispute amongst Nauruans is a practice which is also incorporated into the Nauru institutions.

This was recognized and commented on by Millhouse CJ in *Audoa v. Finch*¹ where he said:

“From my observations of Nauruan people they are as any other community practice the courtesies common to all civilized people. Indeed their institutions (for example Nauru Lands Committee) assume that disputes should be settled by discussion, conciliation, agreement and goodwill...”

Similar sentiments were expressed by Jitoko CJ in *Handsome Adumar & Ors v. Starret Dongabir & Ors*²

“ ...The court is minded to remind the parties especially the defendants of the time – honored traditions and custom of the Nauru people that recognize and respect the practice of family agreement, informal and unpublished they may be at times, as a guided instrument in the orderly and peaceful sharing and allocation of property both real and personal amongst the family members of Nauru. It is a devise that has served landowners faithfully in the past to ensure and to protect the peaceful co-existence of the people on the island.”

¹ (2008) NRSC 3

² 17/3/2018

29. The reality of the importance of the family meeting was recognized and acknowledged by the Administrator of Nauru in Administration Order No. 3 1938 which established regulations to govern intestate estates. The regulations provide that the distribution of the estate of deceased person shall be by family agreement. Failing family agreement the regulations provide steps to be undertaken for distribution. Those regulations are still alive and family agreement remains of paramount importance in the determination of intestate estates.

Submissions

30. Mr Clodumar submitted that the decision of the majority of the family is void since the house is owned by the Republic and the house was registered under the first plaintiff. The Court should allow the plaintiff Elmina to return and occupy house Poe by evicting the defendants who have a matrimonial home elsewhere where they can relocate. Once that is achieved, the parties through their Members of Parliament, request the Cabinet to resolve the tenancy of the house.
31. Mr Valenitabua submitted that the family meeting is significant and influential in the resolution of the dispute. He cited the Administration Order No.3 of 1938. Subject to a decision by Cabinet the defendant should continue to occupy house Poe.
32. It was also submitted at paragraph 8.3 (i) of Mr Valenitabua's written submissions:
- “ 8.3... the house Poe is owned by the Cabinet of the Republic of Nauru. Christopher and Elmina, therefore, do not have the legal capacity to ask for an order from the court that Everly and her family members vacate the house Poe... ”*
33. In response to Mr Valenitabua's submissions in paragraph 31 above, the simple answer is that the plaintiffs through their late father are tenants of house Poe. House Poe was built for Quadina and his family. They are tenants like the defendants and other siblings. As tenants the plaintiffs have standing to bring the action.

34. Mr Clodumar contended that the status quo as at it was before the first plaintiffs was forced out and displaced in 2016 should be adopted. The submission invites the court to condone the plaintiff's abusive and violent conduct soon after Quadina's death which led to the displacement of the defendant and younger siblings from house Poe. It was a calculated displacement.
35. Both parties are of the view that the Cabinet should resolve the issue of occupancy for the family. The reality is the house Poe and many other houses built under the Housing Scheme, should never have been the cause of unnecessary, bitter and violent disagreement between adult Nauruans some of whom are grandparents. The houses were built as family homes under the Scheme at no cost to the families. The Quadina family should resolve the differences which developed. Eiyamo did her best. She was supported by the other siblings, but the plaintiff Elmina viewed their efforts as ganging up against her when the consensus was against her interests.
36. This ruling as well as any determination which Cabinet may make will resolve the issue of occupancy of the house, but the bitterness if not mended will continue and spill over to the younger generations, the future architects of families and of society.
37. In any event it follows from what I have said that the plaintiffs claim must fail.

Result

- (a) The plaintiffs claim for possession of house Poe is dismissed.
- (b) Unless and until directed by Cabinet, the defendants' are to continue occupation of house Poe.
- (c) The plaintiffs are refrained from interfering with the defendants' quiet possession of house Poe.
- (d) Cost for the defendants to be taxed by the Registrar if not agreed upon.

Dated this 26th Day of July 2019



Judge R. Vaai
Supreme Court

