



IN THE SUPREME COURT OF NAURU  
AT YAREN  
CIVIL JURISDICTION

Civil Suit No. 85 of 2016

BETWEEN

Unique Narayan (nee Detagouwa)

Plaintiff

And:

Briar Rose Alona (nee Scotty)

Defendant

Before: Khan, J  
Date of Hearing: 2 July 2019  
Date of Judgement: 13 September 2019

Case may be cited as: Narayan v Alona

#### CATCHWORDS:

Contempt of Court – Where the defendant was in occupation of a dwelling house when judgement was delivered- Where the judgement stated that the defendant had no right over the land on which the dwelling was situated and could not carry out any constructions thereon- Where the plaintiff alleges that defendant in breach of the judgment carried out the extension -Where the defendant admits to carrying out the extension after judgement was delivered- Where the defendant submits that she is not in breach of any orders as that particular paragraph of the judgement was only reasons for the judgement and not an order of the court.

HELD – that the particular paragraph was an order of the court and the defendant is in contempt of court and an order for committal made for 3 months imprisonment but suspended to allow the defendant to remove the extension.

#### APPEARANCES:

Counsel for the Plaintiff: E Soriano  
Counsel for the Defendant: S Valenitabua

#### JUDGEMENT

## INTRODUCTION

1. The plaintiff filed an application for committal for contempt of Court on 17 April 2018 pursuant to Order 37 r.1(1) of the Civil Procedure Rules 1972 which states:

### Committal for Contempt of Court

- 1) A judge may exercise the powers of contempt of committal for contempt of his authority either upon his own motion or upon application made ex parte made by any interested person by summons.
2. The summons for committal was filed inter partes.

## RELEVANT LAW

3. Order 37 r.2(1) provides that the hearing shall be in open court unless the judge considers that it is in the interest of justice or national security reasons that the hearing shall be in closed court.
4. Order 37 r.2 (2) provides that where contempt proceedings are in private and a committal order is made the judge may state the name of the person committed, nature of contempt and the length of the committal period.
5. Order 37 r.3 empowers the Supreme Court to suspend the execution of an order for committal for such period and on such terms and conditions that it may specify.

## ADMINISTRATION OF JUSTICE ACT

6. The Administration of Justice Act (the Act) came into force on 15 May 2018 almost a month after these proceedings were filed.

## CIVIL CONTEMPT OF COURT

### Disobedience of court order or undertaking

7. S.5 of the Act provides:
  - 1) A civil contempt is committed under this Part where a person:
    - a) Willfully disobeys any judgement, decision, direction or other process of a court; or
    - b) Willfully breaches an undertaking given to a Court.
  - 2) A judgement, decision or order shall be sealed by the Registrar of the Court and served personally, by way of substituted service or in any manner prescribed by the court on person or persons against whom or to whom the judgement, decision or order relates.

- 3) The judgement, decision, order or the sealed order shall be endorsed with the penal clause in accordance with the Rules of the Court.

### ENFORCEMENT ORDERS

8. S.6 of the Act provides:

- 1) A party who has obtained a judgement, decision or order under this Part may apply for an order to compel the other party to comply with orders of the court in a manner provided for in the rules of the court.
- 2) The court may issue an order for attachment of the contemnor to show cause as to why he or she shall not be liable for contempt under this Part.
- 3) The standard of proof shall be beyond all reasonable doubt.
- 4) The burden of proof rests on the party seeking to enforce any breach of non-compliance of a judgement, decision or order of the Court.
- 5) For the purposes of this Part, the Criminal Procedure Act 1972 applies.
- 6) Where a person is found guilty of contempt of court under this Part, the Court may if it considers that a fine will not meet the ends of justice and that imprisonment is necessary, direct that the person be imprisoned for a period not exceeding 2 years.
- 7) The jurisdiction of the Court to order costs against the contemnor in favour of a party seeking to enforce an order of the Court under this Part shall not be affected nor be considered as double jeopardy.

### BACKGROUND

9. The plaintiff filed a writ on 22 September 2016 claiming that she was the owner of land Portion 168 (Portion 168) in Nibok District. She claimed that the land was transferred to her in 2012.
10. The defendant was in occupation of a dwelling house situated on Portion 168 since 1972 when she was 27 years old. The dwelling house that the defendant took occupation of was built by Nauru Local Government Council.
11. The defendant claimed that the land Portion 168 was given to her by the landowners by way of customary gift and by virtue of which she became its owner.
12. The matter was heard between October 2016 to January 2017 by Crulci J and having heard the matter Her Honour delivered her judgement on 6 February 2017 and stated as follows at [31] to [40] of the judgment:

### Determination

[31] The Court considers that she wished to do so, there was nothing in custom that would have prevented Eba from gifting land to the defendant. Nor was there anything preventing Detageouwa, in compliance with any request from his mother, to have transferred the land during his lifetime to the defendant.

[32] In either of the above situations, in order to perfect the gift or transfer of ownership, compliance with s.3 of the Lands Ordinance 1921 – 1968 or Land Transfer Act 1976 is required.

[33] The Court determines that the land gazetted in portion 168 in Nebok District is owned by Unique Narayan.

[34] That the house in which the defendant is living, is on the plaintiff's land and as such belongs to the plaintiff.

[35] That the defendant does not have any rights over the land of Portion 168 in relation to the construction of other structures or construction of another dwelling house.

[36] The Court notes that the plaintiff and her family have indicated that the defendant is able to remain as a tenant living in the house.

[37] For clarity, the defendant is not to do anything, to interfere with the plaintiff's use of Portion 168 and this includes of obstructing the building of a house for the plaintiff and her family on the land.

#### Held

[38] Portion 168 Nibok District is the plaintiff's property.

[39] No one is to interfere with the plaintiff's right to use the property and to reasonable access and enjoyment of the property.

[40] Costs awarded to the plaintiff (costs to be taxed by the Registrar).

13. At paragraph 33 of the judgement a finding was made that the plaintiff was the owner of Portion 168 and at paragraph 34 a finding was made that the house on Portion 168 is owned by the plaintiff. At paragraph 35 of the judgement it was stated that the defendant had no right over Portion 168 in relation to the construction of other structures or construction of another dwelling house.

14. At paragraph 36 of the judgement Her Honour noted:

“That the plaintiff and her family have indicated that the defendant is able to remain as a tenant living in house.” As a result of this concession by the plaintiff and her family the defendant is still in occupation of the dwelling house.

#### POWER OF ATTORNEY

15. This application was not filed by the plaintiff personally as she has been out of the country for some time. She gave a Power of Attorney to David Detageouwa on 12

December 2016 and he filed this application as her attorney on her behalf. In his affidavit dated 16 April 2018 in support of the application he stated at [4] as follows:

“[4] We have always held the view that Briar Rose can reside in the house on Portion 168 until she passes. However, she must fully recognize, accept and respect the determination and findings of the Supreme Court as outlined very clearly in the judgement on this matter.”

#### BREACH OF PARAGRAPH 35

16. The plaintiff alleges that the defendant breached paragraph 35 of the judgement by building an extension to the dwelling house after the judgement was delivered. The extent of the extension is depicted in Annexure ‘C’ at paragraph 6 of David Detageouwa’s said affidavit.

17. The defendant admits that the extension was carried out after the judgement was delivered and her counsel, Mr Valenitabua, submits that notwithstanding this the defendant is not in breach of paragraph 35 as it is not an order of the Court but only reasons for the judgement. He relies on Order 40 r.1(1)<sup>1</sup> where it is stated as follows:

“... *Richardson Roofing Company Limited v Colman Partnership Limited* [2009] EWCA Civ 839; February 13, 2009, unrep., CA (judgements are not orders but reasons for orders and the incorporation by reference in an order of paragraphs of judgement is improper.) An order should reflect the judgement and may properly relate only to the formal disposal of an appeal or application; the reasons for an order are to be contained in the judgement, not in the order. (*D’Silva v University College Union* [2009] EWCA Civ 1269 (passages in order critical of party’s behavior should be removed.)

18. Mr Soriano submits that the act of building of the extension is in breach of paragraph 35 and the defendant is therefore in contempt of court.

#### WRITTEN SUBMISSIONS

19. Both plaintiff and defendant filed very extensive written submissions which were of assistance to the Court.

#### CONSIDERATION

20. Paragraph 35 of the judgement is very clear in that the defendant did not have any rights to construct other structures on Portion 168 and despite that the defendant carried out the construction of the extension as shown in Annexure ‘C’ of David Detageouwa’s affidavit. I refer to Order 45 r.5<sup>2</sup> where it is stated as follows:

5/(1) Where

- a) A person required by a judgement or order to do an act within a time specified in the judgement or order refuses or neglects to do it within that

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<sup>1</sup> Civil Procedure (The White Book 2014) Volume 1 page 1272

<sup>2</sup> The Supreme Court Practice 1997 Volume 1 page 752

time, or as the case may be, within that time as extended or abridged under order 3, rule 5, or

- b) A person disobeys a judgement or order requiring him to abstain from doing an act,

21. At page 753 of The Supreme Court Practice it is stated as:

“Enforcement – Contempt of Court

This rule governs the method for enforcement by the Court of its judgement or orders in circumstances amounting to a contempt of Court. It applies to both positive and negative judgements or orders, i.e. those which require a party to do an act as well as those which require a party to abstain from doing an act, subject, however, to this important qualification that the coercive methods of enforcement under this rule cannot be employed to enforce a judgement or order or to do an act unless the act is required to be done, but is not done, within a specified time which has been fixed either by the original judgement or order ...”

22. S.5(1)(a) of the Act provides:

1) A civil contempt is committed under this Part where a person:

- a) Willfully disobeys any judgement, decision, **direction** or other process of a Court (emphasis added).

CONCLUSION

- 23. I find that the defendant in carrying out the extension to the dwelling house was in breach of the orders made in paragraph 35 of the judgement. On her own admissions I find her guilty of contempt of court and she is committed to prison for a term of three months.
- 24. Under Order.37 r.3 I suspend the order of committal for a period of two months with effect from today on condition that the defendant at her own cost removes the extensions carried out in breach of paragraph of the judgement. If she shall fail to do so, then she will be committed to prison.

DATED this 13 day of September 2019

  
Mohammed Shafiullah Khan  
Judge

