IN THE SUPREME COURT OF NAURU
AT YAREN DISTRICT

Miscellaneous Cause 64 of 2014

BETWEEN

Jane Temaki (Helen Dageago) — Plaintiff

AND

Secretary of Justice — First Defendant

AND

John Akubor — Second Defendants

Before: Khan, J
Date of Hearing: 19 September 2019
Date of Judgement: 11 December 2019

Case may be cited as: *Temaki v Secretary for Justice and Others*

CATCHWORDS:

Civil jurisdiction – application to strike out the plaintiff's claim pursuant to Order 15 Rule 19 of the Civil Procedure Rules 1972 by the second defendant – for locus standi and failure to disclose a cause of action – where at all material times Portion 58 of Meneng District belonged to the Administration (Republic of Nauru) - where Nauru Lands Committee awarded ownership to the second defendants – whether the Nauru Lands Committee had jurisdiction to do so – whether under the inherent and supervisory jurisdiction this Court can set aside and quash the determinations of Nauru Lands Committee.

APPEARANCES:

Counsel for the Plaintiff: V Clodumar
Counsel for the First Defendant: J Udit and J Togran and D Togran
Counsel for the Second Defendants: PN Ekwona

RULING

INTRODUCTION

1. This is an application by the second defendants filed pursuant to Order 15 Rule 19 of the Civil Procedure Rules 1972 (the Rules) to strike out the plaintiff's claim. Order 15 Rule 19 states:

   1) The Court in which any suit is pending may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any Writ of Summons in the suit, or anything in any pleading or in the endorsement, on the ground –

      a) It discloses no reasonable cause of action or defence, as the case may be;
      b) It is scandalous, frivolous or vexatious;
      c) It may prejudice, embarrass or delay the fair trial of the suit; or
      d) It is otherwise an abuse of the process of the Court.

2. Mr Ekwona submits that the plaintiff's claim does not disclose a cause of action; and the plaintiff did not have the locus standi to institute this action and therefore the action should be struck out.

HISTORY OF THE MATTER

3. The plaintiff filed a writ of summons on 14 November 2014 claiming that Portion 58 in Meneng District (portion 58) belonged to Edoea Joram and that she was her sole surviving child; and that she was representing the Joram family. She further claimed that the Director of Land and Survey had mixed up portion 58 with portion 57 and she sought an injunction to restrain payment of rent in respect of portion 57.

4. The defendants in their statement of defence stated that the plaintiff had no interest in portion 58 and that the second defendants had land adjacent to portion 58 and there were also laying a claim on portion 58.

5. The plaintiff, Jane Temaki, died on 8 March 2016.

6. Upon Jane Temaki's death the Nauru Lands Committee dealt with her estate including various land in G.N. 364/2016 and published it in the gazette on 11 May 2016.

7. On 15 August 2017 Mr Clodumar made an application for change of the plaintiff because of Jane Temaki's death under the provisions of O. 12, r.8 of the Rules and an order was made by the Acting Registrar, Mr Lomaloma (Acting Registrar) allowing Helen Deageago to be substituted for Jane Temaki.

8. On 16 August 2017 the Acting Registrar also made an ex parte interim injunction order against the second defendants restraining them from constructing or building on portion 58; he made a further order directing the Director of Land (Director) to conduct a survey and to identify the boundaries of land portions 56, 57, 58 and 59 in Meneng District and to submit the report to court by 22 August 2017.

9. The Director's report dated 24 August 2017 was filed in court on 18 September 2017 in which he states that portion 58 is owned by the Administration (now the Republic of

Nauru), whilst portions 56, 57 and 58 are owned by the landowners according to the record held by his office.

10. On 14 February 2018 Mr Ekwona advised the court that Nauru Lands Committee made a determination of portion 58 and allocated its ownership to the second defendants by G.N. No. 907/2017 dated 22 December 2017.

CONSIDERATION

11. In light of the Director's report which is accepted by all parties that portion 58 by Gazette Notice 21/47 belonged to the Administration (now the Republic of Nauru) the plaintiff did not have any cause of action against the second defendants.

WHETHER NAURU LANDS COMMITTEE SHOULD HAVE DEALT WITH THE MATTERS WHILST THIS ACTION WAS PENDING AND WHETHER IT HAD POWER TO DO SO?

12. Nauru Lands Committee made a determination in respect of portion 58 in G.N. No 907/2017 and allocated it to the second defendants. The issue is whether it should have done so whilst this action was pending.

13. Mr Udit informed the court on 31 August 2018 that the Nauru Lands Committee was aware of these proceedings as Ms Capelle had filed certain documents in which she stated that these proceedings were pending in this court, but the Nauru Lands Committee told Mr Udit that they were not aware of this proceeding. Mr Udit further said that prior to dealing with portion 58 Nauru Lands Committee did not issue any notice to the Republic, as it was obliged to do as portion 58 belonged it.

14. The Nauru Lands Committee was not made a party to these proceedings, and nor have I heard any submissions from them or on their behalf as to whether they were aware of this proceeding, so in fairness I will refrain from making any adverse findings against them except to say that documents filed by Ms Capelle would speak for itself. Further I would like to make some comments on G.N. No. 907/2017 in which Nauru Lands Committee stated that the 'original owners' as Akubor and 'reference' to Gazette No. 21/47; which corresponds to the Director's report in which it is stated that under Gazette No. 21/47 portion 58 belonged to the Administration (Republic of Nauru) and this has been accepted by all parties to this proceedings. Despite all this the Nauru Lands Committee stated the 'original owners' as Akubor.

15. DID NAURU LANDS COMMITTEE HAVE POWERS TO MAKE THE DETERMINATION IN FAVOUR OF THE SECOND DEFENDANTS

Powers of the Committee

16. S.6 of the Nauru Lands Committee Ordinance 1956/1963 gives power to Nauru Lands Committee to determine in respect of land. (emphasis added)

S.6(1)(ii) states:

1) The Committee has power to determine questions as to the ownership of, or rights in respect of, land, being questions which arise –

   a) between Nauruans or Pacific Islanders; or
   b) between Nauruans and Pacific Islanders.

2) Subject to the next succeeding section, the decision of the Committee is final.

17. Gazette No. 21/47 was never appealed against and by virtue of s.6(2) of the Ordinance the decision made in Gazette No. 21/47 was final and therefore Nauru Lands Committee did not have any powers to 'determine questions as to the ownership'. That being so, Nauru Lands Committee did not have the capacity or jurisdiction to embark on the hearing and granting the ownership of portion 58 to the second defendant and consequently its orders are null and void.

18. Mr Udit in a very helpful submission discusses the breaches of s.3 of the Lands Act 1976 and submits at [15][1] of his written submissions as follows:

> [15] Any issue about the return of the land to its traditional owners is a matter for the Government and not for the NLC. The NLC Act does not vest any power to NLC to deal with the return of land by the Government. It simply has no interest. It is an issue with the Government and the landowners.

DOES THE COURT HAVE POWERS TO CORRECT THE DECISION OF NAURU LANDS COMMITTEE?

19. Obviously, Nauru Lands Committee acted without any jurisdiction and Mr Udit in his submission's states at [17][2] as follows:

> [17] It is respectfully submitted that the Court has the power and jurisdiction to deal with the decision of NLC. These powers may already be before the court. It was and remains sub judice and beyond the scope of NLC to deal with. The action is still pending before the Court for the sole purpose of deciding who owns Portion 58. Therefore, the court has jurisdiction to deal with the NLC decision within the parameters of the case.

20. In *R (on the application of Cart) (the Appellant) v The Upper Tribunal (respondent) and others*[3] it is stated at [17] and [18] as follows:

> [17] "Mr Fordham, the Public Law Project, rightly reminds us that the remedy of certiorari has long been available to quash the decision of any inferior court or tribunal for error of law on the face of the record; see *R v Northumberland Compensation Appeal Tribunal, Exp Shaw* [1952] 1 KB 338. There the Tribunal has wrongly interpreted the "service" to be taken into account in assessing the applicant's compensation for the loss of office. There was no right of appeal against its decision. The Attorney General had argued that

[1] Written submissions dated 11 September 2019
[2] Written submissions dated 11 September 2019
[3] [2011] UKSC 28; on appeal from [2010] EWCA Civ 859 before Lord Phillips, Lord Hope, Lord Rodger, Lady Hale, Lord Brown, Lord Clarke and Lord Dyson

certiorari would only lie to prevent at tribunal exceeding its jurisdiction. Both the Divisional Court and the Court of Appeal had emphatically disagreed. This was not to assume an appellant function which had not been given to it; the court had 'an inherent jurisdiction to control all inferior tribunals, not in an appellate capacity, but in a supervisory capacity. This control extends not only to seeing that the inferior tribunal keeps within their jurisdiction, but also to seeing that they observe the law. The control is exercised by means of a power to quash any determination by the tribunal which, on the face of it, offends the law....."

[18] Then came *Anisminic Limited v Foreign Compensation Commission* [1969] 2AC 147, where not only was there no right of appeal from the Commission's decisions but there was also an express provision in the Foreign Compensation Act 1950 that those decision "shall not be called in question in any court of law" (s.4(4)). This provision was one of the two expressly excepted from the general abrogation of such clauses in section 11 of the 1958 Act. In holding that, nevertheless, it was not effective to oust the jurisdiction of the High Court to set aside the decision which was a nullity, and that a decision made in error of law was a nullity, the House of Lords effectively removed the distinction between error of law and excess of jurisdiction.

21. In *R v Northumberland* (supra) it was stated and I reiterate that:

> "This control extends not only to seeing that the inferior trusts keep within their jurisdiction, but also to seeing that they observe the law. The control is exercised by means of a power to quash any determination by the tribunal, which on the face of it offends against the law."

22. Inherent jurisdiction is a common law doctrine and it is defined in an article titled 'The Inherent Jurisdiction and its Limits'[4] where it is stated:

Jacob's account of Inherent Jurisdiction

The modern account of inherent jurisdiction begins with Sir Jack Jacob's seminal piece 'The Inherent Jurisdiction of the Court'[5]. Jacob defines 'inherent jurisdiction' as the:

> [...] residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent vexation or oppression, to do justice between the parties and to secure a fair trial between them.

23. Inherent jurisdiction being the common law of England became the law of Nauru pursuant to s.4(1) of the Custom and Adopted Laws Act 1971.

24. The 'inherent jurisdiction'[6] and 'supervisory jurisdiction'[7] has now been codified in the Supreme Court Act 2018. S.37 states:

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[4] Marcelo Rodriguez Ferrere, Otago Law Review (2013) Vol 13 No. 1 Page 108
[5] IH Jacob 'The Courts Inherent Jurisdiction' (1970) 23 CLP 23
[6] S.17(k) of the Supreme Court Act 2018

Supreme Court Supervisory Jurisdiction

(1) The court as the superior court shall have the supervisory power and jurisdiction over subordinate or inferior courts and tribunals.

(2) In exercise of the supervisory jurisdiction, the Supreme Court shall grant such prerogative reliefs as it deems fit or as prescribed by the rules of the court.

(3) Where an appeal procedure is provided to appeal a judgement, a decision or order of the subordinate or inferior court or tribunal to the Supreme Court, the only remedy of redress for review of decision of such subordinate court or tribunal is by way of an appeal.

25. In this matter the plaintiff has not filed an appeal against the decision of the Nauru Lands Committee in respect of G.N. No. 907/2017 but since this court is seized of this matter, I in exercise of the inherent jurisdiction in the supervisory capacity set aside all the orders made by the Nauru Lands Committee granting ownership of Portion 58 to the second defendants and quash those orders.

CONCLUSION

26. I find that the plaintiff did not have a cause of action or locus standi to bring this action against the defendants and the action is struck out.

27. Having quashed the orders made by the Nauru Lands Committee in favour of the second defendants, I order that the Nauru Lands Committee shall correct its record and record that portion 58 is owned by the Administration (the Republic of Nauru).

28. I make no orders as to costs and I order that each party shall bear their own costs.

DATED this 11 day of December 2019

Mohammed Shafiullah Khan
Judge

[7] S.37 of the Supreme Court Act 2018