



**SUPREME COURT OF NAURU**

**[CIVIL JURISDICTION]**

**Civil Case 5 of 2018**

**Sprent Dabwido**

**Plaintiff**

**And**

**Rubyka Kam, Tawaki Kam**

**Defendants**

Before: Chief Justice Filimone Jitoko  
For the Plaintiff: Self  
For the Defendants: K Tolenoa

Date of Hearing: 29 January 2019  
Date of Ruling: 2 February 2019

**Ruling**

This inter parte motion is made by the defendants/respondents for the dismissal of the plaintiff/applicants summons filed on 19 June 2018 seeking an order of contempt of Court and committal against the defendants for non-compliance with the stop-work injunctive order made against them on 26 March, 2018.

The plaintiff's affidavit in support of its contempt summons alleges that in spite of the stop-work order made by the Court, the defendants have continued to build and encroach on land portion 155 Anbwiya, Boe district of which the plaintiff is a part owner. In their affidavit in reply, the defendants are arguing *inter alia* that the encroached portions the plaintiff is referring to in fact forms part of the road reserve under the provisions of the Lands act 2017.

The Court will not deal with the merits or otherwise of the claims by the plaintiff or the defendants. That is for the substantive hearing to decide. For the moment the Court will only deal with the application by the defendants to dismiss the plaintiffs summons on the contempt proceedings, for want of prosecution.

The defendants rely on order 34 rules 3 and 5 of the Civil Procedure Rules. I am not certain how these rules of Order 34 are relevant.

The general principle governing, the exercise of the Courts discretionary powers to dismiss an action for lack or want of prosecution is that the default has been contumelous, that is, the default has been deliberate in that:

- (i) the delay has been intentional, and
- (ii) the delay has been inordinate and inexcusable in the prosecution of the case.

The Court understands from reliable source, that the plaintiff has been away overseas for medical treatment in the last 3-4 months and as since he had been appearing and dealing with this matter in person, the summons which he filed on 19 June 2018 cannot proceed because of his absence due to ill health.

I believe in these circumstances there cannot be any merit in the argument that non progress of the hearing of the summons is caused by a deliberate default on the part of the plaintiff.

In any case, the delay cannot be said to be highly prejudicial to the defendants. Their argument that they had not disobeyed the order of the Court and thereafter cannot be held in contempt is still to be heard, and the proceedings has not really jeopardized or stopped their construction.

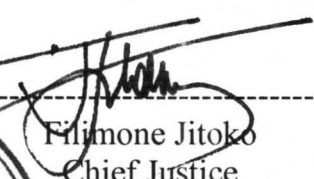
The appellants are entitled to ask for costs which the Court may consider upon application.

The application to dismiss the plaintiff's summons is denied.

Costs in the cause.

Dated this 2<sup>nd</sup> day of February, 2019.



  
Filimone Jitoko  
Chief Justice