



IN THE SUPREME COURT OF NAURU

AT YAREN
CIVIL JURISDICTION

Land Appeal No.13/ 2018

BETWEEN

Nova Dongobir

Plaintiff

and

Handsome Adumur
John Adumur

1st Defendants

and

Zaline Gadeanang
Detoba Deternamo

2nd Defendants

and

Nauru Lands Committee (NLC)

3rd Defendant

Before: Rapi Vaai, J

APPEARANCES:

Counsel for the Plaintiff: V.Clodumar

Counsel for the 1st and 2nd Defendants: K.Tolenoa

Counsel for the 3rd Defendant: B.Narayan

Date of Hearing: 19 May 2020

Date of Ruling: 29 May 2020

Case may be cited as: "*Nova Dongobir v Handsome Adumur & Ors.*"

RULING

Introduction

1. By interlocutory summons dated 11th July 2018 the applicant seeks leave of the Court to appeal out of time the decision of the Nauru Lands Committee (NLC) published in

Gazette on the 4th April 2001 concerning the land Ibweruru portion 155 (the land) Anibare District.

2. The application is opposed by all the three defendants.
3. The land was in 1968 owned by Gumu 2/3rd, and Eigouna 1/3rd. The proposed appeal is concerned with the distribution of Gumu's shares after he died in 1968. By his will he devised his land to his partner Eigabweairo, and his adopted son Kent. Distribution of Gumu's land in accordance with his will was published in the Gazette of 14th October 1968.
4. Eigabweairo died in 1972 intestate. Beneficiaries of her shares in land were her two sisters Eidime and Eben, as well as Kent, her adopted son.
5. Eidime died in 1974. Her two sons who inherited her shares are the first defendants.
6. Eben died in 1992. Her shares were inherited by her son Benoni who died in 1998 and his shares passed to his two children Detoba and Zaline, the second defendants.
7. Kent has also died. In 2001 NLC published its determination for distribution of Kent's estate to the first and second defendants. It is this publication that the applicant purportedly on the face of the application, wishes to appeal against.
8. The applicant is the daughter of Tom Dongobir. She deposed in her supporting affidavit she represents the beneficiaries of the estate of Tom Dongobir, Deitimoiy Dongobir, and Zinnia Amwano (nee Dongobir). Her paternal grandmother is Eigouna, the daughter of Eagege. Eigouna and Gumu are second cousins. They were the joint owners of the land in 1968.

Grounds of proposed appeal.

9. Paragraphs 25, 26 and 27 of the applicants supporting affidavit list the appeal grounds:

25. On advice of the pleader, the applicants claim that the NLC has made a jurisdictional error in distributing the land to the present owners because Gumu died intestate and therefore his share should have reversed to Eigouna the other owner of the land....

26. Ian Bowditch of the Department of Justice then had advised the NLC that Gumu's will did not concern to the laws of Nauru. The NLC acknowledged the advice in its meeting with the family on 21st August 1968 but ignored it when they determined the estate of Gumu. That is, they had deemed that Gumu died testate not intestate.

27. This error has continued in 1972 and in 2001 when the estate of Eigabweairo and Kent were determined respectively.

10. The three grounds outlined in the supporting affidavit of the applicant together with the written submissions of counsel unequivocally demonstrates that the focal point of the applicant's purported appeal is not the 2001 NLC determination; it is the 1968 NLC determination which the applicant contended was in error and that error has filtered through and affected the subsequent determinations including the 2001 determination.
11. The error, which counsel submitted was a jurisdictional error, was in relation to the will of Gumu. It was contended that on the true interpretation of the minutes of the NLC with the families of Gumu, the Vice Chairman of NLC advised the meeting that the will, according to legal opinion, was invalid. This contention was contested by NLC which contended that the true translation of the minutes was that the will was valid.
12. If the will was invalid then Gumu died intestate. But the NLC distributed the estate in accordance with the instructions in the will, and as a consequence the applicant contended the NLC committed a jurisdictional error. If Gumu died intestate, then in the absence of a family agreement, the applicant contended that Eigouna, the applicant's grandmother should inherit Gumu's shares.
13. The court cannot on the materials before it determine the true translations; neither would the court allow these proceedings to embark in an exercise to determine the true translation.

14. With a lengthy delay of over 50 years it is not sufficient for the applicant to demonstrate it has an arguable case, it is necessary to show a strong case. *Concerned Citizens of Canberra v Chief executive Planning and Land Authority*¹.
15. It seems very obvious that the intended appeal is in reality a subtle application for a writ of certiorari to quash the 1968 determination of the NLC on the grounds of jurisdictional error. Delay is a factor which the court takes into account in the exercise of its discretions whether to grant a writ. The scope for certiorari is also subject to restrictions. As stated in *R v Northumberland Compensation Appeal Tribunal Ex-parte Shaw*²
- “It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issue raised in the proceedings. It exist to correct error of law revealed on the face of an order or decision, or irregularity, or absence of, or excess of jurisdiction where shown. The control is exercised by removing an order or decision and then quashing it.”
16. Section 13(4) Limitation Act 2017 specifically prohibits the court from granting a relief in any proceeding or appeals from the NLC to the Supreme Court which would result in a claim being barred under subsection (1). Subsection, disallows recovery of land after a lapse of 20 years from the day the cause of action accrued. Cause of action pursued by the applicant was the determination of the will in 1968.
17. The applicants attempted to get around section 13(4) Limitation Act 2017 by contending that there was no decision in 1968, if the court declares it null and void. The contention misses the point. The 1968 decision is still a decision which has not been challenged by an appeal or otherwise. Section 13(4) prohibits the court from entertaining the applicant’s application.

Reasons for Delay

18. The applicant in her affidavit stated no reasons for the delay. Reason for delay is a question of fact and must come from the applicant not through counsel in his written submissions. Supporting affidavits by litigants should be confined to facts which the deponent honestly believes to be true.

¹ (2015) ACT CA 56

² (1952) IKB 338 of 357

19. Counsel stated the reason for delay through his submissions. He told the court that the applicant only came into possession of the estate of Eigouna in particular, the land Ibweruru following the demise of their parents. The last one to die was Timothy Dongobir and his estate was determined in Gazette 28th April 2017. As such the applicant is blameless for the delay.
20. NLC counsel submitted that the applicant's father Tom Dongobir passed away in December 2014 and determination of his estate of which the applicant and her siblings were the beneficiaries was published on 25th February 2015. Which follows the applicant should have known about the land in question since 2015.
21. The court agrees with counsel for NLC. Furthermore the applicant's grandmother was joint owner of the land with Gumu and she was at the family meeting in 1968. Neither of those at the family meeting objected when it was confirmed Gumu owned 2/3rd and the applicant's mother 1/3rd share. Neither did anyone object when distribution was published. A convincing inference is that the family agreed to the distribution in accordance with the terms of the will. It was probably for that reason also that the applicant's father who with others inherited the land did not challenge the 1968 distribution.
22. Time limits are important and must prima facie be obeyed. There should be an explanation for the delay as to which any action (other than to appeal) that has been taken by the applicant *R v Meyboom*³.
For three years, since the death of her father in 2015, the applicant took no action to challenge.

Prejudice to the Respondents

23. Since the 1968 determination and distribution there were subsequent distributions of the same land in 1972 when Gumu's partner Eigabweairo died; in 1974 when Eigabweairo's sister, Eidime died; in 1992 when Eben, sister of Eidime died; 1998 when Benoni, son of Eben died; and in 2001 when Kent died.

³ (2012) 256 FLR 450

24. The value of finality in litigation and the need for time limits should be respected. The subject land has been passed onto three different owners (first respondents) and four in the case of the second respondents. The principle of certainty of title demand that the 1968 decision should continue to stand. As Millhouse CJ observed in *Bill & Ors v Nauru Lands Committee*⁴

“If Courts were to interfere –except in the rarest cases contemplated in Practice Note No 1/2006 – the system of land tenure would be chaos – no one would know where his or her title was to be challenged. To allow that to happen is unthinkable.”

25. Prejudice caused to the respondent by the delay is a vital factor against the grant of extension of time. Mere absence of prejudice is not enough to justify extension of time.⁵

26. Justice of the case supports refusal of the application to grant leave to appeal out of time. There is simply nothing before court on which the court can exercise its discretion to grant leave. Discretion to extend time is wide and flexible but will not lightly be exercised⁶.

Result

(1) Application to grant leave to appeal out of time is refused.

(2) Costs for the three respondents to be fixed by the Registrar if not agreed upon.



Judge Rapi Vaai



⁴ 2006 NRSC,

⁵ R v Meyboom (supra)

⁶ Johnson v Johnson (2011) NZCA 171