



IN THE SUPREME COURT OF NAURU  
AT YAREN  
CIVIL JURISDICTION

CIVIL CASE NO. 24 OF 2020

BETWEEN

LONI DONGOBIR OF DENIG DISTRICT

Plaintiff

AND

KASH DONGOBIR

First Defendant

AND

DULCIA KEPAE (NEE DONGOBIR)

Second Defendant

AND

ELISA DEDIYA (NEE DONGOBIR)

Third Defendant

AND

SHERIDAN DONGOBIR

Fourth Defendant

AND

GADAFI KAPAE

Fifth Defendant

AND

DARNARD DONGOBIR OF DENIG  
DISTRICT

Sixth Defendant

Before: Khan, ACJ  
Date of Hearing: 23 November 2020  
Date of Ruling: 8 December 2020

Case may be referred to as: Loni Dongobir v Kash Dongobir and Others

CATCHWORDS: Application for mandatory injunction – Where the plaintiff was in occupation of a room given to her by her parents – Where this room forms part of a house occupied by the defendants – Where the defendants claims that the plaintiff was given a temporary right to occupy – Where the defendants entered the room and removed the plaintiff's belongings – Whether an order for mandatory injunction should be granted.

APPEARANCES:

Counsel for the Plaintiff:	T Tannang
Counsel for the First and Sixth Defendants:	R Tagivakatini
Counsel for the Second, Third, Fourth and Fifth Defendants:	J Olsson

RULING

INTRODUCTION

1. The plaintiff filed an ex parte application for interlocutory injunction seeking an order for permanent injunction against the defendants to restrain them from interfering with her peaceful enjoyment of her room in a house situated on Portion 267, Denig District (the house).
2. This matter was initially listed before Vaai J on 21 July 2020 and he ordered that this matter shall be heard inter parte.

BACKGROUND

3. The plaintiff is the eldest daughter of Starret Dongobir and Madonna Dongobir.
4. The plaintiff was in occupation of a room in the house which has 4 bedrooms. This room was previously occupied by the plaintiff's parents long before her birth. The plaintiff was born on 26 September 1982. After her birth her parents lived in the room and when she turned 18 her parents moved out into a flat next to the house and she took occupation of the room and continued to live in it for the last 20 years.
5. Initially she was living in the room alone and her defacto husband, Josese Qualo, moved in with her 2 years ago.
6. The plaintiff's father died in 2016.
7. On 12 July 2020 at about 5pm the defendants broke the door of her room and gained entry and removed all her belongings and put them outside.
8. The plaintiff arrived at the house at around 7pm and spoke to Elisa Dongobir and asked her as to what's happening and she was told that she should vacate her room. The

plaintiff called the police to seek their assistance in moving back into the room. Her brother attempted to put the door back and was stopped by Kash Dongobir.

9. The police were unable to assist and advised the parties to seek assistance from the court.
10. The defendants took occupation of the room and the plaintiff has been denied access to the room since.
11. The defendant Elisa Dongobir states that the plaintiff was allowed use of the room as a result of an agreement made between the plaintiff's father, who is her brother; that she was allowed to live in the room on a temporary basis as it was closer to her college, USP, in Aiwo. She further states the plaintiff's studies have completed and that the agreement came to an end, and that the plaintiff was asked to vacate the room and she refused to do so and therefore the defendants then entered her room and removed her belongings.

### SUBMISSIONS

12. Mr Tannang submits that the plaintiff is entitled to return to her room and that an order for interim injunction should be made against the defendants.
13. Mr Tagivakatini submits that in Nauruan custom the eldest daughter decides as to how the estate is to be distributed.
14. Miss Olsson submits that there was an agreement for the plaintiff to use the room for her studies and she has completed her studies and the agreement has come to an end.
15. When I asked Miss Olsson to explain as to why did the defendants take the matter in their own hands instead of applying for a court order, Miss Olsson response was that the defendants did not know that they should have done so.

### CONSIDERATION

16. What is of concern to me in this case is that the defendants took the law into their own hands, instead of seeking an order of the court to remove the plaintiff from her room. Even, if the defendants' version is correct, they were still obliged to provide due process to the plaintiff and not take the matters into their own hands. This kind of behaviour cannot be condoned and is condemned – particularly when the plaintiff had been in occupation of the room for the last 20 years.
17. The plaintiff's version is that her parents were in occupation of the room and had passed it down to her; whilst the defendants' version is that they allowed the plaintiff to live in the room to complete her studies at the request of her late father.
18. I am required to decide as to which version is correct and depending on my decision, I shall then make appropriate orders, however, in the meantime I am not able to make an

order for mandatory injunction. I refer to The Supreme Court Practice 1997<sup>1</sup> where it is stated that:

“An interlocutory mandatory injunction will not be granted on affidavit evidence where the issues of fact are strongly contested and involve industrial disputes which could only be determined on the trial of the action (Meade v. Haringey London Borough Council [1979] I.C.R. 494; [1979] 1 W.L.R. 637; [1979] 2 All E.R. 1016, C.A.). .... The Cyanamid guidelines are not relevant to mandatory injunctions. The case has to be unusually strong and clear before a mandatory injunction will be granted at the interlocutory stage even if it is sought in order to enforce a contractual obligation.”

19. I order that this matter should be allocated an early trial date and this matter should be disposed of as soon as possible.

DATED this 8 day of December 2020.



Mohammed Shafiullah Khan  
Acting Chief Justice

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<sup>1</sup> Vol 1 Part 1 Page 505