



IN THE SUPREME COURT OF NAURU

AT YAREN

CIVIL JURISDICTION

Civil Appeal No.7 of 2020

BETWEEN: DODO KEPAE & ORS
Plaintiff

AND: JOHN JEREMIAH
1st Defendant

AND: TEHANI JEREMIAH
2nd Defendant

AND: NAURU LANDS COMMITTEE
3rd Defendant

AND: PALIK AGIR
4th Defendant

AND: TYRAN CAPELLE
5th Defendant

BEFORE: Chief Justice F. Jitoko

APPEARANCES:

Counsel for Plaintiff: **J. Olsson (pleader)**

Counsel for 1st and 2nd Defendants: **V. Clodumar (pleader)**

Counsel for 3rd Defendant: **B. Narayan, Deputy Solicitor General**
J. Togoran (pleader)

Date of Hearing: 31st August, 2020

Date of Ruling: 31st August, 2020

Case may be cited as: *Kepae & Ors v Jeremiah & Ors*

Catchwords: Nauru Lands Committee Act 1956 – Lands Act 1976 – President’s Consent – Section 3 (3) – Statutory Duties – Review Process – Contents of Pleadings

RULING
(EX-TEMPORE)

1. I find substance in the plaintiff’s Counsel’s submissions before the Court this morning as to the likely cause of action against the Nauru Lands Committee and/or its agents. Unfortunately, these arguments and relevant issues have not been translated into the pleadings from which the action against the third defendant, is or should be based.
2. Pleadings is everything in any writ filed into court. Everything, from the cause of action; the basis on which liability is predicated, be it personal or through agency; the remedies sought and specifically the types of damages, whether be it compensatory, specific or other types, including exemplary (punitive), should all have been in the pleadings, and damages being claimed specifically against each of the defendants, in both the pleadings and in the prayers.
3. As to the submission to amend its Statement of Claim the plaintiff’s Counsel cannot now argue for further amendments, without first seeking the formal censure of the Court. The Court had already granted leave in its Ruling of 16 October 2019. There is also the Civil Procedure Rules that no further amendments, is permissible at the close of pleadings. This does not however stop counsel from applying in the future.
4. For time being, having listened to all the Counsel’s arguments this morning the Court concludes, in all the circumstances that there is merit in the third defendants’ application.

Background

5. Very briefly, the first strike out application made by the third defendant was dismissed by the court in its, Ruling of 16 October 2019. The Court denied the

application, finding that it was misconceived once its arguments was premised on the decision of the Cabinet and not the Nauru Lands Committee.

6. The Court then referred to the nature of the claim made by the plaintiffs as well as the basis of the remedies sought. It noted that the Statement of Claim only sought a penalty against the NLC for its alleged negligence and improper conduct. The Court in this regard clarifies that there was no procedure either, under the Nauru Lands Committee Act 1956 or the Lands Act 1976 or regulations thereto be followed, on the proper procedures for obtaining the landowners consent for land use. Certainly, the court noted, there exists accepted practice under which consent forms are executed by the landowners and then submitted to the NLC, and after 21 days has expired without objections received, the landowners' consent are acted upon, and in this instance, the consent submitted to Cabinet for its approval for the land to be dealt with pursuant to section 3 (3) of the Lands Act.
7. It is with regards to these issues of certainty of the law that the Court (per Va'ai J) in its 16 October 2019 Ruling, ordered the plaintiffs to file further amended Statement of Claim, and in particular, as to what kind of damages are sought against each of the defendants, including the quantum. The amended Statement of Claim was to be filed by 1 November 2019 and listed before Va'ai J on 29 November 2019. However, the amended Statement of Claim was eventually filed on 24 January, 2020.

Amended Statement Of Claim

8. The Court has perused the plaintiffs' amended claim. It notes in particular the following:
 - (1) The reliefs sought by the plaintiffs in the ultimate paragraph does not appear to seek any against the NLC, the third defendant.
 - (2) Instead, the relief is sought against the 4th and 5th defendants to pay "*relevant damages*" without any qualifications as to what capacities they are being joined.

(3) At paragraph 37 of the Claim, the plaintiffs assert that they are entitled to “*compensatory damages*” against the 4th and 5th defendants, as “*members of the NLC*”.

9. The cause of action against the 4th and 5th defendants as servants of NLC is however qualified in paragraph 9 of the claim which states that the 4th and 5th defendants are “*being sued in their personal capacities*”.
10. Even when the plaintiffs have identified compensatory damages as the type of damages sought, they have failed to state specifically the nature of the compensatory damages sought, for example, did the action complained of, resulted in losses, including harm to the person or property, or at worse, exemplary damages.
11. The quantum of damages that were ordered by the Court to be specified is also not included in the amended Claim.
12. The only reference to quantum is at paragraphs 34 and 38 of the Claim. However, the Court notes that these are not damages *per se* but report of rents, allegedly owed to the plaintiffs and other landowners, including the 1st and 2nd defendants, which money have since January 2019, been paid and kept into the Court’s Trust Account and protected by Order of the Court.
13. In the end, there are, as the plaintiffs’ pleadings stand, no cause of action against the 3rd defendant, the NLC.

Conclusion

14. In all the circumstances, the court concedes that there is merit in the strike out application, and the third defendants summons and prayer is hereby granted.

Judicial Review Remedy

15. It is to be noted that the Court has granted the application on the substance of the Writ alone.

16. As an obiter, the Court would offer its perspectives on the judicial review as the alternative or the first cause of action, by the plaintiffs against the 3rd defendant or the Cabinet.
17. The whole basis of judicial review is premised on the understanding that the powers exercise by a public body or authority find their sources in statutory and constitutional law. The ground therefore of judicial review would primarily be the breach of such powers, for example, whether the donee of such power have done something, more than it was authorised to do, or have done so in an unauthorised manner, or have failed to do an authorised act. All the case law, including the leading authority of *O'Reilly v Mackman [1956] 2AC 237*, proceed on the assumption that the public body or authority is specifically imbued with such powers by law, be it by legislation or through regulations.
18. In this case, there is no mention of the role and responsibilities of either the NLC or the Cabinet in the exercise of the Presidential discretion to agree ("*consent in writing*") under section 3(3) of the Nauru Lands Act, to the transfer, lease or grant of any estate or interest in any land in Nauru. Va'ai J had already alluded to this important missing element in any review process of decisions. In other words, the President's consent under section 3 (3) which is in issue, does not specifically stipulate that it is conditional on the NLC determining first the question of the land ownership, even although in the end it may be a necessary pre-emptive process, that is, for the President, before exercising his/her powers under section 3 (3) of the Lands Act, to direct the NLC to determine the land ownership under section 6 of the Nauru Lands Act. Without this presidential direction, one may well ask, what is the status of the report, gratuitously compiled by NLC? Importantly, what if any, is the nature of NLC's legal obligation in making available such a report or decision other than the primary purpose(s) envisaged under the Nauru Lands Committee Act? It must be born in mind that the purpose of the Lands Act under which the consent of the President is sought, is primarily for the leasing of land for the phosphate Industry and other purposes. In contrast, the role of the Nauru Lands Committee under the Nauru Lands Committee Act is the determination of land ownership and followed by its

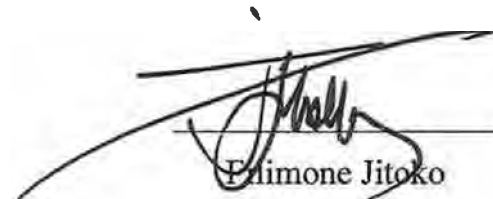
publication in the Gazette. This is the extent of the conferment of the Committee's powers, to determine and publish as prescribed under its own legislation.

19. In the Court's view, in order for the judicial review to arise and become available, on the action of the Committee or Cabinet, it clearly must be shown that there are provisions under the Lands Act or amendments thereto, that impose a duty on the part of either bodies, to make the decisions of which they are now being challenged. It could very well be that, as far as the Cabinet is concerned, its executive authority under the Constitution may provide the platform for such a challenge. This is for the counsel to ponder.

20. In the end, the Court makes the following:

ORDERS

1. The summons to strike out the Third Defendant as a party to these proceedings is granted and is so ordered.
2. The case is to take its normal course.
3. Costs in the Cause.


Palimone Jitoko
Chief Justice

