



SUPREME COURT OF NAURU
YAREN
CIVIL JURISDICTION

Civil Case No. 25 of 2017

BETWEEN

DONNA ADAM

Plaintiff

AND

KANE AMANDUS

Defendant

Before : Fatiaki CJ.

Date of Hearing : 02 August , 2021

Date of Ruling : 7 September , 2021

CITATION : Adam v Amandus

CATCHWORDS:

“strike out grounds” ; “no cause of action” ; “absence of locus standi not a ground” ; “Court’s discretion to strike” ; “principles on which exercised” ; “violation of cultural and customary land law” ; “family meeting”.

LEGISLATION : Order 15 rule s. 11 & 19 CPR ; Order 12 rule 7(2) ; ss 7 & 8 Nauru Housing Ordinance 1957 ; S.5(3) Nauru Local Government Council Dissolution Consequential Amendment Act 1997 ; Statute Revision Act 2011 ; s. 28 Interpretation Act 2011.

CASES REFERRED TO : Robertson v Cain [2017] NRSC 68 ; Quadina v Tsitsi [2019] NRSC 23 ;

APPEARANCES:

Counsel for the Plaintiff : E. Soriano

Counsel for the Defendant : R. Tagivakatini (PLD)

RULING

INTRODUCTION

1. This case concerns the ownership and occupancy of one (1) of three (3) houses built under the Nauru Housing Scheme by the Nauru Local Government Council (“NLGC”) on Land Portion 145 in Boe District.

THE PLEADINGS

2. The original pleadings comprised a Writ with a Statement of Claim that named the NLC but sought no remedies against it. Also filed were an exparte Notice of Motion seeking declarations and an injunction against the first named defendant only, and an affidavit of the plaintiff in support of the Notice of Motion. All documents were filed on 25 August 2017. Little is known about what happened to the plaintiff’s claim after that.
3. Three (3) months after filing on 19 November 2018 the Solicitor General appeared and sought copies of all documents filed and the case was adjourned till 25 Jan 2019, it was not called again until 15 March 2019 when it was further adjourned to 12 April 2019. On 12 April 2019 the case was adjourned for a further 3 months until 24 July 2019 when the SG again complained of not having any documents and the case was adjourned for a month till 30 August 2019 presumably to allow papers to be served.
4. After that, the case went to sleep for nine (9) months and was resurrected on 13 May 2020 only to be adjourned to 3 June 2020 this time, to allow for service of the documents on the first defendant who was by now living and working in the New York Embassy of Nauru. The matter next came before Khan J to hear an application under Order 12 rule 7(2) CPR that had been filed by counsel for NLC on 2 June 2020 seeking its removal as a party to the suit. By this time almost 20 months had elapsed since the first call of the case in Court.
5. On 9 June 2020 the removal application was adjourned to 15 June 2020 for hearing, on which date, plaintiff’s counsel conceded that the NLC should not be a party to the proceedings and agreed to pay costs. On defence counsel’s indication that costs was not being sought, a consent order was made removing NLC as a party to the suit.
6. The case was returned to the Registrar’s list on 24 June 2020 and was amended to remove NLC. Thereafter the case was adjourned from time to time for eight (8) months until it was re-called at a general call-over of civil cases conducted jointly by myself and Khan J on 16 Feb 2021. On 16 March 2021 defence counsel formally entered an appearance for the defendant.
7. The claim had by now, drifted aimlessly in the court registry for over 3½ years without being actively managed or had any substantive order or directions given to advance the case to a conclusion. This should never have occurred and is perhaps reflective of the lackadaisical allocation system that existed during the time where no judicial officer had personal carriage and responsibility for a file. The system has been changed to avoid a repetition and with a view to improving disposal rates.

8. In her claim , the plaintiff avers that she is the lifetime only holder and widow of the late Leslie Adam whose estate inter alia comprised Land Portion 145 in Boe District on which was erected three (3) houses constructed under the Nauru Housing Scheme administered by the NLGC.
9. The plaintiff avers that the defendant who has no ownership interest in either the said land or the houses , is unlawfully occupying one of the houses ("*the disputed house*") and further , is undertaking unauthorised renovations and extensions to the disputed house despite requests to desist.
10. In her suit , the plaintiff advances a host of "*causes of action*" including : "*Trespass*" ; "*Encroachment*" ; "*Damages to the Land*" ; "*Negligence*" ; and "*Violation of Cultural & Customary Land Law*" (whatever that means). She also seeks two (2) declaratory orders , an injunction , and costs. Surprisingly , no damages or mesne profits are sought as might be expected.
11. According to the plaintiff , the disputed house was originally built for her mother-in-law who also owned the land on which the house was erected by the NLGC. On her mother-in-laws' demise the land and houses were transmitted to the plaintiff's husband as the only son Leslie Adam and , on his demise , to the plaintiff as his lawful widow who acquired a life time interest in her late husband's estate which she holds in her own right and as a trustee for their two (2) daughters. The plaintiff maintains that the defendant has no ownership interest in either the land or the disputed house.
12. In his general defence to the claim , the defendant pleads "*that the plaintiff has no locus standi*" and "*the only person or body that has locus standi in this matter is the (NLGC) which has been succeeded by the Cabinet*". The defendant then seeks that the plaintiff's claim be struck out in accordance with a Notice of Motion and affidavit in support also filed on 21 June 2021.
13. The relevant procedure dealing with the striking-out of pleadings is Order 15 rule 19 CPR which sets out the only grounds on which a pleading may be struck out , as follows :
 - (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 "*
14. Plainly , there is no such ground as : "*no locus standi*" nor can it be pleaded as a bare assertion without some supporting facts either challenging or disputing the plaintiff's averments of the factual basis and origin(s) of her claim. For instance , it is not denied that the land and disputed house are part of the late Leslie Adams estate or that the plaintiff is his lawful widow who acquired a life interest in her late husband's estate.
15. Notably , the discretionary orders that the Court may make on an application under Order 15 rule 19 are that the pleadings "*....be struck out*" or "*amended*".... and the suit "*....be*

stayed or dismissed or judgment to be entered accordingly....” In other words, even if successfully argued it does not inevitably follow that the pleading or suit will be struck out.

16. The affidavit filed by the defendant’s sister in support of the strike-out application accepts that the disputed house *“was built by the NLGC....”* and further , that *“....all houses built by the NLGC would have to be dealt with by the Cabinet”*. This latter assertion is plainly a reference to some unidentified legislation or Government directive which could have been pleaded in the defence but was not. (see : Order 15 rule 11).
17. The various tests or standards that the party seeking a strike-out must establish has been variously described but may be conveniently summarized as follows :
“No party should have his claim denied without a hearing in the ordinary way except where the claim as pleaded is so hopeless or so clearly untenable that it cannot possibly succeed even with extensive argument”.
18. Be that as it may , in her Reply dated 15 July 2021 , the plaintiff re-asserts her interest in the house:
“....by virtue of her inheritance of the estate of her late husband Leslie Adam which included tenancy of the house in dispute and ownership-in-common of land portion 145....on which the house in dispute is built
Secondly , there has never been a transfer of tenancy of the dwelling house since it was assigned to Bonnie , the mother of Leslie Adam. She was then owner/occupier of the house and that has not been changed since his death.”
19. In a direct reference to the legislation which was not disclosed in the defendant’s pleadings or application , the plaintiff’s Reply avers :
“ The Nauru Housing Ordinance 1957 (NHO) has been repealed by the Statute Revision Act 2011 without any savings. However by Section 28(2) of the interpretation Act 2011 , the right of occupation by Bonnie (the plaintiff’s mother in law) since it was not terminated by the Nauru Local Government Council (NLGC) or its successor , the Cabinet , survives the repeal and therefore that right has passed to the heirs of Bonnie”
20. These averments are later confirmed in the affidavit in opposition filed by the plaintiff on 2 August 2021 wherein she deposes :
“3. The house in dispute is on portion 145 in Boe and it was originally assigned to the mother of Leslie Adam , namely Bonnie.
.....
5. Bonnie had a brother Amandus.
6. When Bonnie became sick and was admitted in hospital , she conveyed to the brother her dying wish that he move into the house to care of (sic) her son Leslie Adam. Amandus was single at the time.”

and later :

“10. We do not dispute that when the NLGC was dissolved the properties belonging to the NLGC was transferred to the Republic of Nauru

12. *But before and even after the repeal of the Housing Ordinance , there was never a transfer of the tenancy of the house in dispute , from Bonnie to Amandus either by the NLGC or the Cabinet.”*

21. On 2 Aug 2021 , the strike-out application was orally argued. Defence counsel submitted that there was no “*cause of action*” because this claim can only be resolved by Cabinet and Counsel drew the Court’s attention to the provisions of the rather oddly named : “*Nauru Local Government Council Dissolution Consequential Amendment Act 1997*”. In particular Section 5 relevantly provides :

“(1) In this and the following section reference to the Nauru Council is reference to the body corporate known as the Nauru Local Government Council, which was renamed the Nauru Council by the Nauru Local Government Council Dissolution Act 1992 and :

3. all the property and assets of the Nauru Council situate in Nauru are the property and assets of the Republic.”

22. Defence counsel next referred to two (2) judgments of the Supreme Court as follows :

Firstly , Robertson v Cain [2017] NRSC 68 where the dispute involved a similar house built under the Nauru Housing Scheme and managed by the NLGC at Boe District. The Supreme Court (Crulci.J.) in continuing an injunction restraining the defendant (in occupation) from constructing any new building or altering any existing building on (the land) , and recognising “*the plaintiff’s rights to use the property and to reasonable access and enjoyment of the property* , said (at para 40):

“In the view of the Court the situation in relation to tenancies formerly overseen by the NLGC is for Parliament to resolve.”

then , in answering three (3) questions earlier posed in the judgment , Crulci J said (at para 41) :

“(a) The house occupied by the defendant’s....previously vested in the Council under Section 7(1) of the (Nauru Housing Ordinance)....., is now vested in the Cabinet and the Republic pursuant to section 4(a) and 5(3) of the Nauru Local Government Council Dissolution Consequential Amendment Act 1997 ;

(b) The defendants do not hold any legal tenancy in the houseat most , they are tenants-at-will ;

(c) No , adverse possession does not apply. The rights of the landowners are protected under Section 8 of the NHO.”

23. It is immediately plain that the particular submission and claims of the plaintiff in the present case are different from that in the above case , based as they are , on the provisions of Section 28 of the Interpretation Act 2011 which reads so far as relevant :

28. Affect (sic) of repeal or amendment on previous operation

“(1) The repeal.....of a written law does not :

(c) affect an existing right , privilege , acquiredunder the repealed or

amended law ;

“(2) An investigation , proceeding or remedy in relation to anything mentioned in subsection (1)(c)..... may be started , continued or enforced as if the repealed..... law had not been repealed..... ”

24. The second judgment drawn to the Courts’ attention is Quadina v Tsitsi [2019] NRSC 23 wherein Vaai J in dismissing the plaintiff’s claim to evict the defendants from a house “Poe” built under the Nauru Housing Ordinance 1957 housing scheme which was subsequently vested in the NLGC said , after discussing the cultural and legal significance of a “family meeting” in the resolution of disputes amongst Nauruans , (at para 37) :

Result

“(a) The plaintiff’s claim for possession of house Poe is dismissed.

(b) Unless and until directed by Cabinet , the defendants are to continue occupation of house Poe ; and

(c) The plaintiffs are refrained (sic) from interfering with the defendant’s quiet enjoyment of house Poe.

25. In opposing the strike-out application Counsel submits that the plaintiff has “locus” through her late husband Leslie Adam’s estate where “he inherited the house from his mother the late Bonnie Adam” to whom the house was first allocated after it was built under the Nauru Housing Scheme. However Counsel was unaware if there had been a formal Deed of Assignment of the disputed house from NLGC to Bonnie but notwithstanding that , the house was built on Bonnie’s family land. In counsel’s words :

“The plaintiff’s locus is based on a presumed tenancy in the house and the ownership of the land on which the house is built.

26. After carefully considering the pleadings as clarified , the parties affidavits and Counsels oral submissions , I am not satisfied that the defendant has on the sole ground advanced in application , attained the requisite level or threshold for the exercise of the Courts’ pre-emptive discretion in this case which cries out to be tried.

27. Accordingly , the application to strike-out the claim is dismissed with costs of \$300 summarily assessed and ordered to be paid to plaintiff’s counsel within fourteen (14) days.

28. By way of further directions , the defendant is hereby ordered to file and serve an amended Statement of Defence pleading to each and every paragraph , of the plaintiff’s Statement of Claim by 21 September 2021. In similar vein , the defendant is directed to file and serve a supplementary affidavit dealing with each paragraph of the plaintiff’s affidavit dated 25 August, 2017 filed in support of her injunction application by 27 Sept 2021.

29. This case is adjourned for further directions on 28 September 2021.

DATED : this 7th day of September , 2021


D.V.FATIAKI
CHIEF JUSTICE



The seal of the Supreme Court of Nauru is circular. It features a central emblem with a shield, a sun, and a triangle. The text 'SUPREME COURT OF NAURU' is written around the perimeter of the seal. There are two stars on either side of the bottom of the seal. The emblem contains the words 'NAURU' at the top and 'GOD'S WILL SHALL PREVAIL' at the bottom.