



IN THE SUPREME COURT OF NAURU
AT YAREN
DISTRICT CIVIL JURISDICTION

CIVIL SUIT NO. 5/2020

BETWEEN

THE SECRETARY FOR JUSTICE,
Government Buildings, Yaren District,
Republic of Nauru, suing pursuant to
Section 11 of the Republic Proceedings Act 1972

Plaintiff

AND

AKEIYAMAN IKA of Baitisi District,
Republic of Nauru

Defendant

Before: Khan, J
Date of Hearing: 24 June, 13 October, 2 and 24 November 2020
Date of Submissions: 12 February 2021
Date of Judgement: 6 August 2021

Case to be referred as: Secretary for Justice v Ika

CATCHWORDS: Application for injunction where a Plaintiff has been using an access road in excess of 80 years – Whether the plaintiff acquired a prescriptive right pursuant to the provisions of section 24 of Naoero Road Act 2017.

APPEARANCES:

Counsel for the Plaintiff: B Narayan
Counsel for the Defendant: No appearance

JUDGEMENT

INTRODUCTION

1. On 27 February 2020 the plaintiff filed an application for ex parte injunction on behalf of the Department of Multicultural Affairs pursuant to the provisions of Section 11 of the Republic Proceedings Act 1972 against the defendant and pursuant to the provisions of Order 25, r.1 of the Civil Procedure Rules 1972.
2. In support of the application the plaintiff filed the following documents:
 - 1) Writ of Summons;
 - 2) Interlocutory Summons;
 - 3) Affidavit of Aloysius Amwano – the land lease manager of the Department of Multicultural Affairs.
3. In Mr Amwano’s affidavit it is deposed that the plaintiff is the lawful tenant of the land comprised in Portion 86 “IMAGEWIN” (Portion 86) located in the District of Baitisi which is used for the purposes of settlement of the transferees population commonly known as Camp 5 (Camp 5).
4. It is further deposed in the said affidavit that there is an access road leading to Portion 86 which has been in use since 1940, a period in excess of 80 years and the plaintiff has been solely responsible for its maintenance and repair.
5. It is further deposed in the said affidavit that the defendant built a residential house on Portion 120 CL “AEOUNUN” (Portion 120) in the District of Baitisi which is rented out; and that the access road goes past the defendant’s residential house, and that he placed spikes on the side of the road which protrudes on the access road which caused damage to the service vehicles going to Camp 5.

INTERIM INJUNCTION

6. Having heard the plaintiff’s counsel I was satisfied that:
 - 1) That the plaintiff has established a prima facie case that its right of access was violated and that it is a serious question to be tried;
 - 2) That damages were not an adequate remedy;
 - 3) That the balance of convenience was in favour of the plaintiff.
7. Having made those findings, I granted an interim injunction against the defendant and made the following orders:

- 1) An interim mandatory injunction is granted requiring the defendant, its servants or agents or whosoever to remove the spikes or any other form of obstruction or interference or the use of the access road on Portion No. 120 CL “AEOUNUN” leading to Camp 5 situated on Portion 86 P/L ‘IMAGEWIN’ within 24 hours.
 - 2) In the event that the defendant wilfully refuses or neglects to comply with paragraph 1 of this Order within 24 hours of the service of the order the police is to remove the spikes in the interests of public safety.
 - 3) The police to assist in the service of this order to the defendant.
 - 4) I order service of all documents to the defendant forthwith.
 - 5) Adjourned to 3 March 2020 at 10am.
8. The defendant was served with all the documents and he did not attend Court on 3 March 2020 and the matter was adjourned to 6 March when the plaintiff was granted leave to file an application for committal as the defendant had failed to comply with the orders.
 9. The plaintiff filed an application for committal and attempted service on the defendant on 16 March 2020. The matter was called before me on 8 June 2020 when the plaintiff’s counsel sought further time to seek instructions as to whether she was going to proceed with the application for committal or seek an order for permanent injunction against the defendant. The matter was adjourned to 24 June 2020 for hearing when I was informed that the plaintiff was not seeking an order for committal and made an application for an order for permanent injunction and relied on the affidavit of Mr Amwano and the provisions of Order 32, r.2 of the Civil Procedure Rules 1972.
 10. On 24 June 2020 I indicated to Miss Narayan that I will need some further evidence in relation to the plaintiff’s acquiring the prescriptive right in respect of the said access road. She sought an adjournment to make further submissions that since it was an uncontested matter the material in the affidavit of Mr Amwano would be sufficient for the Court to make the order for permanent injunction.
 11. Miss Narayan filed written submissions on 24 February 2021 and again made reference to Order 32, r.2 of the Civil Procedure Rules. In her submissions she stated at [9] and [10] as follows:
 - “[9] The plaintiff is now seeking for declarations and permanent injunctions sought in its Statement of Claim given that the defendant has not contested the same. In seeking this relief, the plaintiff relies on the affidavit evidence of Aloysius Amwano sworn on 27 February 2020 and filed on 28 February 2020 which evidence remains uncontested.
 - [10] The plaintiff is entitled to rely on its affidavit evidence filed in support of these proceedings pursuant to Order 32, r.2 of the Rules which states:

- “2(1) A Court may, at or before the trial by it of a suit, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks it reasonable so to order.
- (2) An order under that last preceding paragraph may be made on such terms as to the filing and giving copies of the affidavits and as to the production of the deponents for cross-examination as the Court thinks fit but, subject to any such terms and to any subsequent order of the Court, the deponent shall not be subject to cross-examination and need not attend the trial for the purpose.”

12. Having considered written submissions I am satisfied that I do not need further evidence as to the prescriptive right and I would rely on the material deposited in the affidavit of Mr Amwano.
13. I find that the plaintiff has been using the said access road since 1940, a period in excess of 80 years and has acquired a prescriptive right pursuant to the provisions of s.24 of Naoero Road Act 2017 which states:

24 Tracks, common driveways and access ways

The proprietors and occupiers of adjoining and surrounding lands:

- a) who have tracks, common driveways or access ways; and
- b) the tracks, common driveways and access ways have been in usage for more than 10 years; or
- c) the person using such tracks, common driveways or access ways have by virtue of usage have acquired a prescriptive right to the use of such tracks, common driveways or access ways;

shall not unreasonably obstruct such tracks, common driveways or access ways without providing an alternative route.

14. I find that the defendant had no legal or proprietary right in the access road and trespassed on it by placing spikes restraining the free flow of vehicles to Portion 86 and in doing so committed an act of nuisance.

CONCLUSION

15. In the circumstances I make the following declarations:

- 1) That the plaintiff has acquired a prescriptive right in the access road leading to Camp 5 situated in Portion 86 by virtue of the provisions of Naoero Road Act 2017; and
- 2) That the defendant trespassed on the access road by placing spikes and restraining the free flow of vehicles to Portion 86 and in doing so committed an act of nuisance;

- 3) That an order for permanent injunction is granted against the defendant, his servants or agents or whosoever from obstructing, interfering or tampering in any manner whatsoever the safe and unrestricted use of the access road on Portion No. 120 C/L “AEOUNUN” leading to Camp 5 on Portion 86 P/L “IMAGEMWIN” in the District of Baitsi.

16. I make no orders as to costs.

DATED this 6 day of August 2021

Mohammed Shafiullah Khan
Judge