



IN THE SUPREME COURT OF NAURU
YAREN DISTRICT

CIVIL CASE NO. 27 of 2021

BETWEEN

MELVIN KAM of Meneng District, Nauru

Plaintiff

AND

MAVERICK SCOTTY of Meneng District, Nauru

Defendant

Before: Khan, J
Date of Oral Submissions: 2 November 2021
Date of Written Submissions: 28 November 2021
Date of Ruling: 3 December 2021

Case is to be known as: Kam v Scotty

CATCHWORDS: Application for interim injunction – Common landowners – Defendant obtained consent of the landowners to build a house – Dispute as to the site – Interim injunction sought – Whether it ought to be granted.

APPEARANCES:

Counsel for the Plaintiff: A Lekenaua
Counsel for the Defendant: V Clodumar

RULING

INTRODUCTION

1. On 29 September 2021 the plaintiff filed a summons under Order 25 of the Civil Procedure Rules 1972 seeking an order for interim injunction against the defendant that he, his servants or agents be restrained from continuing with the construction of the dwelling house which is next to his house on Land Portion 365 namely 'Karawinuroro' in Meneng District (PL365).
2. In support of the summons the plaintiff filed the following documents:
 - a) Writ of Summons;
 - b) Statement of Claim;
 - c) His affidavit.
3. On 8 October 2021, the returnable date of the summons, the defendant agreed to cease all construction work and by consent an order was made that all construction work shall stop until the hearing of the summons.
4. The principle to be applied in application for interlocutory injunction have been authoritatively explained by Lord Diplock in *American Cyanamid Co. v Ethicon Ltd* [1975] A.C. 396; [1975] 1 All E.R. 504 H.L. They may be summarised as follows:
 - 1) The plaintiff must establish that he has a good arguable claim to the right he seeks to protect;
 - 2) The court must not attempt to decide this claim on affidavits; it is enough if the plaintiff shows that there is a serious question to be tried.
 - 3) If the plaintiff satisfies these tests, the grant or refusal of an injunction is a matter for the exercise of the Court's discretion on the balance of convenience.¹

FACTS

5. Both the plaintiff and defendant are part landowners together with others of PL 365.
6. The plaintiff is in occupation of House No. 13 which previously was leased to the Government which expired in the year 2000.
7. The defendant was adopted by Scotty Scotty and Belsita Scotty and they brought him up in House No. 15, also a former Government house for which the lease expired.
8. The defendant currently lives with his wife and a child in Denig District. In January 2021 he started to clear an abandoned house known as House No. 14 (House No. 14) which was also leased to the Government and its lease also expired in the year 2000. He intended to build his house thereon and in anticipation of building his house he applied for and obtained consent of the remaining landowners including the plaintiff in March 2021. On 27 March

¹ The Supreme Court Practice 1997 page 503

2021 the plaintiff obtained 75% consent of the landowners and his application was approved by the Secretary of Land Management on that date.

9. By early May the defendant had demolished the derelict portion of the building on House No. 14 except the concrete floor and the water tank attached thereto, but he demolished the steps or stairway leading to the water tank.
10. When the defendant obtained the consent of the landowners, he discussed with the plaintiff about his plan to use the House No. 14 concrete floor as a foundation to build his house. The plaintiff objected to his proposal and said that it was very close to his house and suggested that he should build elsewhere and not where House No. 14 was situated.
11. The defendant ignored the plaintiff's request and was adamant on building on the site of House No. 14 and as a result they had some exchange of words and it got a little physical with pushing and shoving and punching and as a result the defendant filed an application for apprehended violence order (AVO) in the District Court pursuant to the provisions of the Criminal Procedure Act 1972. On 11 August 2021 Magistrate Lomaloma made the following orders against the plaintiff for AVO and stated at [28], [29] and [30] as follows:

[28] For the reasons given, I conclude that an AVO pursuant to section 34A of the CPC should be issued against the respondent but not to restrict his use of the land in question – they can seek an injunction in the Supreme Court if they wish to do so.

[29] The respondent is therefore bound over in the sum of \$500 each to keep the peace for 12 months. Keeping the peace means to maintain public order and to prevent violence and other unlawful behaviour.

Orders

[30] The respondent, Sylvania Kam, is to be bound over in the sum of \$500 with one surety to keep peace for 12 months and to abide by the following conditions:

- a) Not to communicate with the applicant, Maverick Scotty;
- b) Not to come or remain within 5 metres of the applicant, Maverick Scotty;
- c) Not to assault or hurt the respondent, Sylvania Kam. (this seems to be an error)

12. It is not in dispute that the water tank attached to House No. 14 has been exclusively used by the plaintiff for a very long time.

DISTANCE FROM PLAINTIFF'S HOUSE TO HOUSE NO. 14

13. The plaintiff in his affidavit states that the distance between his house and House No. 14 is 9 metres (approximately 30 feet), the distance between his house and the water tank is 5 metres and the distance between House No. 14 and the water tank is 1 metre.

14. On the other hand, the defendant in his affidavit states that the distance between the plaintiff's house and House No. 14 is 25 feet.


CONSIDERATION

15. The consent by the landowners to the defendant to build his house does not state as to where it is to be built and therefore, he could build on where House No. 14 was situated. There is no legislation in Nauru as to the distances between each house except s.13(2) of Nauru Housing Ordinance 1957 which states that the rights extend to 30 feet around the dwelling house.
16. The defendant in his affidavit states that before he started clearing the debris of House No. 14 he asked his aunty, Patrina, who gave him consent. The question to be resolved is whether she gave the consent on her own behalf or whether it was given on behalf of all the landowners.
17. It is not in dispute that the plaintiff has been exclusively using the water tank for a long time. The question to be determined is whether by long usage – did he acquire any right over the water tank and if so whether the right precludes the defendant from building on the site of House No. 14? The water tank is situated within a metre of House No. 14 and if the defendant is allowed to continue with the construction of his dwelling house thereon and if the plaintiff were to go to the water tank, then he would be in breach of the AVO which prohibits him from coming within a distance of 5 metres of the defendant.

CONCLUSION

18. In light of the above discussions, I am satisfied that the plaintiff has a good and arguable case, that there is serious question to be tried as to the ownership of the water tank and the distance between the respective houses and that the balance of convenience favours the plaintiff, and that damages would not be adequate remedy.
19. In the circumstances, I grant an interim injunction against the defendant:
- a) That he, his servants or agents be restrained from continuing with the construction of the dwelling house on the site of House No. 14 on Land Portion 365 'Karawinuroro', Meneng District;
 - b) That the defendant, his servants or agents are restrained from entering the site of where House No. 14 is situated;
 - c) That the costs shall be in the cause.

DATED this 3 day of December 2021


Mohammed Shafiullah Khan
Judge

