



**IN THE SUPREME COURT OF NAURU  
AT YAREN  
CIVIL JURISDICTION**

**Civil Case No. 12 of 2024**

**BETWEEN : LANA JEREMIAH of Meneng District, Nauru.**

**Applicant**

**AND : TAWAKI KAM of Meneng District**

**Respondent**

**BEFORE: Keteca J**

**DATE OF HEARING: 05<sup>th</sup> December 2024**

**DATE OF RULING: 09<sup>th</sup> December 2024**

**CITATION: Jeremiah v Kam**

**KEYWORDS: Interlocutory Injunction**

**APPEARANCES:**

**COUNSEL FOR the  
Applicant:**

**H Cook**

**COUNSEL FOR the  
Respondent:**

**V Soriano**

**RULING**

**BACKGROUND**

1. On 07<sup>th</sup> November 24, the Applicant filed a Summons seeking a permanent injunction against the Respondent from entering Land Portion 187 and to stop construction activities on the same land.
2. He further seeks that the Respondent remove all his properties on Land Portion 187.
3. The Applicant also filed his Writ of Summons and Statement of Claim on the same day.

**AFFIDAVIT IN SUPPORT**

4. The Applicant deposes as follows:
  - i. He is a co-owner of Land Portion 187, 'Anoe' in Meneng District. On 01<sup>st</sup> November 24, he requested the Defendant to stop the construction so they could sort out the land issue.

- ii. A land surveyor, James Scotty advised the Defendant that he has encroached onto the Plaintiff's land.
- iii. The Defendant did not comply with the Plaintiffs requests to stop the construction.

#### **SURVEY BY DEPARTMENT OF LAND MANAGEMENT**

5. On 20<sup>th</sup> November 24, I ordered that the Nauru Lands Survey Department to conduct proper surveys of Land Portions 187 and 188 in Meng District.
6. On 03<sup>rd</sup> December 24, James Scotty, Manager Field Officer, Department of Land Management, submitted a 'Survey Plan Report of Land Portions 187 & 188, District of Meneng' as per my order of 20<sup>th</sup> November 24.
7. The Report states:
  - i. Purpose of Plan- 'It is to clarify whether the building construction in Portion 188 by Tawaki Kam, the named defendant is encroaching into Portion 187.'
  - ii. The Remarks –'The department conducted a survey led by Mr Sebastian Teimitsi and Mr James Scotty. Upon the survey we can confirm that the newly constructed building does encroach into land portion 187 as shown on the plan. The yellow lines represent the boundary marks for the land portion and the green lines represent the building construction of the defendant which is encroaching by *74.364 square meters into land portion 187.*'
8. On 05<sup>th</sup> December 24, Counsel for the defendant submitted that he is challenging the integrity of the report.
9. Mr Soriano was given until Friday 06<sup>th</sup> 24 to file any affidavits of his clients.

#### **DEFENDANT'S AFFIDAVIT**

10. On 06<sup>th</sup> December 24, the defendant deposed:
  - i. The Plaintiff is his neighbour. He accepts the Plaintiffs ownership of Portion 187.
  - ii. His house on Portion 188 was built in 1999-2000. He occupied it in 2005.
  - iii. In 2006, Wes Tsitsi and Bwibwi Scotty from Lands & Survey Department showed him his boundaries. They assured him that his intended wall was within his boundary.
  - iv. From 2006 when the wall was built and 2007 when it was completed, the Applicant and her family did not protest about the construction.
  - v. In 2024, the Applicant protested about the wall.
  - vi. He notes from the latest survey ordered by the Court that the boundary is different from what he was previously told.
  - vii. He is willing to stop further further construction pending agreement with landowners of adjoining land.

#### **THE LAW**

1. In *Buramen v Dageago* [2022] NRSC 13; Civil Action No. 6 of 2022 (2 May 2022) A/CJ Khan stated at [2] and [3] as follows:

*[2] I stated in Kam v Scotty [2021] NRSC 49; Civil Case No.27 of 2021 (3 December 2021) at [4] as follows: "The principle to be applied in application*

*for interlocutory injunction have been authoritatively explained by Lord Diplock in American Cyanamid Co. Ethicon Ltd [1975] UKL 1; [1975] A.C.396; [1975] 1 All E.R 504 H.L. as follows:*

1. *The Applicant 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 Applicant shows that there is a serious question to be tried.*
3. *If the Applicant 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."*

11. Based on the materials before me:

- i. The Respondent acknowledges that the Applicant is an owner of land portion 187.
- ii. The Survey Plan Report filed on 03 December 24 show that the Respondent has encroached onto the Applicant's Land portion 187.

12. I find that the Applicant has a good arguable claim and there is a serious question to be resolved at the trial or between the parties themselves.

13. The Respondent has deposed that an injunction is not necessary as he has undertaken to stop the work pending negotiations between the parties.

14. To maintain peace between the parties, I opine otherwise.

## **ORDERS**

15.

- i. The Respondent, his agents or servants are to stop any further works on the wall or any other activity on his building that has encroached onto land portion 187 as per the Survey Plan Report by the Department of Land Management, filed on 03<sup>rd</sup> December 2024, until the conclusion of this matter.
- ii. The Applicant is to seal and serve the order on the Respondent by 4pm today.
- iii. The Respondent is at liberty to apply to discharge the injunction on 2 clear days' notice.
- iv. The Respondent is to file and serve his Statement of Defence within 7 days.
- v. The Applicant is to file and serve any response 14 days after.
- vi. Costs reserved.

**DATED** this 09<sup>th</sup> day of December 2024

  
**Kiniviliame T. Keteca**  
**Acting Chief Justice**

