IN THE SUPREME COURT OF NAURU
AT YAREN
CIVIL JURISDICTION

Civil Action No.10 of 2021

BETWEEN:	**CURTIS SOLOMON & ORS of Boe District**
	Plaintiffs
AND:	**SRUE BRECHTEFELD of Denig District**
	Defendant

BEFORE:	Keteca J
DATE OF HEARING:	19th April 2024
DATE OF RULING:	18th December 2024
CITATION:	Curtis Solomon & Ors v Srue Brechtefeld
KEYWORDS:	*Consent from 75% of landowners. The purported withdrawal of the same consent some 7 months later. Section 6 lands Act 1976, Custom & Adopted Laws Act 1971*
APPEARANCES:	
Counsel for the Plaintiff:	Mr R. Tom
Counsel for the Defendant:	Mr R. Tagivakatini

Judgment

BACKGROUND

1. This matter came before Fatiaki CJ on 12th April 2021 on an *ex parte* application by the Plaintiffs for an interim injunction to stop the Defendant from entering, and/or clearing by themselves or their agents and servants the part of land portion 69, Meneng District.
2. CJ Fatiaki ordered as follows:
   i. Until further order, the respondent is restrained from entering and /or clearing by themselves or their agents and servants the part of land portion 69, Meneng District;

ii. Applicant to file in court an undertaking in damages by 4pm tomorrow;
iii. Applicant to seal and serve the orders and papers on the respondent as soon as possible;
iv. Liberty to the respondent to apply to discharge injunction on 2 clear days' notice;
v. Applicant to file and serve on the respondent a proper claim against the respondent within 7 clear days;
vi. Costs reserved.

MATERIAL BEFORE THE COURT

3. The Plaintiffs and the Defendant have filed the following:
   i. Plaintiffs Ex- parte Summons- 30th March 2021
   ii. Plaintiffs affidavit in Support – 30th March 2021
   iii. Plaintiffs affidavit (Brocky Olsson) – 30th March 2021
   iv. Plaintiffs affidavit – 13 April 2021
   v. Record of CJ Fatiaki's Order- 22nd April 2021
   vi. Defendants Motion to Discharge Interim Injunction – 02 September 21;
   vii. Plaintiff's Writ of Summons – 22 September 2021
   viii. Plaintiffs Undertaking for Damages- 23rd September 21
   ix. Plaintiffs affidavit in opposition- 24th September 2021
   x. Defendant Statement of Defence -15th October 21
   xi. Reply to Statement of Defence- 01st November 2021
   xii. Plaintiffs affidavit- 16th November 21
   xiii. Defendants affidavit by Acting Secretary for Land Management - 09th May 2022
   xiv. Agreed Facts and Issues- 13th October 22
   xv. Counsel for Plaintiffs Written Submissions- 14th March 2024
   xvi. Counsel for Defendants Written Submissions-18th March 24

Agreed Facts

4. The Agreed Facts dated 13th October 22 are:
   i. The Plaintiff is a landowner of Land Portion 69, Aredeto at Meneng District and is in a representative capacity for the families of his late mother (Eiderrinen Solomon) and his late uncles (Udire and Depoudu families)
   ii. The Defendant is a landowner at Land Portion 69, Aredeto at Meneng istrict.
   iii. The Plaintiff's families own a combined 50% share of the land at Land Portion 69.
   iv. Brocky Olsson is the nephew of the late Mrs Marion Clodumar, and is currently residing at a dwelling house on Land Portion 69.
   v. The Defendant approached the Plaintiff and other landowners to sign a Consent Form. She wanted to build a dwelling house on Portion 69.
   vi. The Plaintiffs signed the Defendant's Consent Form.
   vii. The Plaintiffs later wrote a letter to the Secretary of Land Management and to the Chairman of the Nauru Lands Committee on 29th March 2021.The purpose of the letter was for the Plaintiffs to withdraw their consent for the defendant to construct her house on Land Portion 69. The Plaintiffs intended to transfer their share to Brocky Olsson, which is in line with their parents' wishes.

Issues to be determined:

i. Whether the consent obtained by the Defendant on 05th August 2020 was 55% or 75% of the landowners?
ii. Whether the Plaintiff and other landowners may lawfully withdraw their consent?
iii. Whether the withdrawal of the Plaintiff's consent is required to be and was regularised?
iv. Whether the Court should accept the withdrawal of the Plaintiff's consent?

SUBMISSIONS BY COUNSELS

PLAINTIFF'S SUBMISSIONS

5. Mr Tom submits as follows:
   i. The consent given to the Defendant does not reach the 75% threshold stated under the **'common law'**.
   ii. The landowners wish to withdraw their consent now. Counsel relies on *Denuga v Denuga [2020] NRSC 37*- where CJ Jitoko stated that consent may be withdrawn at any time.
   'As to the withdrawal of the consent the law is clear that consent may be withdrawn at any time, but with consequences, for example, if the party, acting in reliance of it, had acted and incurred costs and expenses. In such a situation, the party is entitled to compensation and damages for the loss incurred.
   In this instance, the plaintiff has only just begun to peg the grounds, for the building of the extension, and the costs and damages, if any, would be minimal. There is some question raised as to the number of the landowners who signed the revocation document, but it is sufficient for the Court to be satisfied, that the numbers ***constituted the required majority under this Act.***
   iii. The court should accept the withdrawal of consent as 'there have been no constructions commenced by the Defendants and she has not incurred any costs.'

DEFENDANT'S SUBMISSIONS

6. Mr Tagivakatini submits as follows:
   i. In *Deireragea v Kun [2017] NRSC 35*; Crulci J concludes that Section 6 of the Lands Act 1976 provides that three- fourths or *75% of the landowners need to agree in relation to the land.'*
   ii. *Denuga v Denuga [2020] NRSC 37*- is the authority that consent may be withdrawn at any time as observed by CJ Jitoko.
   iii. Issue 1- on 15th November 2021, the Secretary for Land Management published two documents concerning Land Portion 69-
      a. Consent Form- pre- withdrawal- 75%; and
      b. Consent Form -post withdrawal- 42%
   iv. The Consent Form - pre- withdrawal was published by the Department of Land Management
   v. Issue 2- based on *Denuga v Denuga [2020] NRSC 37*-the Plaintiffs may withdraw their consent any time. There are consequences relating to

compensation and damages on losses incurred. Issues like encroachment, nuisance and health safety like littering will be relevant.

vi. Issue 3- The Secretary for Land Management has deposed that according to her records, **the Defendant still has 75% consent from the landowners.**

vii. Issue 4- The discretion to accept the withdrawal of the consent of landowners' rests with the court and these points are covered in the Statement of Defence:

a. The Defendant approached the Plaintiffs and other landowners of her intention to build near the dwelling house currently being occupied by Brocky Olsson.
b. There was no confusion from the Plaintiff nor was there any fraudulent conduct displayed by the Defendant when the request was done.
c. There is enough space to build a dwelling house next to the dwelling house that is occupied by Brocky Olsson.
d. The Plaintiffs signed the consent in mid- 2020 and the Defendant registered the Consent Form in August 2020.
e. In March 2021, the Plaintiffs wrote to the Department of Land Management and the Nauru Lands Committee to withdraw their consent.
f. In April 2021, the Plaintiffs filed an Interim Injunction against the Defendant. The Record of Order required the Defendant not to continue any building on Portion 69 and that the Plaintiffs were to serve their substantive claim 7 days later.
g. In September 2021, the Defendant filed a Motion and Affidavit seeking the discharge of the Interim Injunction. The Plaintiffs did not follow through with their application and it was the Defendant that was compliant with the Order.
h. It was only after the Defendant filed her Motion and Affidavit that the Plaintiff filed their Writ of Summons and Statement of Claim.
i. The Defendant has no house of her own and sought to build her dwelling house on a piece of land where she is a landowner. She is not a multi-house owner who greedily wants to build as many houses wherever she can.
j. The Plaintiffs have indicated their intention to transfer their respective shares of Portion 69 to Brocky Olsson.
k. The Plaintiffs are shutting down a fellow landowner who wishes to utilise and build on the land. The Plaintiffs are prioritising Brocky Olsson's interests, who is not a landowner.

viii. The Defendant acknowledges that the Plaintiffs have the right to withdraw their consent but her plight need to be considered. *Denuga v Denuga* was decided after CJ Jitoko considered the encroachment, health and safety breaches and complaints of nuisance that was perpetrated by the Plaintiff.

ix. Counsel seeks the following:

a. A Declaration that the Defendant has obtained 75% consent from the landowners of Land Portion 69, Aredeto, Meneg.
b. A Declaration that the withdrawal of the consent by the Plaintiffs be rejected.
c. Discharge of the Interim Injunction in the Record of Order, dated 22nd April 2021.

THE EVIDENCE

7. On 01st April 2021, ***Curtis Solomon deposed***:
   i. Her mother Eiderinen, was an owner- in -common in land Portion 69, Meneng District, with her siblings, Depoudu and Udire Aboubo. They held a combined share of 50% of the land.
   ii. He and his siblings, some of the children of Depoudu and Udire signed the Consent Form circulated by the Defendant. **They signed not being aware of the land it related to.** They intended to withdraw their consent.
8. On 01st April 2021, ***Brocky Olsson deposed:***
   i. He was raised by his Aunty Marion and Vinci Clodumar in their matrimonial home on land portion 69 in Meneng District. Vinci Clodumar had built this house in 1981.
   ii. In 1984 or 1985, Vinci Clodumar was involved in a civil suit filed by Babol Aliklik, an uncle of the Defendant, to retract his name as the owner of land portion 69. Vinci Clodumar informed the court that the land was not under his name but his wife Marion.
   iii. He had been living in that house since 1999 when Vinci and Marion Clodumar were posted as PRUN in New York.
9. On 02nd September 2021, the ***Defendant, Srue Brechtefeld deposed:***
   i. In June 2020 she obtained a Consent Form from the Department of Lands to obtain the signatures from landowners of Aredeto, portion 69 at Meneng District.
   ii. She obtained 75% signatures that was verified and certified by the Secretary for Lands Management on 05th August 2020.
   iii. She went with a surveyor to peg the site on land portion 69. A Brocky Olsson was there who claimed that he owned the land.
   iv. Curtis Solomon told her that he would not have signed if he knew the land portion in question.
   v. She explained fully to the Plaintiff before he signed the Consent Form.
   vi. On 29th April 21 she was served with the interim injunction restraining her from entering or engaging in any activity on land Portion 69, Meneng District.
   vii. The Plaintiff was ordered to file a proper claim within 7 days of the Interim Injunction Order.
   viii. She intends to build her house away from Brocky's house as there is enough space on land Portion 69.
10. On 24th September 21, ***the Plaintiff deposed:***
   i. The Department of Lands and Survey indicated on page 1 of the Consent Form that only 55% of landowners had signed the form.
   ii. The landowners he represents hold ½ share in land portion 69, Meneng District. He has filed a notice of withdrawal of consent, dated 29th March 2021, with the Nauru Lands Committee and Department of Lands & Survey.
   iii. The shareholding of landowners that have withdrawn their consent totals 33%. This reduces the overall consent given to the Defendant to **42%.**
11. On 09th May 2022, ***Yvette Duburiya, Acting Secretary for Land Management deposed***:
   i. Paragraph [6]- On 05th August 2020, the defendant's consent form was verified by the Manager Land Records Administrator and certified by the

Secretary for Land Management- that the Defendant **has reached the 75% threshold in order to build on Portion 69.**

ii. Paragraph [8]- The withdrawal of consent by the Plaintiff does not have any endorsement from the Department of Land Management and the Nauru Lands Committee yet.

iii. Paragraph [9]- As far as I am aware, **the Defendant still has 75% of the signatures intact and can build on Portion 69.**

DISCUSSION

12. Looking at the arguments by both parties, it is apparent that their main issue of contention here is Section 6 of the Lands Act 1976 and what the courts have said in the past regarding the requisite consent of co- landowners. The scheme of the Lands Act 1976 is clear that the legislation was enacted *'for the purposes of the phosphate industry and other 'public purposes.'* If three quarters of the owners of a portion of land, both by number and the interest in the title, agree to grant a lease, easement or other right, the government may acquire the property despite the refusal of the minority.
13. It follows that if all or less than 75 % of the landowners do not give their consent, there is no provision for the compulsory acquisition of such land, even for a public purpose.
14. Section 6 of the Lands Act 1976 was considered recently by the Nauru Court of Appeal in *Oppenheimer (trading as Capelle & Partner and Pacific Occidental) v Tom [2024] NRCA 10; Civil Appeal 3 of 2019 (8 August 2024).* Because of the importance and significance of the decision, some paragraphs of the judgment will be reproduced here.

> 53. To construe Sections 5 and 6 as applying to land used for "phosphate industry" or "any other public purpose" supports the view that where land is sought for leasing **for private purpose or use between private persons or private entities** whether incorporated or unincorporated, the requirement to obtain consent of 75% of the owners of the land is **not** necessary.
> 54. The other view which the Supreme Court preferred is that it has been recognized that land tenure system of Nauru is based on communal ownership and given its importance, *it has been a long-standing practice that it is necessary to obtain consent of 75% of owners of land to show that majority of owners of the land agreed to lease any interest in land to another.* The practice to obtain consent of 75% of owners of the land under Section 6 was adopted to form the evidence of the consent of the majority owners of the land **to lease** any interest in land **between Nauruans.**
>
> 55. Several Nauru Supreme Court decisions have recognized this long-standing practice. Some of them were cited in the judgment of the trial judge. We consider it useful to comment on them. In *Audoa v. Finch* [2008] NRSC 2 (12th March 2008) it will be noted that obtaining consent or approval of owners of land was a moral and legal obligation bestowed on owners of land in Nauru to observe. That was a case where there was a dispute between two branches of the same family over a portion of land. On the land was a house. The house was demolished pursuant to the direction of the defendant. It was not disputed that both sides owned the land. It was also not disputed that the defendant did not seek the consent of the plaintiffs before having the

house demolished. The issue was whether Mrs Dick should have consulted the other owners before asking the defendant to demolish the house. Milhouse CJ observed that *"The whole ethos of Nauru is toward consideration for the feelings and rights of others. The institutions of the country are based on that ethos"* His Honour concluded that *"It is more than moral obligation. It should be and is a legal obligation as well"*.

56. In *Hiram v. Solomon* [2011] NRSC 25 (28th November 2011) the Court adopted the practice of obtaining consent of 75% of landowners in a case where occupation of a house on a portion of land was in dispute. In that case the plaintiff was one of the landowners of the land on which a house was located. The plaintiff's daughter who was married to the first defendant moved into the house with her family. The landowners agreed to give the house to the plaintiff's daughter and the first defendant to occupy. They signed an agreement. The house was dilapidated and after renovating it, the plaintiff's daughter then leased it to the second defendant for rent. When she died, the plaintiff asked the first defendant to share the rent money, but he declined. She sued the defendants for the rental money and right to the house. One of the signatories to the landowner agreement was purported to be that of the plaintiff. The plaintiff denied that it was her signature and alleged that her signature was forged. The Court was not satisfied that the plaintiff's signature was forged and dismissed the action.

57. In *Anita Koroa v. Landowners of Portion 15* [2011] NRSC 22 (22nd November 2011) per Eames CJ, that was a case where the plaintiff sought a declaration and damages on the grounds that the defendant landowners of a portion of land granted to her possession of a residential property. However, it was found that the purpose for the lease was changed from one of having accessibility to electricity to one of occupation of the land for herself. She then leased the property to the Australian Department of Foreign Affairs and Trade (DFAT). The Court held that the change in the use of the property *was without the consent of the landowners.*

58. In *Francis Deireragea v. Janci Kun* [2017] NRSC 35 (14th June 2017) the Court appeared to reject the notion that a landowner may unilaterally authorize use of the land to another. That was a case where a building on a portion of land known as "Atomo" in Yaren District was used by the defendants to operate a betting shop. The plaintiff alleged that the defendants trespassed on the land and building because they did not obtain the consent of 75% of the landowners to occupy the building. Amongst other reasons, the defendant opposed the action for trespass and claimed that they were able to use the land and build the house through their late mother who was a landowner and a Rev. Roger Mwareouw, also a landowner. The Court held that the plaintiffs established that the defendants did not obtain approval from majority of the landowners to operate the betting shop. His Honour Crulci J referred to Section 6 of the *Land Act,* 1976 and observed that:

"49.....where section 6 refers to a requirement of 'not less than three fourths of the owners of the land' needing to give their permission in respect of granting of a lease or other licence, as the basis for consolidating the legal requirement that three-fourths or 75% of the landowners need to agree in relation to the land.

50. Therefore, Rev. Roger Mwereouw cannot of his own volition permit the Defendants to use, build upon, conduct a business or otherwise exercise rights over land Portion 84 unless he speaks for 75% of the landowners of the land"

15. The Court of Appeal added:

61. 'It is abundantly clear from these cases that the Supreme Court has consistently adopted the 75% referred to in Section 6 as a threshold limit for majority of landowners to consent to a grant of a lease or license over land to another Nauruan. The view expressed by the Supreme Court favoured the respondents, and they took that up in this appeal because it further strengthened the trial judge's finding that only 64.20% of the landowners gave their consent and the appellant failed to meet the threshold limit of 75%, hence the lease agreement is void, and of no effect and unenforceable.

62.'However, in our respectful view, while we acknowledge that tradition and custom of Nauru people recognize and respect the practice of family agreement, there is no evidence preferably from a Nauru elder who is well versed with the customs and traditions of Nauru people to substantiate that it has been a customary practice and tradition of the Nauru people from time immemorial to obtain 75% of consent of owners of land to grant a lease or license over land to another Nauruan.

16. At paragraph [65]:

> 65. 'What is apparent from the material is, this long-standing practice of 75% consent appeared to have been developed from the time Section 6 of the *Lands Act* came into force. Going back further in time, we note that 75% is not expressed in Section 5(2) of the *Lands Ordinance* 1956 as the forerunner of the *Lands Act* (which repealed Section 5 of *Lands Ordinance,* 1921-1956). Additionally, the Supreme Court decisions we have highlighted above were post the *Lands Act* and reinforces the view that this long-standing practice of 75% consent would not meet the test of time immemorial to constitute a customary practice and tradition of the Nauru people.

17. At para [66]:

> 66. 'On the other hand, as the Supreme Court correctly held, it has been a longstanding practice in Nauru. The Court's finding reaffirms the earlier Supreme Court decisions which we have highlighted above *where none of them stated that the longstanding practice of obtaining consent of 75% of owners of land is a custom and tradition in Nauru*. That said, there is no question that the Nauru people recognize and respect the practice of family agreement to maintain and strengthen peace and harmony in the society**. In our respectful view, *the longstanding practice of obtaining consent of 75% is nothing more than a practice of convenience.*** As Jitoko CJ in *Adumur v. Dongabir* (supra) observed:
> *".....the court is minded to remind the parties, especially the defendants, of the time-honoured tradition and custom of the Nauru people that recognize and respect the practice of family agreement, informal and unpublished they maybe at times, as a guiding instrument in the orderly and peaceful sharing and allocation of priority both real and personal amongst the family members on Nauru. It is a devise that has served the landowners faithfully in the past to ensure and protect the peaceful co-existence of the people on the island."*

18. At [67]:

> 'In the present case, the lease of the land was between a Nauruan (Nauruan entity) and group of Nauru landowners and was for a purpose other than phospbate industry or other public purposes. In our respectful view the requirement to obtain consent of 75% of owners of the land stipulated in Section 6 of the *Lands Act* **does not apply.** '

LAND PORTION 69- ' Aredeto, Meneng District

19. The present dispute between the Plaintiff and the Defendant in this case is not over a lease. Rather, it is the Defendant, a landowner, intending to build on part of a land, currently occupied by a non- landowner Brocky Olsson. They are both Nauruans. In the evidence of Yvette Duburiya, Acting Secretary for Land Management, the Defendant has obtained the consent of 75% of the landowners. She goes further- Paragraph [9]- As far as I am aware, **the Defendant still has 75% of the signatures intact and can build on Portion 69.**
20. The Plaintiff claims that the consent is only from 42% of the landowners. The Nauru Court of Appeal, in the recent *Oppenheimer (trading as Capelle & Partner and Pacific Occidental) v Tom [2024] NRCA 10; Civil Appeal 3 of 2019 (8 August 2024)* case has held that the Section 6, Lands Act 1971 75% threshold is only a practice of convenience and it does not apply in land dealings not required for the phosphate industry or for a' public purpose.'
21. The question before me now is- if a landowner, whatever her share in the commonly-owned land, intends to build a dwelling house on such land, does she need to consult her co- landowners?
22. A similar question was posed by *Robin Millhouse, CJ* in *Audoa v. Finch [2008] NRSC 2 (12th March 2008).* The facts of this case are summarised in [55] above. Milhouse CJ asked- *'The question I have to answer is whether Mrs. E.E. Dick and her family members* ***had in law an obligation to consult and agree with other land owners*** *before demolishing the building and (apparently) appropriating more than half the Portion to their own use?*
23. Milhouse CJ, in developing his answer to the question, observed:

> *'No doubt they have acted high handedly in not consulting. They had, I suggest, at least a moral obligation to consult. Courtesy, good manners, sensitivity for the feelings of others demanded it.*
>
> *From my observation of Nauruan people, they as much as any other community practice the courtesies common to all civilized people. Indeed, their institutions (for example Nauruan Lands Committee) assume that disputes should be settled by discussion, conciliation, agreement and good will. The defendant has acted quite to the contrary.'*

He added- *Is that moral obligation also a legal duty?*

'The whole ethos of Nauru is toward consideration for the feelings and rights of others. The institutions of the country are based on that ethos. It is more than a moral obligation. ***It should be and is a legal obligation as well.'***

Milhouse CJ concluded-

'The answer to the question I had posed is "Yes". Mrs. Finch and her family had an ***obligation in law*** *as well as a moral obligation* ***to consult and agree*** *with other land owners before making changes in the use of Portion 107.'*

24. Is this legal obligation to consult other landowners' part of the common law of Nauru?

25. In the development of the common law in Fiji, the Supreme Court of Fiji, comprising CJ Daniel V Fatiaki, JJ Robert French & Kenneth Handley in the *Hassan v Transport Workers Union [2006] FJSC 11; CBV0006U.2005S (19 October 2006)*, had to deal with the distinction between employees and independent contractors **under statute and common** law. The facts of that case and the legal issues arising therein are clearly distinguishable from the present case. The relevant part to the present case is the question that the Fiji Supreme Court raised which they said, **'must always be asked.'**

    At paragraph [69], the court observed:

    'Doctrines and principles accepted in Australia will be part of the common law of Australia. The same is true of New Zealand and Canada and other countries. They, like Fiji, inherited the common law from England. But at particular times, and in particular ways, the common law, as declared in the courts of those countries, may have diverged from the common law elsewhere. The question ***must always be asked*** *–* ***what is the common law of Fiji?***

26. In the present case, there isn't any legislation that governs the land dealings between co-landowners over a commonly owned portion of land in Nauru. There is a lacuna in the law here. The Defendant intends to build her dwelling house on a Land Portion she has an interest in. I ask the same question here- **what is the common law of Nauru?** – If a landowner, whatever her share and interest in the commonly- owned land, intends to build a dwelling house on such land, *does she need to consult her co- landowners?*
27. I note that Section 4 of the Custom and Adopted Laws Act 1971 provides that the common law and rules of equity that 'were in force in England on the 31st day of January 1968,' were adopted as laws of Nauru. In the absence of specific legislation, I take the view that the observations of Milhouse CJ reflect the development of the common law of Nauru of the legal obligation for Nauruans to consult co-landowners in land dealings affecting commonly-owned land. In my view, this legal obligation has crystallised into a legal duty. It is now part of the common law of Nauru. I agree with Milhouse CJ that 'courtesy, good manners, sensitivity for the feelings of others demanded it.'
28. I therefore find, under the common law of Nauru, there is a legal duty for a landowner to consult co-landowners if such a landowner intends to build a dwelling house on commonly-owned land.
29. I will go a step further. I also fmd that under the common law of Nauru, there is a legal duty for such a landowner to get the consent of co-landowners before he or she starts clearing and building on a parcel of commonly-owned land. As Milhouse J observed in the *Audoa v. Finch [2008] NRSC 2 (12th March 2008)* case- there is an *obligation in law* as well as a moral obligation to ***consult and agree*** with other landowners.
30. How many of the co-landowners need to give their consent? Section 3(1) of the Custom and Adopted Laws Act 1971 provides:

    'The ***institutions, customs and usages of the Nauruans*** *to the extent that they existed immediately before the commencement of the Act shall...be accorded recognition by every court and have full force and effect of law to regulate the following matters:*

    (a) **title to, and interests in, land**, *other than any title or interest granted by lease or other instrument or by any Nauru written law*

    (b) *rights and powers of Nauruans to dispose of their property, real and personal,* ***inter vivos*** *and by will or any other form of testamentary disposition;*

    (c) *succession to the estates of Nauruans who die intestate; and*

    (d) *any matters affecting Nauruans only.*

31. Is there a Nauruan custom that determines how many of the landowners need to be consulted and to give the necessary consent before the Defendant can build her dwelling house on land portion 69, Meneng District?

32. At paragraph [66] of the Oppenheimer case mentioned above, the Nauru Court of Appeal has held- '**In our respectful view, *the longstanding practice of obtaining consent of 75% is nothing more than a practice of convenience.***
33. It is noteworthy that even if the Nauru Court of Appeal found that the consent of 75% of the landowners was part of Nauru custom, Section 3(1)(a) of the Custom and Adopted Laws Act 1971 provides that such customs and usages will apply in 'interests, in land, **other than any title or interest granted by lease..'**
34. Since the obtaining of 75% of the landowners' consent is a 'practice of convenience,' and without any statutory basis, I ask, what percentage of landowners must consent to the Defendant building her house on part of a land she has an interest in?

35. From the evidence, the Defendant does not have a house of her own. She intends to build her first dwelling house on Land Portion 69. Unlike Mrs Dick in the *Audoa v. Finch [2008] NRSC 2* case, the Defendant has not acted 'high handedly' or without considering the feelings and wishes of her co- landowners here. To the contrary, she has been civil and courteous in her approach. The process of consultation had begun. She consulted her fellow landowners. The landowners signed on the relevant Form, indicating their consent for her to build her dwelling house on Land Portion 69. The Defendant, though not required by legislation or custom, submitted, the Consent Form to the Department of Land Management. According to the Acting Secretary for Land Management, the Plaintiff has obtained the consent of 75% of the landowners. She attended to land Portion 69. She was told by Brocky Olsson, a non- landowner, the occupant of Mr Clodumar's house on Land Portion 69 that she was not allowed to build there. Some landowners purportedly withdrew their consent. According to the Plaintiff, those that have consented to the Defendant building on Portion 69 amounts to 42% of the landowners. The Defendant deposes that she intends to build her house 'away from Brocky's house as there is enough space on Land Portion 69. It is not a case where the Defendant owns several houses and intends to build another. This is going to be her first dwelling house.

36. I mention in passing that it is fortunate for the Defendant that she isn't trying to build a shelter in the middle of winter in the Brecon Beacons.

SITE VISIT

37. On 04th December 24, I visited the site with Counsels for both parties and Brocky Olsson. The house that Brocky Olsson occupies is a substantial double story one. Brocky Olsson showed us, where the Defendant intended to clear the land for her dwelling house. The proposed site is in uncleared bush, about 30 metres away from the house that Brocky Olsson is occupying. It is on the opposite side of the gravel road/ driveway that leads past Brocky Olsson's abode, leading to other houses further inland.
38. There is more than enough space on Land Portion 69, on the uncleared portion pointed out to us by Brocky Olsson for the Defendant to build her dwelling house.
39. The intent of the Plaintiffs to give their share of their interest in Land Portion 69 to Brocky Olsson, a non- landowner is their right. Should that intent disentitle the Defendant to build her only dwelling on the same Land Portion that she has an interest in? From the site visit, it is clear that having the Defendant build her house, about thirty meters away from Brocky Olsson's house will not affect his enjoyment of his substantial double story home. Justice and fairness demand that the Defendant, as a landowner, should be allowed to build her dwelling house on Land Portion 69, Meneng District.

40. I make the following findings:

i. Based on the *Oppenheimer (trading as Capelle & Partner and Pacific Occidental) v Tom [2024] NRCA 10,* case, the 75 % requirement under Section 6 of the Lands Act 1976 for the landowners to give their consent for the Defendant, a landowner, to build her dwelling house on Land Portion 69, Meneng District does not apply here because this land is not being sought by the government for the phosphate industry or a public purpose. The claim by the Plaintiff that the Defendant needs to get the consent of 75% of the landowners, based on Section 6 of the Lands Act 1976, fails.

ii. To ensure the peaceful co-existence and mutual respect between the people of Nauru, and to provide a statutory basis on the issue of consent, on land dealings between landowners of Nauru, I, like the Nauru of Court of Appeal, also suggest that the legislature consider what percentage of landowners need to give their consent in such land dealings.

iii. There is more than enough space on Land Portion 69 for the Defendant to build her dwelling house.

iv. Although some landowners have purportedly withdrawn their consent, I find that those landowners are estopped from doing so without any justifiable legal basis and the Defendant has complied with her legal duty in consulting and getting the consent of 75 % of her co-landowners to build her dwelling house on Land Portion 69.

41. **Orders:**

i. The Interim Injunction granted by this Court on 22nd April 2021, restraining the Defendant from constructing a house on Land Portion 69, Meneng District, is discharged.

ii. The Plaintiffs are not to interfere with the Defendant as she constructs her house on the said land.

iii. No order to costs.

DATED this 18th day of December 2024.

Kiniviliame T. Keteca
Acting Chief Justice