



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

Civil Cause No.25 of 2021

BETWEEN: Dodo Kepae & Ors, **Plaintiffs**

AND: John Jeremiah **1st Defendant**

Nauru Lands Committee **2nd Defendant**

BEFORE: Keteca J

DATE OF HEARING: 20th June 2025

DATE OF RULING: 28th July 2025

CITATION: Kepae & Ors v Jeremiah & Ors

KEYWORDS: Strike – Out Application

APPEARANCES:

Counsel for the Plaintiff: V. Detanamo

Counsel for the 1st Defendant: V. Clodumar

Counsel for the 2nd Defendant: S. Kamatura

RULING

BACKGROUND

1. This matter has a rather chequered history. The background and the nature of the claim is summarised in Vaai J's ruling on 16th October 2019 where he dismissed the strike out applications of the first and second defendants.
2. *The plaintiffs and the second defendant were some of the part owners of the land Atai Portion No. 197 in the district of Meneng (the land).*
3. *The second defendant is the mother of the first defendant. His house is built on the land.*

4. *By Cabinet approval dated 07th March 2013, Cabinet approved the consent of the President to the transfer of shares of the plaintiffs and others, in the land to the first defendant. Cabinet approval was published in the Government Gazette of the 13th March 2013 so that as from the 13th March 2013 the plaintiffs ceased to be owners of the land. Their shares were registered in the name of the first defendant.*
 5. *The land transfer forms which put into motion the transfer of the plaintiffs shares to the first defendant were allegedly signed by each of the plaintiffs and each transfer and signature was witnessed by the 5th and 6th defendants as a member and chairperson respectively of the Nauru Lands Committee, the 4th defendant. It is the Nauru Lands Committee which submitted the purported transfers to Cabinet for approval.*
 6. *The Claim- some of the plaintiffs claim they did sign forms but they did not sign before any member of the Nauru Lands Committee. The forms they signed were personally given to them at their homes or their workplace by the second defendant who requested them for their written consent to allow her son, the first defendant to extend his house on the land. On some occasions, the second defendant was accompanied by the first defendant; on others she was accompanied by the 5th defendant but it was the second defendant who talked to them, not the first (John Jeremiah) or fifth defendant (member of NLC) who stayed in the car.*
 7. *Some plaintiffs claim they did not sign at all and their alleged signatures were obviously forged.*
 8. *All of them claim they would never have agreed to sign away their lifetime inheritance.*
2. In Vaai J's Ruling of 16th October 2019, the strike out application by the Nauru Lands Committee was also dismissed. Vaai J held that the publication in the Government Gazette of 13th March 2013 was not the decision of the Nauru Lands Committee but the publication of the grant of approval by cabinet. At paragraph 24 of his Ruling, Vaai J said:

'If what the plaintiffs allege in their claim (substantiated in details in the affidavits) are correct, there is a case for forgery, dishonesty, false pretence and deceit disclosed in the pleadings for the defendants to answer.' The plaintiffs were ordered to file an amended statement to reflect if damages were sought against each defendant and if so, the nature and quantum of damages.
 3. The amended Statement of Claim was filed on 24th January 2020 and not 01st November 2019 as ordered by Vaai J.
 4. On 31st August 2020, the 3rd Defendant (NLC) was again heard on another application to strike out the claim against it by the plaintiffs. In an Ex-Tempore Ruling on the same date, CJ Jitoko held that based on the pleadings, there was no cause of action against the 3rd defendant and the claim against the NLC was struck out.

5. On 09th March 2021 the matter came before Fatiaki CJ. The Counsel for the Plaintiffs then, Ms Olsson had raised the issue of a consent order made by Vaai J. Fatiaki CJ said:
*'Monies paid into the Supreme Court Trust Fund is to remain until further order of the Court. **The applicant is directed to discontinue the present application and to file and serve properly formulated proceedings to challenge and set aside the consent orders entered before Vaai J. If fraud is pleaded it is to be fully particularized and pleaded. Fresh Writ and Claim to be filed by 23rd March 2021 and failing which the monies in Court will be paid out to the respondents without further notice.**'*
6. On 23rd April 2021, Ms Olsson filed a notice of discontinuance under Order 18 r.3 (2) of the Civil Procedure Rules. She also filed a fresh Writ against the first defendant (John Jeremiah) and the third defendant, Nauru Lands Committee.
7. On 14th Feb 2022, Mr Clodumar filed a motion seeking orders that since there is a notice of discontinuance filed, then all monies the subject of injunctive orders by Vaai J on 01st March 2019, should be refunded to Menen Hotel and for the hotel to pay the defendant and other landowners. Ms Olsson applied for the motion to be struck out.
8. In a ruling on the applications, 08th September 2022, Khan ACJ observed:
 [20] *Under Order 18 r. 2 CPR the plaintiff could have discontinued the action at any time not later than 14 days of the service of the defence by the defendants, however the defence was filed on 09th May 2019 and the plaintiff filed a reply thereto on 16th May 2019 and the action was discontinued on 23rd April 2021.*
 [21] *Under Order 18 r. 3 the plaintiff was required to seek leave before the discontinuance and he was obliged to file a summons for the grant of such leave (O.18 r.3(2)); but the plaintiff's counsel chose not to file the summons.*
 [22] *Fatiaki CJ had granted leave to the plaintiffs to discontinue his application to challenge the payment out of \$23,566.00 (order by Vaai J on 01st March 2019) by **filing a fresh action to plead fraud**; but the plaintiff chose not to take that course, and instead chose to file a notice of discontinuance and filing a fresh action. In doing so the plaintiff abused the process of the Court as in this action the plaintiff's claim against the Nauru Lands Committee was struck out and **was therefore bound by the principles of res judicata** and yet he filed a fresh claim against the Nauru Lands Committee.'*
9. On 24th October 2022, The Plaintiffs filed an amended Statement of Claim. On 22 November 22, the Defendants filed a "further Amended Statement of Defence." The Defendants contend that the Plaintiff is trying to resurrect the initial claim from Civil Suit 07 of 2019 which has been discontinued.
10. On 10th November 23, the 2nd Defendant filed an amended summons to Strike Out the claim against the NLC. The 2nd Defendant filed her written submissions on 04th March 24. The Plaintiffs filed their written submissions on 05th April 24.

11. On 20th June 2025, the Plaintiff filed a Motion seeking an Interim Injunction against the Menen Hotel (who is not a party to this proceedings) to restrain the hotel from paying rental payments to the 1st Defendant.
12. The Application to Strike Out by the 2nd Defendant was heard on 20th June 25.

THE STRIKE OUT APPLICATION

13. At the hearing of the 2nd Respondent's application, Ms Kamatura abandoned the first ground of her application which is that the civil suit was wrongly commenced by an Amended Statement of Claim and not a Writ of Summons.
14. The second ground for the Strike Out Application is on the principle of *Res Judicata*. Counsel submits as follows:
 - In *Kapae v Jeremiah* [2022] NRSC 18; Civil Suit 7 of 2019 (08th September 2022) a Ruling delivered by ACJ Khan in this matter, at paragraph [22] he said: ‘*Fatiaki CJ granted leave to the plaintiffs to discontinue his application to challenge the payment out of \$23, 566.00 (Order made by Vaai J on 01st March 2019) by filing a fresh action to plead fraud; but the plaintiff chose not to take that course, and instead chose to file a notice of discontinuance and filing a fresh action. In doing so the plaintiff abused the process of the Court as in this action the plaintiff's claim against the Nauru Lands Committee was struck out and he was therefore bound by the principles of res judicata and yet filed a fresh claim against the Nauru Lands Committee.*’
 - Counsel then refers to the Ruling of CJ Jitoko in *Kepae v Jeremiah* [2020] NRSC53; Civil Appeal 7 of 2020 (31st August 2020) where he made the order- ‘*The summons to strike out the Third Defendant (Nauru Lands Committee) as a party to these proceedings is granted and is so ordered.*’
 - No appeal was filed by the Plaintiffs against the Ruling dated 31st August 2020.
 - On 07th October 2020, the Registra granted the summons to strike out the 3rd Defendant (NLC) in Civil Suit No: 07 of 2019.
 - Therefore, the principle of *res judicata* applies here and the NLC cannot be made a party.
15. Mr Clodumar, counsel for the 1st Defendant, supports the application by the 2nd Defendant.

PLAINTIFFS SUBMISSIONS

16. Mr Detenamo submits as follows:

- This matter involves fraud.
- Section 8 of the Constitution- a person is not to be deprived of his property except in accordance with the law.
- CJ Jitoko's order that the NLC be struck out as a party relates to Civil Action No: 07 of 2019. (The Court notes that this was delivered ex-tempore on 31st August 2020)
- The present case is a new matter – Civil Suit 25/2021. This was filed on 23rd April 2021.
- This new claim **contains allegation of fraud** on the part of the NLC. This is contained in the Amended Statement of Claim filed on 17th day of October 22. In the prayers, the Plaintiffs seek an interim injunction to protect the 'monetary property' due to them. (I take this as reference to the monies paid by Menen Hotel to the 1st Defendant that were previously held in trust by the Supreme Court)

CONSIDERATION

17. The amended statement of claim filed by the plaintiffs on 24th October 22 is quite different from the initial claim in civil case 07 of 2019 that was discontinued on 23rd April 2021. CJ Fatiaki had suggested to the plaintiffs in March 2021 to discontinue the initial claim. They were to file a fresh writ where any alleged fraud by the defendants were to be fully particularised and pleaded. The present claim does not specifically allege fraud. At paragraph [2] the plaintiffs state that they do not recall signing 'any land transfer forms' at the NLC in the presence of the then chairperson, Tyran Capelle nor NLC member Palik Agir.
18. At paragraph [3] the plaintiffs claim that they 'did not sign any land transfer forms to transfer ownership of their respective land shares to the 1st defendant.'
19. The plaintiffs claim that to their knowledge, they signed a 'consent housing form' that was circulated by the 2nd defendant.
20. On the particulars of the claim, the plaintiffs outline in 13 paragraphs what they claim **should be the process in cases of the transfer of land ownership.**
21. The Plaintiffs seek a declaration that the 2nd defendant was negligent 'and did not comply with standard procedures for land ownership transfers.' The source of the 'standard procedures for land ownership transfers' are not particularised. They seek general and punitive damages against the NLC.
22. As a creature of statute, there are no particulars in the statement of claim that the 2nd Defendant breached any statutory duty.
23. In the absence of properly formulated claims, I find that the pleadings as they stand, do not establish any reasonable cause of action against the 2nd Defendant,

24. I further find that based on the principle of *res judicata*, the court has already ruled that the claim against the 2nd defendant in this matter has been struck out.

25. The Plaintiffs also filed a Motion on 12th June 25 seeking an injunction against the Menen Hotel. I note that the Menen Hotel is not a party to this proceeding.

CONCLUSION

26. The strike out application by the 2nd defendant is granted.

27. Costs are in the cause.

28. This matter is referred to the Registrar for the completion of the Discovery and Inspection process under Section 12 of the Civil procedure Act 1972 and Order 21 of the Civil Procedure Rules 1972.

29. Matter is adjourned to **Monday 4th August, 2025 at 10am** before Registrar for Mention.

DATED this 28th day of July 2025


Kiniviliame T. Keteca
Judge



The seal of the Supreme Court of Nauru is circular with a blue border. The outer ring contains the text "SUPREME COURT OF NAURU" at the top and "SADIRO" at the bottom. Inside the ring is a central emblem featuring a shield with a sun, a star, and other symbols, flanked by two stars. Below the shield is a banner with the motto "LAW IS WILL".