



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

**Civil Case No. 12 of 2021**

**BETWEEN : Robert Atsime Eongen** of Anetan District, Nauru.

Plaintiff

**AND : Windy Deireragea** of Anabar District, Nauru

Defendant

**BEFORE: Keteca J**

**DATE OF HEARING: 16th May 2025**

**DATE OF RULING: 4th July 2025**

**CITATION: Eongen v Deireragea**

**KEYWORDS: Application for Strike Out**

**APPEARANCES:**

**COUNSEL FOR the  
Plaintiff:**

**B. Duburiya**

**Defendant:**

**T. Tannang**

**RULING**

**BACKGROUND**

1. The Plaintiff and the Defendant are both landowners of land known as 'Arep', Portion 80, Anabar District.
2. The Amended Statement of Claim by the Plaintiff raises certain important issues as regards the use by co- landowners of land owned as tenants in common. The issue of consent is raised; both the legal framework governing consent and the authenticity of the signatures on the consent forms used in this case.

## PLAINTIFF'S CLAIM

3. At paragraph 9(a) of the Amended Statement of Claim, it reads:  
*'The practice of obtaining 75% landowner consent being the means of satisfying use of land owned by individuals in common is an incorrect application or adaptation of the Lands Act. There is no consideration for the rights of the remaining 25% of landowners who have withheld their consent and have had their property interest in the land arbitrarily disregarded.'*
4. The Plaintiff raises the issue of consent given by landowners who have 'Lifetime Only' interest like the present case.
5. The Plaintiff submits that in transactions relating to co-owned land, *100% of the co-landowners need to give their consent.*
6. On 13<sup>th</sup> March 23 the Defendant filed a Summons to Strike Out the Plaintiff's claim pursuant to Order 15 rule 19(1)(a) that the suit be struck out on the ground that it discloses no reasonable cause of action.

## STRIKE -OUT APPLICATION

7. Mr Tannang submits that the claim by the Plaintiff discloses no reasonable cause of action and refers to the following cases:
  - i. *Boletanga v Kam* [ 2022] NRSC 14 on the 75% of landowners consent;
  - ii. *Tom v Duburiya* [2016] Civil Suit 89/2015 Section 6 Lands Act 1976 on consent of landowners; and
  - iii. *Papua Inc Club v Nusham Holdings Ltd & Ors* W.S 378 of 1999 – on the claim of fraud to succeed, the Plaintiff needs to plead and give particulars of fraud.
  - iv. *Kepae v Jermiah* [ 2019] NRSC 29- on strike out applications.
8. Counsel submits that the consent of 75% of landowners has been applied in many cases in Nauru.
9. The claim of fraud has not been pleaded nor particularized by the Plaintiff and the Statement of Claim should be struck out with costs.

## THE LAW

10. **Order 15 rule 19(1)(a)** of the **Civil Procedure Rules 1972** relevantly provides:  
*"(1) The Court in which any suit is pending may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ of summons in the suit, or anything in any pleading or in the indorsement, on the ground that –*  
*(a) it discloses no reasonable cause of action or defence, as the case may be;*  
  
*(2) No evidence shall be admissible on an application under sub-paragraph (a) of the last preceding paragraph."*

11. In *Jeremiah v Kam* [2021] NRSC 26; Civil Case 13 of 2020 (15 July 2021), Fatiaki CJ said:

*‘, although the court’s discretion to strike out under Order 15 r19(1)(a) is unfettered, the pre-emptive nature and finality of the court’s order is such that a cautious even benevolent approach should be adopted to ensure that the plaintiff is not summarily denied the opportunity of having his “day in court” and having his claim determined after a trial (see : per Vaai J in Tom v Beneficiary of the Est of Ediribaini Tom [2019] NRSC 14 at para 11- referring to Halsbury’s Laws of England (4th ed) para 435.)*

He added: *The summary jurisdiction to strike out a claim as disclosing no reasonably arguable “cause of action” is one to be sparingly exercised in a plain and obvious case where it appears to the Court even after extensive argument, that the pleaded “cause of action” is so clearly untenable that it has no possible chance of success and is certain to fail. (see : per Eames CJ in Tamakin v Ronphos [2012] NRSC 9 at para 14.)*

12. In *Keppa v Adeang* [2021] NRSC 35; Civil Case 15 of 2021 (3 September 2021) at [25], Khan J said:

*‘The test for summarily (sic) dismissal of an action was set out in *General Steel Industries Inc v The Commissioner for Railways* (N.S.W.)[2] it is stated at pages 128 and 129 as follows:*

*“The plaintiff rightly points out that the jurisdiction summarily to terminate an action is to be sparingly employed and is not to be used except in a clear case where the Court is satisfied that it has the requisite material and necessary assistance from the parties to reach a definite and certain conclusion. I have examined the case law on the subject to some of which I was referred in argument and to which I append a list of references. There is no need for me to discuss in any detail the various decisions, some of which were given in cases in which the inherent jurisdiction of a Court was invoked and others in cases in which counterpart rule to Order 26, r.18, where the suggested source of authority to deal summarily with the claim in question. It is sufficient for me to say that these cases uniformly adhered to the view that the plaintiff ought not to be denied access to the customary tribunal which deals with actions of the kind he brings, unless his lack of a cause of action – if that be the ground on which the Court is invited, as in this case, to exercise its powers of summary dismissal – is clearly demonstrated. The test to be applied has been variously expressed; “so obviously untenable that it cannot possibly succeed”; “manifestly groundless”; “so manifestly faulty that it does not admit of argument”; “discloses a case which the Court is satisfied cannot succeed”; “under no possibility can there be a good cause of action”; “be manifest that to allow them” (the pleadings); “to extend would involve useless expense”. (Emphasis added)*

*At times the test has been put as high as saying that the case must be so plain and obvious that the court can say at once that the statement of claim, even if proved, cannot succeed; or “so manifest on the view of the pleadings, merely reading through them, that it is a case that does not admit of reasonable argument”; “so to speak apparent at a glance”.*

[26] It was further stated in *General Steel Industries Inc (NSW)* at pages 129 and 130 as follows:

*“As I have said, some of these expressions occur in cases in which the inherent jurisdiction was invoked and others in cases founded on statutory rules of Court but although the material available to the Court in either type of case may be different the need for exceptional caution in exercising the power whether it be inherent or under statutory rule is the same. Dixon J (as he then was) sums up a number of authorities in Day v Victoria Railways Commissioners [3] where he says[4]: “A case must be very clear indeed to justify the summary intervention of the Court to prevent a plaintiff submitting his case for determination in the appointed manner by the Court with or without a jury. The fact that a transaction is intricate may not disentitle the Court to examine a cause of action alleged to grow out of it for the purpose of seeing whether the proceeding amounts to an abuse of process or is vexatious. But once it appears that there is a real question to be determined whether of fact or law and the rights of the parties depend on it, then it is not competent for the Court to dismiss the action as frivolous and vexatious and an abuse of process.” Although I can agree with Latham CJ. in the same case when he said that the defendant should be saved from the vexation of the continuance of useless and futile proceedings[5]. In my opinion great care must be exercised to ensure that under the guise of achieving expeditious finality a plaintiff is not improperly deprived of his opportunity for the trial of his case by the appointed Tribunal. On the other hand, I do not think that the exercise of jurisdiction should be reserved for those cases where argument is unnecessary to evoke the futility of the plaintiff’s claim. Argument, perhaps even on an extensive kind, may be necessary to demonstrate that the case of the plaintiff is so clearly untenable that it cannot possibly succeed.” (Emphasis added)*

13. From the above cases, the test to be applied has been variously expressed; “so obviously untenable that it cannot possibly succeed”; “manifestly groundless”; “so manifestly faulty that it does not admit of argument”; “discloses a case which the Court is satisfied cannot succeed”; “under no possibility can there be a good cause of action”; “be manifest that to allow them” (the pleadings); “to extend would involve useless expense”. (Emphasis added)

14. I adopt the remarks of Fatiaki CJ in’ *Jeremiah v Kam* above:

‘The summary jurisdiction to strike out a claim as disclosing no reasonably arguable “cause of action” is one to be sparingly exercised in a plain and obvious case where it appears to the Court even after extensive argument, that the pleaded “cause of action” is so clearly untenable that it has no possible chance of success and is certain to fail. (see : per Eames CJ in *Tamakin v Ronphos* [2012] NRSC 9 at para 14.)

15. The question before me is- Has the Defendant shown after ‘extensive argument, that the pleaded “cause of action” is so clearly untenable that it has no possible chance of success and is certain to fail? Considering the totality of the arguments of Counsel for the Defendant, I find that he has not shown that the claim by the Plaintiff, as pleaded, is plainly and obviously unarguable. It is not ‘manifestly groundless’ or ‘discloses a case which the Court is satisfied cannot succeed.’ There are issues that may be the domain of the legislature as the court’s function is *jus dicere*, not *jus dare*. In that regard, the issues will need to be fully argued and ventilated before any final determination by the Court.

## CONCLUSION

16. I make the following orders:

- i. The strike out application is dismissed.
- ii. The Defendant is to serve his Amended Statement of Defence on the Plaintiff within 14 days of this Ruling.
- iii. Any Reply to the Amended Statement of Defence is to be filed and served by the Plaintiff within 7 days thereof.
- iv. This matter is to be listed for mention on 31<sup>st</sup> July 25.
- v. Costs are in the cause.

DATED this 04<sup>th</sup> day of July 2025.



Kiniviliame T. Keleca  
Judge

