



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

Civil Case No. 03 of 2025

BETWEEN : CHANTILLY AKIBWIB of Meneng District, Nauru.

Plaintiff

AND : SUSAN KEPAE Meneng District, Nauru

Defendant

BEFORE: Keteca J

DATE OF HEARING: 20th June 2025

DATE OF RULING: 18th July 2025

CITATION: Akibwib v Kepae

KEYWORDS: Application for Strike Out

APPEARANCES:

COUNSEL for the

Plaintiff:

H. Cook

Defendant:

V. Soriano

RULING

BACKGROUND

1. The Plaintiff and the Defendant are co- landowners of land known as ANIMAROR, Land Portion 395, Buada District. The Plaintiff claims that she holds a 1/12th and the Defendant, 1/ 288th interest in Land Portion 395.

2. The Statement of Claim by the Plaintiff questions the issue of consent granted to the Defendant to build on the said land portion.
3. On 09th April 2025, I granted an Interim Injunction against the Defendant to cease any further work on her construction of a dwelling house on Land Portion 395 until this matter is concluded.

PLAINTIFF'S CLAIM

4. In her Statement of Claim, the Plaintiff claims that in February 2025, she obtained the consent of 85% of the co- landowners to build her house on the land. The Lands Department installed pegs on the land to mark her building site in 2022.
5. Sometimes this year, the Defendant removed her pegs and started building on the site that had been marked for her to build on.
6. The Defendant has not received the requisite consent from the co- landowners to build on the site that had been 'pegged' for her to build her house.
7. The Defendant was to build her house elsewhere and not on Land Portion 395.

STRIKE OUT APPLICATION

8. On 01st May 2025, the Defendant/ Applicant filed a Motion seeking the discharge of the Interim Injunction granted on 09th April 25 and secondly that this matter be struck out as it discloses no reasonable cause of action. The application is made pursuant to Order 15, rule 19(1) of the Civil Procedure Rules 1972.
9. The Defendant/ Applicant submits that based on the Nauru Court of Appeal decisions in **Oppenheimer (trading as Capelle & Partners and Pacific Occidental v Tom** [2024] NRCA 10; Civil Appeal of 2019 (08th August 2024) and my decision in **Curtis Solomon v Srue Brechtefeld** [2024] NRSC 40; Civil Action 10 of 2021 (18th December 2024), on the issue of the practice of obtaining the consent of 75% of co-landowners, the present claim discloses no reasonable cause of action.
10. Mr Soriano submits some cogent arguments as follows:
 - i. Both parties in this matter possess property rights as they are co- landowners. As such, both parties have the right to build on that property.
 - ii. The 75% requirement submitted by the plaintiff based on Section 6 of the Lands Act 1976 is for land acquisition required by the government for a public purpose. The Defendant is not required to obtain 75% of the landowners consent to build on the co- owned land;
 - iii. The consent of 50 landowners obtained by the Applicant is sufficient for her to build her house as it is in line with the *Curtis* case.
 - iv. Any *lacuna in the law* is to be addressed by parliament as the courts must 'defer to the legislature to fill the gap.'
11. Counsel adds that the Applicant undertakes not to interfere with the construction of her house and to pay for the pegs that were removed.

THE LAW

12. **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.”

13. 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.)*

14. In *Eongen v Deireragea* [2025] NRSC 28; Civil Case 12 of 2021 (4 July 2025), with reference to *General Steel Industries Inc v The Commissioner for Railways* (N.S.W I said-

‘From the above cases, the test to be applied has been variously expressed as- “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)

15. For the present case, 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?

16. Before I answer the question in paragraph [14] above, I make the following observations:

i. Firstly, the Respondent/Plaintiff has raised in his submissions, an allegation of fraud as regards the consent obtained by the Defendant/ Applicant. The issue of fraud has not been included in the Statement of Claim. This will have to be pleaded for the court to consider it;

ii. Secondly, the Applicant/ Defendant submits that she has consulted and obtained the consent of 50 landowners of Land Portion 395. How many co- landowners are there in total? What is the percentage of interest or shares in Land Portion 395 of these 50 landowners? Do they make up the majority of interest or shares in Land Portion 395? What if the interest or shares of these 50 landowners that were consulted and consented, constitute the minority out of all the landowners? Do the answers to these questions have any bearing in the determination of the substantive matter in this case?

iv. More importantly, without any legislative framework as suggested by the Court of Appeal in August last year and which I also raised, with deference to parliament in December 24, what is the requisite percentage of landowners that need to give their consent before a co- landowner may build on co- owned land? Other cases are coming to court as even the minority in a landowning unit are seeking to build on co- owned land without the consent of the majority. Do they need the consent of the majority? Land matters are sacred. Like other Pacific Islanders, Nauruans are passionate about their land rights; and rightly so. Such a state of affairs can lead to further disputes. When left unchecked and without the proper legal framework, it can escalate to violent conflicts amongst co- landowners. Such an escalation is preventable with the proper legal framework in place. As I said in *Eongen v Deireragea* [2025] NRSC 28, the courts function is *jus dicere* and not *jus dare*. I hope that the recommendations of the *Oppenheimer and Curtis Solomon* cases will find their way onto the legislative program of the government, sooner, rather than later.

17. Because of the finality of a strike out order, the likelihood of the continuation of the uncertainty in the law without legislative intervention, and ensuring that the plaintiff is not summarily denied her 'day in court' I choose to take a cautious approach here. I find that this matter, in particular paragraph [15][ii] above will need to be fully ventilated at a substantive hearing where the actual interest of consenting landowners can be fully scrutinised by the court before the final determination of this matter.

18. To answer the question in paragraph [14] above, I find that this cause of action is not so clearly untenable that it is certain to fail.

CONCLUSION

19. The application for the discharge of the Interim Injunction granted on 09th April 2025 is dismissed.

20. The strike out application is also dismissed.

21. Costs will be in the cause.

DATED this 18th Day of July 2025.



Kiniviliame T. Keteca
Judge

