



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

Civil Cause No.01 of 2025

BETWEEN: Zita Itsimaera & Ors of Nibok District, Nauru
Plaintiff

AND: Teresa Menke & Ors of Denigomodu District, Nauru
Defendant

BEFORE: Keteca J

DATE OF HEARING: 07th July 2025

DATE OF RULING: 21st July 2025

CITATION: Itsimaera v Menke

KEYWORDS: Interim Injunction

APPEARANCES:

Counsel for the Plaintiff: Mr Victor Soriano

Counsel for the Defendant: Mr Vinci Clodumar

RULING

BACKGROUND

1. The plaintiffs are the children of the late President Bernard Dowiyogo. The defendants are the children of the late June Amwano. Bernard Dowiyogo is June Amwano's brother. The parties to this dispute are first cousins and are co- owners of 'Ariyen' land portion 279, in Denigomodu District.

2. On 20th June 25 the Plaintiff/ Applicant filed a Motion seeking an Interim Injunction against the Defendants/ Respondents to cease all construction and business activities on the old storage areas that is now converted into a service garage as well as on the bakery that is owned by Wawani Joe- Grant Dowiyogo.

3. In an affidavit filed on the same day, Wawani Joe- Grant Dowiyogo, one of the Plaintiffs, deposes that:

- He is the grandson of Bernard Dowiyogo, a former President of the Nauru.
 - A Bakery on Land Portion 279 in Denig District was built by her Aunt Clara Alefaio. The bakery and the warehouse formed part of the infrastructure that make up the Dowiyogo retail business. His late grandfather, Bernard Dowiyogo built the Dowiyogo store and the warehouse.
 - Her grandaunt June Amwano was given his grandfather's family home to occupy exclusively. Her grandfather Bernard Dowiyogo owned the buildings that made up the Dowiyogo retail business.
 - In 2013, his aunt Clara Alefaio transferred the ownership of the bakery to him and the Defendant's siblings signed a consent form for him to occupy the building where the bakery is- **Annexure WD2**.
 - The Defendants are turning the warehouse into a makeshift garage.
4. In their Statement of Claim, the Plaintiffs claim that the Defendants **have trespassed onto the property** built by one of the Plaintiffs, Clara Alefaio. The Defendants continue to build and add onto the building that belongs to the Plaintiffs without their consent.
5. On 3rd July 25, Teresa Menke, one of the Defendants deposed an affidavit as follows:
- She is the daughter of June Amwano. The late Bernard Dowiyogo is her mother's brother. June and Bernard inherited the land 'Areiyenyen' portion 279.
 - She has been living on the disputed property for over 17 years.
 - It is over 24 years now and the Plaintiffs are bringing this action.

APPLICATION FOR INTERM INJUNCTION

6. At the hearing of the application, Counsel stresses the following:
- The substantive matter is listed to be heard on 15th- 16th September. The application is for the Respondents to cease all construction, (business- not specified) and other activities on the property until the substantive matter is resolved.
 - The main issue is- 'Who legally owns the properties?'
 - Is there a serious question to be tried? The Applicants submit that they have legal or equitable rights in the properties. They have not consented to the construction and commercial use of the properties by the Respondents. These activities have breached their proprietary rights. This raises a serious question to be tried and gives rise to an arguable case.
 - On the balance of convenience, the Applicants submit:
 - i. It favors that the status quo being preserved until the resolution of the matter.
 - ii. If the Respondents 'are permitted to continue the construction and commercial activities on the properties, irreversible changes can occur- in that 'structures will be completed, land altered and third parties involved.' 'Such changes could render any final decision by this court a nugatory.'
 - iii. Counsel refers to Fletcher v Bealey (1884) 28 Ch D 688- 'where there is a risk of 'irreparable injury' or 'a mischief which cannot be compensated by damages'- the Court ought to intervene by way of injunction.

- On whether damages will provide adequate remedy- the Applicants submit that if an interim injunction is not granted, the potential losses that they will suffer will not only be financial. It will involve ‘proprietary and possessory rights over land.’
- Lastly, the Applicants submit that a remedy will be difficult to find if the Respondents are allowed to complete their construction and enter into business agreements with third parties.

RESPONDENTS SUBMISSIONS

7. Mr Clodumar relies on the affidavit of Teresa Menke:

- The properties in question are the Dowiyogo store, Halsted store and a warehouse.
- The bakery is non- existent. She has been occupying the lower floor for the last 17 years.
- She questions the authenticity of the Annexure WD2 of the affidavit of Wawani Joe-Grant Dowiyogo.
- In the Statement of Defence, the Defendants contend that the disputed structure in question has been abandoned. Section 13 (5) of the Limitation Act 2017 is relevant and the claim is time barred.

8. Counsel raises a valid question on what is the Applicant seeking to injunct? There is no bakery. A garage is there. They rely on the doctrine of laches. The claim should be struck out as it discloses no reasonable cause of action.

THE LAW

9. In *Castlemaine Tooheys Ltd v South Australia* [1986] HCA 58; (1986) ALR 553, at 557, ACJ Mason said:

‘The principles governing the grant or refusal of interlocutory injunctions in private law litigation have been applied in public law cases, including constitutional cases, notwithstanding that different factors arise for consideration. In order to secure such an injunction the plaintiff must show (1) that there is **a serious question to be tried** or that the plaintiff has made out a prima facie case, in the sense that if the evidence remains as it is, there is a probability that at trial of the action the plaintiff will be entitled to relief; (2) that he will suffer irreparable injury for which **damages will not be adequate compensation** unless an injunction is granted; and that the balance of convenience favors the grant of an injunction.’

10. Considering the evidence and the submissions, I find that the question of the legal ownership of the disputed property on Land Portion 279, namely the property built by Clara Alefaio to be a bakery will need to be determined at trial. There is the issue on the applicability of Section 13 (5) of the Limitation Act 2017. These raise serious questions to be tried. It flows from this that any further construction by the Defendant may lead to some irreparable damage to the Plaintiff where damages may not be adequate as a remedy.

11. I will grant the interim injunction sought but not in the terms sought in the Motion. It will not extend to the commercial or business activities currently being carried out on the property. It will be restricted to any further construction on the property.

ORDERS

- i. The Respondent, her agents and servants are restrained from any further construction activities on the property that once housed the 'bakery' on Land Portion 279.
- ii. Parties are to complete the Discovery process within 14 days from this Ruling.
- iii. This matter will be called for mention on 04th August.
- iv. Costs in the cause.

DATED this 21st of July 2025


Kiniviliame T. Keteca
Judge

