



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

Civil Case No. 08 of 2025

BETWEEN : LORITA AGIGO of Meneng District, Nauru. Plaintiff

AND : KALINSKY BRECHTEFELD of Meneng District, Nauru First Defendant

AND : THE SURVIVING HEIRS OF THE LATE JIM T BRECHTERFELD of Second Defendant
Meneng District.

BEFORE: Keteca J

DATE OF HEARING: 29th September 2025
DATE OF RULING: 03rd October 2025

CITATION: Agigo v Kalinsky
KEYWORDS: Application for Strike Out

APPEARANCES:

COUNSEL for the
Plaintiff: M. Degei
Defendant: V. Soriano

RULING

BACKGROUND

1. The plaintiff is the younger sister of the late Jim T Brechtefeld who passed away on 29th May 2025. She claims that she is now the sole owner of the family house on land portion 33 'Aeran' in Meneng District.

2. The first defendant is the plaintiff's nephew. The second defendants are the heirs of her late brother.

The Application

3. On 06th September 25, the defendants/ applicants filed a Notice of Motion under Order 15, Rules 19(b) and (d) of the Civil procedure Rules 1972 seeking the following orders:
 - a. The claim be struck out for abuse of the process of the court;
 - b. The claim by the plaintiff is frivolous and vexatious; and
 - c. Costs.
4. The Applicant, Kalinsky Brechtefeld deposes as follows:
 - He and the second defendants are the children of the late Jim T Brechtefeld who passed away on 29th May 2025. His father's estate is yet to be determined by the Nauru Lands Committee. (NLC)
 - His paralyzed father died defending the claim by his younger sister who was trying to oust him from land portion 33.
 - From the government allowances received by his father and other monies, they made improvements to the family house by:
 - i. Building a proper toilet and shower;
 - ii. Building two rooms for his sisters;
 - iii. Building a small garage and raised some chickens and pigeons;
 - iv. Operated a small business selling animal feed.
 - The plaintiff made regular travels abroad and did not invest in the housing of her children.
 - With the Nauru Lands Committee yet to determine his father's estate, the plaintiff now seeks to kick him and his siblings off the property that their father built.
 - The plaintiff is not the sole owner of the property in question. This will have to be determined by the government as the house was built under the Nauru Housing Ordinance 1957, and ownership vests in the Nauru Local Government Council.
 - This claim is premature. It is an attempt to bypass the processes of the NLC. The claim is thus frivolous. It is also an abuse of process.
 - He believes that in his father's Will, the shares in land portion 33 have been left to him, the Applicant.
 - The claim is to be struck out as it is premature, and an abuse of the process of the Court.

Response by the Plaintiff/Respondent

5. The plaintiff/ respondent, Lorita Agigo, deposes as follows:

- His late brother, Jim T. Brechtefeld did not own the rooms in the house he was occupying. He had vacated the rooms 20 years ago. His late brother had told her that the house 'is solely mine as the directive of our late mother EIDIMOUW MOTITI. (I take judicial notice of what the late Jim T Brechtefeld had said in his affidavit dated 19th November 2024 in a similar claim by the plaintiff, Lorita Agigo. He said at paragraph 5- "*In 1989, our mother died, and her estate was distributed by the NLC under Gazette No. 53 of 1989. When our mother's estate was distributed, there was no discussion or agreement that my sister would occupy the house to the exclusion of everyone else.*")
- She only has one house and she is struggling to provide for her family.
- Her claim is not to do with *ownership of the family house* but the revocation by her deceased brother of his right to possession.
- She is not challenging the distribution of his deceased brother's estate 'but mainly the *right to possess the property*' as per the wishes of her late mother.

THE LAW

6. **Order 15 rule 19(1)(a) to (d) of the Civil Procedure Rules 1972** 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;*
- (b) it is scandalous, **frivolous or vexatious**;*
- (c) it may prejudice, embarrass or delay the fair trial of the suit; or*
- (d) or it is otherwise an **abuse of the process** of the court; and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.*

(2) No evidence shall be admissible on an application under sub-paragraph (a) of the last preceding paragraph."

7. The present application is made under Order 15, rule 19 (1) (b) and (d). Counsel for the Applicant submits that since this claim is premature and is an attempt to pre-empt the distribution of the second defendant's estate, and it has failed to include the 'Curator of Intestate Estate pending the determination by the NLC, it is therefore frivolous under O. 15. Rule 19(1) (b). Counsel adds that it is an abuse of the process of the court under O.15 Rule 19 (1) (d) as it circumvents the NLC process including the options for appeal to this court.

8. Counsel for the Applicant/ Defendant refers to the case of **Robertson v Cain** [2017] NRSC 68; Civil Suit 107 of 2016 (31 August 2017). The dispute dealt with a house built under the **Nauru Housing Ordinance (NHO)- 1957**. The purpose of the ‘the Nauru Housing Scheme’ under that law was ‘To vest in the Nauru Local Government Council the ownership of certain houses erected by the British Phosphate Commissioners, to provide for the Renting and Sale of those houses and for other purposes.’
9. In his oral submissions, Counsel for the Applicant/ Defendants submits that the house that is the subject of dispute in this case was built under the ‘Nauru Housing Scheme.’ This is deposed by the 2nd defendant in paragraph 12 of his affidavit in support of this Strike Out Application.
10. From the **Robertson v Cain** case above, Crulci J states-
 21. ‘Section 7(1) NHO clarifies the ownership of the houses built under the Scheme: “*From the date of commencement of this Ordinance, the ownership of the dwelling-houses erected in pursuance of the Nauruan Housing Scheme is vested in the Council.*” (emphasis added)
 22. Who owns the **land** on which the houses were built is clarified by section 8 NHO: *The land upon which a dwelling-house was erected under the Nauru Housing Scheme is vested in the person in whom it was vested immediately before the date of commencement of this Ordinance.*” (emphasis added)
 23. However, ownership of the land on which the house is built does not extend to the house built on it, as per section 9 NHO: “*The dwelling-house shall be deemed to have been erected on the land with the consent of the owner on the basis that compensation at the rate specified in section eighteen of this Ordinance is paid, and the owner does not obtain, by reason only of the ownership of the land, any right, title or interest in the dwelling house.*” (emphasis added)
11. At paragraphs [28] & [29] Crulci J added:
 - bb. ‘The *Nauru Local Government Council Dissolution Consequential (Amendments) Act 1997* purpose was ‘*To make consequential changes to the laws of the Republic following the dissolution of the Nauru Local Government Council and for related purposes.*’
 - cc. This Act along with the Native Island Dissolution Act 1999, divested property and funds previously managed under these Ordinances and Acts to the Republic of Nauru, **specifically the President and Cabinet.**
12. Mr Soriano submits that pending the decision by Cabinet and the subsequent decision of the NLC on the estate of the late Jim T. Brechtefeld, the present claim is premature, frivolous, and an abuse of the process of the court and it should be struck out.
13. Counsel for the Plaintiff relies on the following cases:
 - i. *Debao v Nauru Lands Committee* [2024] NRSC 12;- this case dealt with an application under **O.15 rule 19(1) (a)** – ‘discloses no reasonable cause of action.

- ii. *Itsimaera v beneficiaries of the Deceased Robert Debrum* [2017] NRSC 90- that case dealt with **Order 38 Rule 1**- No Suit for Order of Mandamus without the leave of the court. That is not the case in the present case.
- iii. *Michael v Joram* [2021] NRSC 34- the case also dealt with an application for strike out based on ‘no reasonable cause of action’ under **Order 15 rule 19(1) (a)**.

14. I remind myself that the present application is based on Order 15 Rule 19(1) b)- the claim is frivolous or vexatious and Rule 19(1) (d)- the claim is an abuse of the process of the court and not Order 15 rule 19(1)(a)- ‘discloses no reasonable cause of action.’

15. Counsels have not referred to any case law to ventilate the concepts of ‘abuse of process’ and whether a claim is ‘frivolous or vexatious.’

16. In *Colombini v De Berigny* [2021] NSWSC 374, Ward CJ in Eq at [44] stated:

“The principles on a summary dismissal application are well known. There is a high threshold to be satisfied. The test generally applied on applications for summary disposal of part or all of proceedings is that set out in *General Steel Industries Inc v Cmr for Railways* (1964) 112 CLR 125; [1964] HCA 69 at 128 –9 (*General Steel*). It is necessary that there be a very clear case before proceedings will be summarily dismissed (*General Steel* at 129; *Dey v Victorian Railways Commissioners* (1949) 78 CLR 62; [1949] HCA 1 (*Dey*) at 91). As Dixon J (as his Honour then was) noted in *Dey* at 91, “once it appears that there is a real question to be determined whether of fact or law and that the rights of the parties depend upon it, then it is not competent for the court to dismiss the action as frivolous and vexatious and an abuse of process.”

17. In *Re Rules of the Supreme Court 1971 (WA) - Ex parte Gates* [2018] WASC 213, **Vaughan J** outlined the applicable principles in dealing with concepts of ‘frivolous or vexatious or abuse of process.’ He said:

‘25. *There is considerable overlap between the concepts of ‘abuse of process’ and whether a proceeding is ‘frivolous’ or ‘vexatious’. The expressions are often used in conjunction or interchangeably.*

26. *What amounts to an abuse of the court's process is unsusceptible of a formulation comprising closed categories. It extends to all categories of cases in which the processes and procedures of the court, which exist to administer justice with fairness and impartiality, may be converted into instruments of injustice or unfairness. Abuse of process occurs in any circumstance in which the use of the court's procedures would be unjustifiably oppressive to a party or would bring the administration of justice into disrepute. However, the onus of satisfying the court that there is an abuse of process is a heavy one. The power to dismiss proceedings as an abuse of process should be exercised with caution and only in the most exceptional or extreme case.*

...

29. *Proceedings will constitute an **abuse of process** if they are clearly doomed to fail or are plainly unsustainable.*

30. *In the context of an application to strike out a claim or pleading the terms '**frivolous**' and '**vexatious**' have often been used interchangeably. For example, an action is frivolous if it is **obviously (or plainly) unsustainable** and an abuse of the process of the court. It may for the same reason be categorised as **vexatious**.*

31. *An action is **frivolous** when it is **not worthy of serious consideration**, is **insupportable in law**, **discloses no cause of action** or is **groundless**. So too a matter that is without substance or is fanciful is **frivolous**. The term is apt to describe proceedings in which the plaintiff's claim is **so obviously untenable that it cannot possibly succeed or in which there is no serious question to be tried**. An action is **vexatious** if it has **no reasonable prospects of success**. The term has also been said to be apt to describe an action which is a sham and which cannot possibly succeed.*

18. Having considered the submissions and case law, I find that there are real questions of fact and law to be determined here. There are two pending decisions: the decisions of Cabinet on the ownership of the house and NLC on the possible bequeathing of the late Jim Brechtefeld's interest in land portion 33, where the house is built, to the Applicant/ first defendant.

19. Having found that there are questions that need to be determined by this court, the application to strike out this matter is dismissed.

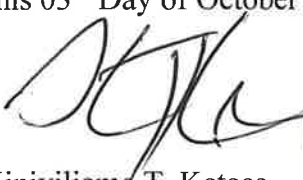
ORDERS

20. I make the following orders:

- a. The application to strike out this matter is dismissed;
- b. The defendants are to file and serve their statement of defence within 14 days of this ruling;
- c. The Plaintiff is to file and serve any reply to the defence 7 days thereafter;
- d. This matter is to be put before the Registrar for the preparation and filing of the pre-trial conference minutes and referred to this court for setting the matter for trial.

21. Costs will be in the cause.

DATED this 03rd Day of October 2025.


Kiniviliame T. Keteca

Judge

