



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

**Land Appeal No. 01 of 2023**

**BETWEEN : ELMINA QUADINA**

**APPELLANT**

**AND : NAURU LANDS COMMITTEE**

**RESPONDENT**

**BEFORE: Keteca J**

**DATE OF HEARING: 15<sup>th</sup> August 2025**

**DATE OF RULING: 20<sup>th</sup> October 2025**

**CITATION: Akibwib v Kepae**

**KEYWORDS: Application for Strike Out**

**APPEARANCES:**

**COUNSEL for the  
Plaintiff:  
Defendant:**

**M. Degei  
Grundler**

**RULING**

**BACKGROUND**

1. The Appellant is a landowner of land portion 91, Anabar District. On 23<sup>rd</sup> March 2023, the Respondent published in G. N. No. 361/2023, vide G.N. No. 153/2020- G.N.No. 523/2020 the beneficiaries of Land Portion 91.

2. According to the Appellant, it has been 45 years between what was discussed in 1975 and the publication in the G.N. No. 361/2023.
3. Aggrieved by the determination by the NLC recorded in G.N. No. 361/2023, the Appellant has filed an appeal against that decision.
4. The Respondent filed an affidavit by Edwina Karl, Chairperson of NLC on 27<sup>th</sup> February 2024 in response to the Notice of Appeal. This affidavit was sworn on 06<sup>th</sup> November 2023.
5. On 05<sup>th</sup> July 2024, pursuant to Order 19 Rule 19(1)(a) (b) & (c) of the Civil Procedure Rules 1972 the Appellant filed a Motion to Strike Out certain paragraphs of the Respondent's 27<sup>th</sup> February 2024 affidavit on the grounds:
  - i. They disclose no reasonable defence;
  - ii. Are frivolous or vexatious;
  - iii. May prejudice or embarrass the court.
6. The Appellant relies on her affidavit filed on the same date.

### **SUBMISSIONS BY THE RESPONDENT**

7. On 09<sup>th</sup> December 2024, the Respondents filed a submission stating:
  - The striking out of the NLC's affidavit will be contrary to Practice Note (No. 1 of 2015) relating to Lands Appeals (Practice Note). The Practice Note, to regulate land appeals, was made by the then Chief Justice pursuant to Section 76(2) of the Civil Procedure Act 1972
  - The Practice Note is part of the Rules of the Court and a Strike Out 'undermines the court practice and procedure.'
  - The NLC affidavit in question is in order pursuant to Order 34 of the Civil Procedure Rules 1972; in particular O. 34, r 6. The contents of the affidavit are all relevant pertaining to land Anuwo, Portion 91, Anabar District as they provide the factual background to the appeal.
  - There is no legal basis for the Appellants application. The only basis for an application to strike out an affidavit is Order 34 Rule 7 **which the Appellant is not relying upon.**
  - The subject affidavit is in accordance with the directions of the court in 2023.
  - The appeal is defective and not proper under Section 7 of the Nauru Lands Committee Act 1956 as follows:
    - i. The beneficiaries identified in G.N.No. 61[ G.N. No. 361 of 2023] dated 23<sup>rd</sup> March 2023 have not been made parties to this land appeal. They need to be given an opportunity to be heard.
    - ii. The Appellant's Notice of Appeal filed on 13<sup>th</sup> April 2023 refers to G.N. No. 153/2020- G.N.No. 523/2020; dated 06<sup>th</sup> August 2020 at page 43 - The appeal is out of time under Section 7 of the Nauru Lands Committee Act 1956 that states:
 

‘Appeals from decisions of the Committee  
 (1) A person who is dissatisfied with a decision of the Committee may appeal to the Supreme Court against the decision:  
 (a) Within 21 days after the decision is published; or  
 (b) With leave o the Court’
  - ***Reweru v Nauru Lands Committee*** [2018] NRSC 45, at paragraphs [7] and [19] are relevant here.

- The Respondent seeks:
  - i. The Strike out Application be dismissed;
  - ii. The appeal be dismissed in its entirety;
  - iii. Any other orders.

## SUBMISSIONS BY THE APPELLANT

8. On 15<sup>th</sup> August 2025, Counsel for the Appellant submits:
  - The application for Strike Out is made under Order Rule 19) (1) of the Civil Procedure Rules 1972. The application relies on the affidavit of Applicant filed on 05<sup>th</sup> July 2024. (I note that Counsel has not identified which particular ground in Rule 19(1) (a)- (c), he is relying on)
  - Referring to the affidavit of the Respondent, the Appellant deposes that the paragraphs of Elmina Quadina's affidavit are:
    - i. Incoherent
    - ii. Poorly composed
    - iii. 'convoluted sentence structure and could not be understood'

9. Counsel for the Appellant refers to the following cases:

- i. ***Debao v Nauru Lands Committee*** [2024] NRSC 12; Land Appeal 3 of 20222 ( 16<sup>th</sup> February 2024)- looked **at the test for striking out a pleading as disclosing no reasonable cause of action**. At paragraph [22]- In ACTW Corporation v Mihaljevic [2004] ACTSC 59 Master Harper set out the test for striking out a pleading as disclosing no reasonable cause of action at [26] - [27]:

The test for striking out a pleading **as disclosing no reasonable cause of action** is a high one. Dickson J (sic) said in *Dey v Victorian Railways Commissioners* (1949) 78 CLR 62:

"A case must be very clear indeed to justify the summary intervention of the Court to prevent plaintiff submitting his case for determination in the appointed manner by the Court ... Once it appears that there is a real question to be determined whether of fact or law and that rights of the parties depend upon it, then it is not competent for the Court to dismiss the action... "

- ii. ***Itsimera v Beneficiaries of the Estate of Deceased Robert Debrum*** [2017] NRSC 90; Miscellaneous Cause 11 of 2014 (29<sup>th</sup> September 2017) per Khan J- looked at Order 38 Rule 1 that 'no suit for an order of mandamus, prohibition or certiorari shall be commenced unless leave has been granted.'

iii. **Michael v Joram** [2021] NRSC 34; Civil Case 14 of 2021 (02<sup>nd</sup> September) per CJ Fatiaki.-

20. ‘ Defence counsel relied on K. Sheridan v Colin Biggers & Paisley [2019] NSWSC 528 for the relevant principles for the summary dismissal of a Statement of Claim for the absence of a “*cause of action*” , as set out in General Steel Industries Inc v Commissioner for Railways (NSW) [1964] HCA 69 ; (1964) 112 CLR 125 at 129 as follows :

- (1) “*The claim was “so obviously untenable that it cannot possibly succeed” ;*
- (2) “*manifestly groundless*”;
- (3) “*so manifestly faulty that it does not admit of argument*” ;
- (4) “*discloses a case which the court is satisfied cannot succeed*” ;
- (5) “*under no possibility can there be a good cause of action*” ; and
- (6) “*be manifested to allow (the pleading) to stand would involve useless expense.*”

“*Similarly, the Court may strike out pleadings in plain and obvious case...(and)*

*The court may strike out pleadings where for example, a claim is:*

- (1) *Doomed to fail ....; or*
- (2) *Untenable in the admitted (pleaded) circumstances: .....*”

10. Mr Degei adds that the affidavit in question, sworn by Edwina Karl on 06<sup>th</sup> November 2023 must be ‘struck out’ as it contains no reasonable defence, frivolous and vexatious and will prejudice the Appellant ‘as it is difficult to respond to the same.

11. Counsel adds that the contents of the affidavit does not explain why the Respondent NLC breached Section 6A of the **Nauru Lands Committee (Amendment) Act 2012** i.e why the subject decision of the NLC in 1975, which should have been published within 21 days after the decision was made, ended up being published on 06<sup>th</sup> August 2020, some 45 years later.

12. Counsel submits that the affidavit breaches Order 34 Rule 1(6) of the Civil Procedure Rules 1972.

## CONSIDERATION

13. I have considered all the relevant submissions of Counsels. I agree with Counsel for the Respondent that this application should have been made under Order 34 Rule 7 which reads:

*‘The court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or oppressive.’*

14. The Appellant contends that the affidavit in question (Edwina Karl, sworn on 06<sup>th</sup> November 2023 does not comply with Order 34 Rule 1(6) in that each paragraph is not confined ‘to a distinct portion of the subject.’ He has referred to cases on the test for ‘striking out a pleading ‘on the grounds it discloses no reasonable cause of action or defence. Counsel has not relied on any cases that are relevant to Order 34 Rule 7 above where the Court may strike out matters in an affidavit that is ‘scandalous, irrelevant or oppressive.’ There is no reference in the submissions by Counsel and the affidavit of the Appellant on how the subject affidavit of Edwina Karl is ‘scandalous’ irrelevant or oppressive.’

15. Both Counsels are delving into the merits of the appeal.

16. I find that the Appellant has not relied on the proper Order 34 Rule 7 in this application. I further find that the Appellant has not shown that the affidavit of Edwina Karl is ‘scandalous, irrelevant or oppressive.’

## CONCLUSION

17. The application to strike out certain paragraphs in the affidavit of Edwina Karl sworn on 06<sup>th</sup> November 2023 is dismissed.

18. This matter is to be called before the Registrar on 24<sup>th</sup> October 2025 to see that Practice Note N0. 1 of 2015 is fully complied with, before setting the matter for hearing.

DATED this 20<sup>th</sup> Day of October 2025.

  
Kiniviliame T. Keteca  
Judge

