



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

Civil Suit No. 07 of 2025

BETWEEN : Li- Annta Cain of Anetan District Plaintiff
AND : Eiyaya Apad of Anetan District 1st Defendant
: Juanta Ika of Anetan District 2nd Defendant
: Nolleen Adire of Anetan District 3rd Defendant

BEFORE: **Keteca J**

DATE OF HEARING: **12th November 2025**
DATE OF RULING: **24th November 2025**

CITATION : Li-Annta Cain v Eiyaya Apad & Ors
KEYWORDS: Interim Injunction

APPEARANCES:

COUNSEL for the
Plaintiff: D. Aingimea
1st & 2nd Defendant: B. Duburiya
3rd Defendant: E. Soriano

RULING

BACKGROUND

1. The Plaintiff in this case is a co- landowner of Land Portion 71. The Defendants are her neighbors on Land Portion 88. The Plaintiff has obtained the consent of 75% of the landowners of Land Portion 71 for her to construct a dwelling house there. In April 2024, the Plaintiff also obtained the consent of 75% of the landowners of Land Portion 73 to have an access way to Land Portion 71.

2. In April and May 2024, the Defendants have been interfering with the Plaintiff's operations on Land Portions 71 and 73. On 17th September 2024, I granted an interim injunction against the defendants in the following terms:
 - i. 'The defendants are severally and jointly restrained from interfering with the plaintiff's clearing of access on portion 73 and the construction of the plaintiff's house on portion 71, Anetan District until the finalisation of the claim in Civil Case No.07 /2024,
 - ii. The order extends to the defendants, their agents, servants, or workmen on the site;
 - iii. The plaintiff is to serve a copy of this order on the defendants or their legal representative by 4pm today;
 - iv. The defendants are to file and serve their statement of defence within fourteen days from the date of this order;
 - v. Costs reserved.

THE APPLICATION

3. On 23rd October 2025, the 1st and 2nd Defendants (Applicants) filed a Summons seeking the following orders:
 - i. Discharge of the interim injunction granted on 17th September 2024;
 - ii. An Order restraining the parties (which party?) from entering onto or being on the land known as Anuworoiya comprising **land portions 71 and 73** of Anetan District (**Disputed land**);
 - iii. Order restraining the parties (which parties?) from building on or developing in any way the 'Disputed lands';
 - iv. The status quo of the 'Disputed land' be maintained until the determination of this matter.
4. The Applicants rely on the affidavits of Mrs Cecilia Wabeiya, Mrs Noleen Adire and Mrs Jamilla Adire and the Statement of Defence of the 1st and 2nd Defendants.
5. Mrs Cecilia Wabeiya (Eiyaya Apad) in an affidavit filed on 23rd Oct 25, deposed as follows:
 - She is 76 years old and is the 1st Defendant in this case. The 2nd and 3rd Defendants are her sister and daughter, respectively. They intend that the injunction granted by this Court on 17th September 24 be discharged. They seek that that a new injunction be granted, **retaining the status quo of the land in dispute- namely land portions 71 & 73, in Anetan District known as ' Anuworoiya' (Disputed land).**
 - They have filed their statement of defence and intend to rely on it for this application. Her family inherited the Disputed land and they have an old map shown to her by her late mother.
 - The boundaries of the 'Disputed Land'' was **altered** by the Nauru Lands Committee (NLC) or the Lands & Survey (L & S) which altered the ownership. The current map of the land is not the same as the German map that she has. Her family has approached the NLC and L & S on the issue with no progress. Recent NLC and L & S maps show the changes. **(I note that there are no attachments to reflect what the deponent says here)**

- Her mother gave her consent for her to build on land portions 73 and 71. The subsequent changes in the survey has resulted in the changes in the ownership of the Disputed lands with the consequence that ‘strangers’ are entering their lands.
 - There is a serious question to be tried here as it relates to the fundamental rights of landowners. A public interest question arises **where alterations in land maps have also altered who the landowners are.**
 - The Disputed land was untouched and it had a pond on land portion 73 extending to land portion 88. The pond had milkfish that they used for food. It also provided water supply for the family’s fruits trees and coconuts.
 - The Plaintiff has ‘backfilled’ the area, cleared portion 71 and commenced building on the land and she prepared to pour cement on the land in October 25.
 - Payment of damages by the Plaintiff will not be sufficient here as the actions of the Plaintiff has permanently altered the land, affecting the water source, the fruits trees and foliage in the area. The Plaintiff should be restrained from continuing to develop the land pending the outcome of this case.
6. In an affidavit filed on 15th October 25, Noleen Adire, the 3rd Defendant, deposed as follows:
- She is the 3rd Defendant in this matter. Her mother is the 1st defendant. She resides next to land portion 71- the Disputed area. On 8th October 25, the Plaintiff had brought the police to the disputed area. Police officers told her mother to stop damaging the site.
 - The brother of the Plaintiff, Madodo Debaoswore at them at the site saying he would ‘destroy her home by bulldozing everything.’

RESPONSE BY THE PLAINTIFF

7. In an affidavit filed on 17th October 25 and 03rd November 25, the Plaintiff deposed as follows:
- The Applicants have continuously interfered with her construction project. The defendants have told her directly that they will continue to destroy her property. The Director of Infrastructure (Nauru Government Housing) informed her in October 2025 that the profiles to her new house foundation had been damaged again. It was the third time that the construction workers were required to re- install her house profiles.
 - The damage caused to the profiles were caused by the Defendants and their agents. **(I note that the damage to these profiles were done whilst the injunction against the Defendants that I ordered on 17th September 2024 is in force)**
 - The Applicants have not provided any evidence to prove their ownership of the land in question. The Applicants have not provided a map or gazette to support their claim.
 - The list of landowners and the map have been in existence **since 1962**. Annexure LC1 shows Gazette notice No.76/1962 which lists the ‘Determination of Ownership’ of Coconut land- Anetan-**Anuworoia-71**.
 - She has not caused any interference with the Defendant’s lands on -Portion 88

8. By a supplementary affidavit filed on 04th November 25, the Plaintiff deposed:
- She holds a 1/510 share in land portion 71. This is shown on Gazette Notice G.N.No 191/2005 – published on 20th July 2005. When this Gazette Notice was published, none of the Defendants challenged the validity, accuracy and legality of the decision of the NLC.
 - She has obtained the consent of the majority of all the co-landowners to construct her dwelling house on the property- Land Portion 71.
 - The majority of landowners on land portion 73 have also consented in allowing her access through land portion 73.
 - The Statemen of Defence of the Defendants do not challenge the ownership of land portions 71 and 73.

HEARING of THE APPLICATION

9. On 03rd November 25, I heard submissions form Counsel for the Applicants. She submitted that there was a serious question to be tried here, Damages would not be sufficient and the balance of convenience favours her clients.
10. Counsel referred to paragraphs 7-9, & 16 of the first Defendants affidavit as showing that there is a serious question to be tried here.
11. Counsel referred to paragraphs 17-21 of the same affidavit and submits that damages would not be an adequate remedy.
12. Counsel referred to paragraph 22 of the same affidavit that on a balance of convenience, it favours her client.
13. Counsel referred to CJ Fatiaki’s decision in *Michael v Joram* [2021] NRSC 34; Civil Case 14 of 2021 (2 September 2021) as the relevant authority in support of her application.
14. In response Mr Cooke opposed the application and submitted that the relevant test for the granting of an injunction has not been met. Counsels were asked to file the relevant cases and written submissions.

APPLICANT’s SUBMISSIONS- filed on 06th November 25

15. At paragraph 4, Counsel submits:
- ‘The subject matter of this application is in relation to the ‘Disputed Land.’” Through the Statement of Defence of the Applicants, the Applicants have made it known that they have a claim to the Disputed Land and by way of a brief summary of the claims, they are:
- a. That the current map and other aspects including portion numbers used by Lands and Survey Department are incorrect and that there are discrepancies in comparison to an older map which the Applicants have that they claim to be the correct map of the land known as Anuworoiya which is owned by their family.

- b. In particular relation to the 2nd Applicant/ 2nd Defendants Mrs Ika, she and her family have not endorsed the consent forms of the Plaintiff to use the Disputed Lands and that by progressing to use the land the Plaintiff has arbitrarily **disregarded her rights as a landowner** and taken exclusive possession of the Disputed land.

16. Counsel refers to paragraph [17] of CJ Fatiakis ruling in in *Michael v Joram* [2021] NRSC 34; where he said:

From the foregoing, the sequence of considerations for a court dealing with an interlocutory application for an injunction are:

- a. *to consider on the papers whether there is a serious question(s) to be tried;*
- b. *to consider whether damages would afford an adequate remedy for both parties in the event of the grant or refusal of the injunction; and*
- c. *Where damages is inadequate, the court should then consider where the “balance of inconvenience” lies and the relative strengths of each party’s case on the papers filed and undisputed evidence.*

[see : per Eames CJ in Pitcher v Ronphos (ibid) at para 7]

17. Counsel refers to paragraph 8 of the Applicant’s affidavit to show that there is a serious question to be tried. This paragraph reads- “I am aware that under the current list of landowners my sister Juanita is also a landowner through her inheritance of her husband’s ownership of the ‘Disputed Land.’ I am aware that she has not consented to the Plaintiff using the Disputed land. **(I note that this does not give the 1st Defendant any locus as regards any right of ownership of the so-called Disputed Land- If the 2nd Defendants right of ownership arises through her husband- this brings into question where all the defendants are getting their right to claim ownership of Land Portion 71)**
18. Counsel refers to mistakes, incorrect or altered records without referring to any evidence of the same. In particular, Counsel refers to paragraphs [7]- [9] of the 1st Defendants affidavit regarding the ‘an old German map’ given to her by her mother and the allegation that the NLC and L & Survey altered the boundaries of portion 71. **(Again, Counsel has not attached the old map or any evidence that the boundary of land portions 71 and 73 have been altered.)**
19. Counsel refers to the Nauru Court of Appeal case of *Ika v Gadeanang* [2022] NRCA 3 on the issues of Nauru custom and usage of land, rules of equity, doctrine of laches and the appropriate body to resolve ‘any conflict that may arise between Nauruans.’ **(I do not see how the principles in this case assist the Applicants here)**
20. Counsel concludes that the interim injunction granted against her clients on 17th September be discharged and the status quo be maintained until the conclusion of this matter.

SUBMISSIONS BY THE PLAINTIFF

21. On 11th November 25, I granted Mr Aingimea audience on behalf of the Plaintiff. I asked Counsel to make a written submission.
22. Submissions by Counsel for the Plaintiff maybe summarised as follows:
- As stated in the affidavit of the Plaintiff, the ownership of land portion 71 was determined **back in 1962**. Annexure LC1 shows **Gazette notice No.76/1962** which lists the ‘Determination of Ownership’ of Coconut land- Anetan-**Anuworoia-71**. This was determined 63 years ago.
 - There is no serious question to be tried as the land ownership of portion 71 has already been determined. The Defendants nor their ancestor ever challenged the determination of ownership done 63 years ago.
 - The Statement of Defence did not mention land portion 71 and it is being brought up by the Applicants now.

CONSIDERATION

23. I remind myself of the considerations that need to be considered when dealing with applications for an injunction. These are, as CJ Fatiakis said in *Michael v Joram* [2021] NRSC 34:

‘From the foregoing, the sequence of considerations for a court dealing with an interlocutory application for an injunction are:

- a. to consider on the papers whether there is a serious question(s) to be tried;*
- b. to consider whether damages would afford an adequate remedy for both parties in the event of the grant or refusal of the injunction; and*
- c. Where damages is inadequate, the court should then consider where the “balance of inconvenience” lies and the relative strengths of each party’s case on the papers filed and undisputed evidence’*

24. **Do the Applicants, through the evidence and papers that they have filed, have a serious question to be tried?** From the evidence of the 1st Defendant, she claims that she has an old ‘German map’ that shows that they are owners of land portion 71. Currently, they own land portion 88 in Anetan. I note that there is a dearth of evidence provided by the Defendants to support this contention. The ‘old German map’ mentioned by her in her affidavit and in Counsel’s submissions has not been produced. Even if it is found and produced, the Defendants will have an uphill battle proving its utility in this case. The 1st Defendant also claims that the NLC and the L & S altered their records including maps that shifted the boundaries of what they claim is-‘Disputed Land.’ Again, there is no evidence at all in the papers before me to support this claim. Further, the Defendants did not challenge the decision of the NLC when it determined the ownership land portion 71 that was published on Gazette Notice G.N.No 191/2005 – published on 20th July 2005.

25. I note that the 1st Defendant states in her affidavit that her sister, the 2nd Defendant is now a co- landowner of portion 71. The 2nd defendant did not inherit this from her mother or from her supposed entitlement based on ‘the old German map.’ Rather, her co- ownership right to Land Portion 71 arises from the inheritance through her husband. There is no evidence that all the defendants have any right at all to Land Portion 71.

26. I also note from the affidavit of the Plaintiff, filed on 07th May 25, at paragraph 2-‘**They (the Defendants) failed to disclose to the court that their foundation extended about 41.49 square meters within portion 71 which is my land.**’ Annexed to this affidavit is a Survey Plan Report. The Report reads:

Department of Land Management

SURVEY PLAN REPORT

Re: Survey of Land Portions 71 and 88

DISTRICT OF ANETAN

PURPOSE OF PLAN

The Survey Plan pertains to survey land portions 71 and 88 in the District of Anetan, conducted at the request of Counsel for the Plaintiff in civil action between Li-Annta Cain v Eiyaya Apad, Juanita Ika and NoLeen Adire (Civi case No. 7 of 2024)

The purpose of this survey is to:

- *Clarify the boundary marks for **land portion 71 and 88**;*
- *Determine the location of the newly constructed foundation; and*
- *Ascertain whether the newly constructed foundation has encroached into other land portions.*

REMARKS

The Department of Land management conducted the survey, led by Mr Sebastian Teimitsi. The survey team successfully identified and marked the boundaries for portion 71 and 88. Relevant data from the site and a survey map was prepared by Mr Nakautoga, Director Lands Survey.

The survey findings indicate that the newly constructed foundation extends as follows:

- *53.59 square meters within portion 88, Anetan*
- *41.49 square meters within portion 71 Anetan; and*
- *0.01 square meters within portion 70 Anetan.*
- *The survey has been carried out in compliance with the Surveyor’s Regulations 1961.*

OUTCOME

The survey confirms that:

- *The boundary marks for land portion 71 and 88 have been identified and properly marked;*

- *The location of the newly constructed foundation has been determined*
- *The newly constructed foundation encroaches into land portion 70 by 0.01 square meter and onto land portion 71 by 41.49 meters.*

DOCUMENTS ATTACHED

1. *Survey Report*
2. *Proper Survey Plan (AutoCAD map)*

I trust this report will assist in resolving the dispute. If there are any other information required or clarifications needed, please feel free to contact me.

Mr Peniasi Nakautoga

Director Lands Survey

Department of Land Management

25/02/25

27. From the above report, it confirms that the Defendant's foundation extends from their Land Portion 88 and encroaches onto the Plaintiff's land portion 71 by 41.49 meters. The report also confirms the boundaries of the Plaintiff's Land on Portion 71.

28. I remind myself of what Lord Diplock said in *American Cyanamid Co v Ethicon Ltd* (1975) AC 396 at p 406:

'.. the decision whether or not to grant an interlocutory injunction has to be taken at a time when ex hypothesis the existence of the right or the violation of it, or both, is uncertain and will remain uncertain until final judgment is given in the action.'

Later:

*'the object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights... **The court must weigh one need against another and determine where the 'the balance of convenience lies'.....***

In those cases where the legal rights of the parties depend upon facts that are in dispute between them, the evidence available to the court at the hearing of the application for an interlocutory injunction is incomplete. It is given on affidavit and has not been tested by oral cross-examination".

At p. 407

'It is no part of the court's function at this stage .. to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law.. These are matters for trial.'

29. I note from the above case that *'the court must no doubt be satisfied that the claim is not frivolous or vexatious in other words, that there is a serious question to be tried.'*

30. The claim by the 1st & 2nd Defendants in this application regarding their interest in Land Portions 71 & 73 is not supported by any evidence on the materials before me. It gives me the impression that it is a recent invention, based on their mistrust of the relevant government department, in this case, the Department of Lands Survey, and to justify the Defendant's encroachment of her building foundation on Land portion 88 into land portion 71. As I noted in my judgment in *Anita Harris v Dana Aliklik* ; Civil Action No. 06 of 2021, -

' . There is very clear and authoritative evidence that the Plaintiff was relying on some incorrect information fuelled by her ignorance. This is the second case that has come before me where the litigants have displayed a mistrust for government departments and the work that they do. In this case, the Plaintiff requested for a survey. The survey was done. She did not agree with the survey results. She is not a qualified and registered surveyor. She did not rely on any expert witness to counter the evidence provided by the Director of Lands & Survey of Nauru.'

31. It is the Department of Land Management, through the Director of Lands Survey, that is the authority and custodian of land survey maps on Nauru. Further, it has been 63 years since the determination of the ownership of Land Portion 71. Generations have come and gone. The ownership of shares in the same Land Portion 71 & 73 would have been determined and transferred to beneficiaries over the years. It would not be prudent to consider and restrain the Plaintiff, as a co- landowner from constructing her house on her land portion 71 based on unsubstantiated claims by the Defendants of altered boundaries and ownership of parcels of land some 63 years later.


32. Considering the pleadings and affidavits filed by the parties, the ownership of land portion 71 having been determined back in 1962, the dearth of evidence of the 1st and 2nd Defendants having any ownership rights over the same land portion, no evidence of the 'German map' to support the Defendant's claim, I am not persuaded that the Defendants have a serious question to be tried here.


33. Further, noting the impecunious status of the 1st Defendant as admitted by her in paragraph [26] of her affidavit, I find that damages will not be an adequate remedy for the Plaintiff should the Defendant succeed in this matter. It follows that the balance of convenience favours the Plaintiff here.

CONCLUSION

34. The application by the 1st and 2nd Defendants to discharge the injunction granted by this Court on 17th September 2024 is dismissed. Any subsequent orders granted after that date are discharged.
35. I amend the Orders that I had granted on 17th September 2024 to read:
- i. 'The Defendants, their agents and servants are severally and jointly restrained from interfering with the Plaintiff's clearing of access on land portion 73, the construction of the Plaintiff's house on Land portion 71, Anetan District, and the Plaintiff's enjoyment and use of the same land, until the finalisation of the claim in Civil Case No.07 /2024.
 - ii. The Plaintiff, her agents and servants are severally and jointly restrained from interfering with the Defendant's enjoyment and use of their property described as Land Portion 88, Anetan District.
36. Costs of \$500 to be paid by the 1st and 2nd Defendants to the Plaintiff, within 21 days of this Ruling.
37. The matter will be called for Mention before the Registrar on Thursday 18th December, 2025 at 10am.

DATED this 24th Day of November 2025.


Kiniviliame T. Keteca
Judge



The seal of the Supreme Court of Nauru is circular with a blue border. The outer ring contains the text 'SUPREME COURT OF NAURU' at the top and '1977' at the bottom, separated by two stars. The inner circle features a central emblem with a shield, a scale of justice, and a book, surrounded by the words 'ANADROK' and 'TAMAL' at the top and 'COMPO' and 'WEL' at the bottom.