



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

Civil Appeal Case No. 01/2024

BETWEEN : MELA TEMAKI Applicant
AND : ESTATE of SIMON AKU
Adam Aku (a minor) as the beneficiary 1st Respondent
AND : POLLY AKU Trustee
(in her capacity as a friend of Adam Aku) 2nd Respondent
AND : NAURU LANDS COMMITTEE 3rd Respondent

BEFORE: **Keteca J**

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

DATE OF RULING: **30th January 2026**

CITATION : Mela Temaki v Estate of Simon Aku & Ors

KEYWORDS: Stay Pending Appeal

APPEARANCES:

COUNSEL for the

Applicant: V. Clodumar
1st Respondent: R. Tagivakatini
2nd Respondent: S. Kamatura

RULING

BACKGROUND

1. In Gazette No. 162 dated 18th August 2020, the Nauru Lands Committee (NLC) distributed, intestate, the estate of Simon Aku. The beneficiary was Adam Aku, the adopted son of Simon Aku. The Applicant appealed this distribution to Adam Aku under Section 7(1)(a) of the Nauru Lands Committee Act 1956. On 02nd December 24, this court dismissed the appeal of the Applicant/Appellant.

2. On 23rd December 24, the Applicant filed an appeal in the Nauru Court of Appeal and an *ex parte* Summons in this Court seeking a stay of the execution of the 02nd December 24 judgment. I granted an interim stay order on 02nd January 2025 pending the determination of this application being determined *inter partes*.
3. A preliminary issue before me is the addition of Polly Aku by the Applicant as a 2nd Respondent in this matter. She was not a party in the appeal in the Supreme Court. I agree with Counsel for the NLC that this is contrary to Rule 29 of the Court of Appeal Rules 2018 (**the Rules**) relating to 'intervention by a non-party.' Consequently, Polly Aku, as trustee for Adam Aku and referred to as the 2nd Respondent is struck out as a party. The NLC becomes the 2nd Respondent.

THE APPLICATION

4. Section 17 of the Nauru Court of Appeal Act 2018 provides:

'Stay of execution of judgment, decision or order'

 - (1) Subject to Part 7, the Court shall have the jurisdiction and power to stay the execution of any judgment, decision or order of the Supreme Court until the final determination of the appeal or such further or other orders the Court may deem fit.
 - (2) A party may apply for the discharge or variation of an order granting stay on the grounds of change of circumstances from the time the decision to stay was granted.'
5. Rule 12 of the Rules govern applications for stay of execution or proceedings. The Rule provides:
 - (1) An appeal shall not operate as a stay of execution or proceeding unless ordered by the Supreme Court or the Court.
 - (2) Where an intended appellant or appellant seeks an order for stay of execution or proceeding against the judgment, decision or order of the Supreme Court, before or after filing of the notice of appeal respectively, he or she may file and serve:
 - (a) a summons seeking an order for stay of execution or proceeding with any other appropriate orders in Form 3 in Schedule 1; and
 - (b) one or more affidavits in support of the application for stay of execution or proceeding for and on behalf of the applicant.
 - (3) The affidavit in subrule (2)(b) shall include:
 - (a) reasons as to why the failure to stay the execution or proceeding will render the appeal nugatory;
 - (b) the prospects of the success of the appeal or where an appeal is not filed, exhibit a duly completed copy of the proposed notice of appeal in form 1 in Schedule 1;
 - (c) the effect of the stay on a third party;
 - (d) the balance of convenience and competing rights of parties to the intended appeal or appeal filed;
 - (e) a copy of the judgment, decision or order of the Supreme Court;
 - (f) a copy of the decision or order of the Supreme Court where the application for stay was filed but dismissed; and
 - (g) any other matters which the intended appellant or appellant may deem necessary.

- (4) The Court may hear *ex parte* a summons to stay, if the applicant is able to demonstrate the urgency and the Court deems it fit to hear the application and grant such an order.
- (5) The Court, in considering an *ex parte* application for stay shall only grant an interim stay **until such time the application is heard *inter partes***.
- (6) Any respondent or interested party who seeks to oppose the application may file and serve an answering affidavit no later than 7 days or as directed by the Court from the date of the service of the summons and affidavit filed in subrule (2).
- (7) An order granted under this rule shall be served to the respondent or any other interested third parties as soon as practicable or as ordered by the Court.

Do I have the jurisdiction to hear his application?

6. I thank Mr Tagivakatini for his submissions on this issue. In *Tsiode v Adeang* [2021] NRCA; Civil Appeal 07 of 2020 (19th November 2021) Fatiaki CJ (As NCA President) said:

6. By a Court file Minute on 16 December 2020, the stay application was adjourned to 23 December 2020 and the Appellant was granted time to file an affidavit in reply to the Respondents affidavit received that morning in opposition to the stay application.

7. On 23 December 2020 the application was further adjourned to 26 January 2021 and this time, the Court gave directions for the filing of written submissions on the stay application. After drawing counsels attention to **Rule 12** of the Court of Appeal Rules which deals with a “*stay of execution*” which may be : “....*ordered by the Supreme Court or the Court (of Appeal)*”, Khan A/CJ recused himself on the following basis :

“ It is my judgment of which stay is being sought I should disqualify from hearing this matter.”

8. In that regard, I merely observe that the Summons for a stay is intituled and was issued out of the Court of Appeal. It also adopted the Form provided in the Court of Appeal Rules and expressly invokes **Rule 12(2)(a)**. The stay application was also dealt with by Khan A/CJ in his capacity as “*President of the Court of Appeal*” and not as a Supreme Court judge. In this latter regard **Article 57(6)** of the Constitution prohibits the Chief Justice (who is “*ex-officio*” the President of the Court of Appeal), from “*hearing an appeal*” from any judgment or decision of his while sitting as a judge in the Supreme Court.

9. In my view, an interlocutory application to stay the execution of a judgment filed in the Court of Appeal is not an “.... *appeal from a judgment*” nor does the consideration and/or grant of the application constitute the “.... *hearing of an appeal*”. In short, the Article has no relevance to the stay application.

10. Be that as it may, **Section 17** of the Court of Appeal Act 2018 which deals with a stay of execution, gives the Court of Appeal “... *jurisdiction*

*and power to stay the execution of any judgment of the Supreme Court until the final determination of the appeal” Likewise , **Section 27** in **Part 7** which enumerates the powers of a Justice of Appeal includes power at **para(e)** :*

“ (to) stay execution of a judgment , decision or order of the Supreme Court.”

11. From the foregoing , there is no doubt that the Supreme Court as well as the Court of Appeal and a Justice of Appeal has the necessary power to grant a stay of execution of a judgment that has been appealed to the Court of Appeal.

12. Besides a Summons seeking a stay order , **sub-rule(3)** of Rule 12 sets out the minimum contents of the affidavit required to be filed in support of the application which **“shall include”** :

“(a) reasons why the failure to stay the execution will render the appeal nugatory ;

(b) the prospect of success of the appeal..... ;

(c) the effect of the stay on a third party ;

(d) the balance of convenience and competing rights of the parties to the appeal ;

(e) a copy of the judgment of the Supreme Court being appealed ;

(f) a copy of the decision or order of the Supreme Court where the application for stay

was filed but dismissed;

(g) any other matters which the appellant deems necessary ”. (my highlighting)

13. **Para(f)** above, in the absence of the words (“if any”), strongly suggests that a stay application should initially, be made to the Supreme Court and, only if it is dismissed, should an application be made to a single Justice of Appeal.

7. Based on the above Ruling of CJ Fatiaki, I find that I have the jurisdiction to hear this application for ‘Stay of Execution.’

Rendering the Appeal, a Nugatory

8. Counsel refers to the Applicant's affidavit filed on 23rd December 2024 in support of the application in that:
 - a. The estate of Simon Aku was derived solely from the realty estate of Kamtsi Ketner shared equally with the surviving wife, Terog Ketner. [*I note from paragraph 21-*
'If the orders made in the judgment are not stayed, then any income earned from coconut lands and royalties from the mining of phosphate bearing land including Ronwan would be distributed and therefore it will make the appeal a nugatory. The Ronwan part of the estate would be substantive as the injunction has been in place since 10 December 2020 and it would cover at least 20% of the Ronwan royalties due to the estate.']
9. At paragraph 1(i) of the Applicant's affidavit in Reply filed on 21 July 2025, she deposes:
'I am informed by my lawyer and I believe to be true that the action of the learned Judge inviting the Respondents to argue for or against his decision in granting the interim stay is unusual. A stay has been granted under Rule 12 of the Rules of Court of Appeal 2018 which means that the applicant had satisfied the elements set out under the rules to grant stay. It is an interim stay conditioned on the Court of Appeal decision on the appeal. It would be unusual if the decision is reversed on speculation by the Respondents on the outcome of the appeal that is before the Court of Appeal.'
10. This contention by the Applicant is flawed. Rule 12 (5) of the rules specifically provides that 'The Court, in considering an *ex parte* application for stay shall only grant an interim stay until such time the application is heard *inter partes*.' This Rule does not state 'until such time as Court of Appeal decides the appeal. The application for stay is being heard and considered *inter partes* now as per Rule 12(5).

PROSPECT OF SUCCESS OF THE APPEAL

11. Counsel submits that the estate in question was not inherited from the parents of Simon and Polly Aku. The said Polly Aku has no interest in the estate 'as none of the lands came from her biological parents' neither was she 'an immediate family of Simon Aku nor a next of kin in the context of the estate to be determined.' Adam Aku 'is barred by law to inherit the estate by right as he was not legally adopted.'
12. The matter should be reverted to the NLC to 'redetermine the estate under customary practices.

The EFFECT OF THE STAY ON THIRD A PARTY

13. Counsel submits that there are no third parties that would be affected by the stay. NLC is not a third party as its role is limited to one of *amicus curiae*.

BALANCE OF CONVENIENCE & COMPETING RIGHTS OF PARTIES

14. A stay had been granted back in 2020 when the Applicant filed her appeal. This was discharged in the orders flowing from the 02nd December 2024 dismissal of the appeal.

Granting a stay now will not inconvenience any of the parties but if the appeal is successful, 'great inconvenience will be caused to both parties' as the funds would have been spent by Adam Aku. The best course is to refer the matter to the NLC to redetermine the matter.

SUBMISSIONS BY THE RESPONDENTS

15. Counsel for the **2nd Respondent**, the NLC, opposes the grant of a stay here as not allowing the application will not render the appeal nugatory. Counsel adds that the 'Applicant can be adequately compensated' if her appeal is successful. In the affidavit of Juliana Buraman, the Acting Chairperson of the NLC, filed on 10th February 25, she deposes that a stay should not be granted here because:
 - a. Mella Temaki is the stepdaughter of the late Kamtsi Ketner who has no biological link or bloodline connection to Mr Ketner per se;
 - b. Mr Clodumar conceded at paragraph [7] of their supporting affidavit and indicated at the substantive hearing that the late Mr Kamtsi Ketner transferred half of his realty estate to Mella Temaki in 1993. This transfer basically meant that the Appellant had already acquired half of Mr Kamtsi Ketner's estate;
 - c. The current appeal is simply a greedy attempt by Mella Temaki to get the whole of the realty estate (i.e. the other half) at (sic) to the detriment of Adam Aku;
 - d. Adam Aku is in a similar situation as Mella Temaki, that is to say that, both are customarily adopted; and
 - e. Mella Temaki's mother Karaina was neither (sic) not the biological daughter of the late Mr Kamtsi Ketner.
16. Based on the principles of fairness and equal distribution, the NLC awarded Adam Aku the 'rest of the half of the estate in 2020' as Mella Temaki had already received half of the realty estate of Mr Kamtsi Ketner in 1993. 'The effect of awarding Mella Temaki all of the estate would be perceived as an unjust enrichment scenario.'
17. The principle of 'finality' demands that the application be dismissed. This will avoid the adverse impacts including the public doubts on the work of the NLC.
18. Counsel for the **1st Respondent** relies on the affidavit of Polly Aku, the sister of the late Simon Aku. And refers to the *Herman v Deireragea* [2020] NRCA 2; Civil Appeal 01 of 2020 (24 August 2020) case. Jitoko CJ said"

'STAY APPLICATION'

[9] The prospect of success of the appeal weighs heavily in the application for stay. There is numerous case law that adds substance to the exercise of the powers of the Court of Appeal to stay the execution of judgments, decisions, or orders, under Section 17 of the Nauru Court of Appeal Act 2018. It is sufficient to summarize the grounds upon which the Court will consider before it arrives at its decision. They are set out under Rules 12(3) of the Nauru Court of Appeal Rules as follows:

- (a) failure to stay the execution will render the appeal if successful, nugatory;*
- (b) there is some prospect of success of the appeal;*
- (c) the effect of the stay on a third party; and*
- (d) balance of convenience.*

19. The grounds of appeal need to be considered:
- i. That the learned judge erred in law when he deemed Polly Aku as a family of Simon Aku in the context of Regulation 2 of the Regulation Governing the Intestate Estates (aka Administration Order 3 of 1938).
 - ii. The learned trial judge misconceived the decisions in *Gad Demaunga v NLC* [2012] NRSC 17 (26 November 2012) and thereby erred in law in finding that Poly Aku was competent person to decide the estate of Simon Aku which was also contrary to the decision in *Ikir v Duburiya & Ors* [1972] NRSC 1 (969-1982) NLR (B)
 - iii. The learned judge erred in law in not accepting that Maradag Ketner was the father of the Applicant because the name of the father was not registered on her birth certificate despite the fact that her mother Karaina Deireragea (nee Demaunga) stated that Maradag was the father of the Applicant. It is trite law that when a mother who gave birth to her child after living in a defacto relationship with a person, it would recognize the child as being the child born out of the defacto relationship unless there is proof that he is not the father.
 - iv. The learned judge erred in law by declaring the Applicant had no locus standi to institute the appeal as she was not adopted by Kamtsi Ketner. This is in conflict with Section 7(1) of the Nauru Lands Committee Act 1956 where it states- "A person who is dissatisfied with a decision of the Committee may appeal to the Supreme Court against this decision." The Applicant has interest in the estate in question as she holds 50% share in the lands comprising Simon Aku's realty estate. The failure by the Nauru Lands Committee to invite the Applicant was a denial of procedural fairness as determined in *Adam v Nauru Lands Committee* [2011] NRSC 12.
 - v. The learned judge erred in law by determining the appeal instead of remitting back to the Nauru Lands Committee to redetermine the estate of Simon Aku because he accepted that there was a family arrangement and therefore Regulation 3(b) of the Administration Order 3 of 1938 does not apply. The principle of reversion was raised by the Appellant which is part of the Nauruan customary practice and it was decided in *Aliklik v Nauru Lands Committee* [2013] NRSC 8 where there is conflict between the Regulation Governing Intestate Estate 1938 and Section 3 of the Customs and Adopted Laws 1971, the Act overrides the Regulation.

Appeal, if Successful, Rendered Nugatory

20. Mr Tagivakatini refers to the *Herman Deireragea case* where Jitoko CJ granted a stay of an order for the defendant to vacate a dwelling house as if the appeal was successful, it would be nugatory.

21. Counsel then refers to the case of *Tsiode v Adeang* [2021] NRCA 3; Civil Appeal 07 of 2020 (19 November 2021) where Fatiaki CJ, as President of the NCA said:

[32] For present purposes I gratefully adopt the four (4) grounds enumerated by Jitoko CJ in Herman v Deireragea (op.cit) as the relevant factors in the present application:

- *Failure to stay the execution will render the appeal if successful, nugatory;*

[33] In this instance the eviction of the appellant from the disputed house will render the appeal nugatory if it ultimately succeeds and the appellant is unable to immediately recover possession and occupancy of the house.

[40] In light of the foregoing I am satisfied that not only does the appellant have an arguable appeal, but also, the novelty and importance of the matters raised in the appeal are in the public interest and need to be decided by a final appellate Court. I

am also satisfied that the overall balance of convenience' strongly favours the continued maintenance of the appellant's occupancy of the disputed house until the determination of the appeal.

[41] Accordingly and for the foregoing reasons including the absence in the judgment of a date or time by which vacant possession was to be given, the application is granted and the judgment of Khan J delivered on 01 December 2020 is stayed until the final determination of the appeal.'

22. From the above cases, Mr Tagivakatini submits, that the 'nugatory argument' 'should be reserved for cases of vacant possession or building of houses instead of rental income from phosphate- bearing lands or RONWAN payments.'

PROSPECT OF SUCCESS OF THE APPEAL

23. Counsel submits that the 'customary issue of reversion, as applied in the case of *Demaunga v NLC* case does not apply here as in this case, there was a 'family agreement.' In this regard, the success of appeal is 'fairly low.'

EFFECT OF STAY ON A THIRD PARTY

24. On this point, Counsel submits that unlike Herman case where Jitoko CJ found that there were no third parties that would be adversely affected by the stay. In the present case, as it relates to reversion of lands, rental income and RONWAN payments, the third parties will be:

- i. Nauru Lands Committee (NLC);
- ii. Office of the Curator of Intestate Estates;
- iii. Bendigo Bank; and
- iv. Nauru Phosphate Royalties Trust.

25. In support of the NLC being a third party that will be adversely affected by a 'stay,' Counsel refers to paragraphs [16] & [17] of the affidavit of Juliana Buraman, the Acting Chairperson of the NLC, filed on 10th February 25, where she deposes:

*[16] That the principle of **finality** demands the stay application be dismissed as there needs to be finality in NLC's determination as a statutory decision- making body or quasi- judicial body.*

[17] That the effect of granting the stay application on NLC would gravely be affected in terms of invoking public doubts on the principles we as NLC's successors apply in our determination. Other adverse impacts include:

- a. delay in execution of the judgment;*
- b. credibility and authority of NLC will be questioned by general members of the public;*
- c. NLC's board members would be indecisive and less confident in terms of land determination. Our members could become more reserved and unwilling to determine land matters in a timely manner. This means more matters piling up after the other and fewer estates being determined which leads to no distribution for the beneficiaries;*
- d. NLC's records would be rendered inconclusive and questionable resulting in chaos in our system; and*

e. the administrative burden due to ongoing ordeals of court litigation related to time consumption, preparation, printing and attention on this matter concerning the stay hearing and the appeal.

BALANCE OF CONVENIENCE

26. Counsel submits that Adam Aku has not ‘benefitted from his father’s estate for over 6 years. This has affected his welfare, well-being and upbringing.
27. Counsel adds that the Applicant has not shown any ‘practical difficulty that she faces nor has she shown the inconvenience’ in the distribution of the royalty payments in Simon’s estate.

CONSIDERATION

28. I thank Counsels for their submissions. Before considering the law relating to stay of execution under Rule 12 of the NCA Rules 2018, I will deal first with the status of the Applicant who keeps referring to the late Kamtsi Ketner as her grandfather. This consideration is to emphasize the significance and importance of the NLC’s powers under Section 6 of the NLC Act and the need, for the NLC, in the exercise of those powers, to ‘determine questions as to the ownership of, or rights in respect of land, to consider the evidence presented to it by claimants in totality and to make determinations based on the evidence with some certainty. An example is what I said in this case in my 02nd Dec 24 judgment-

“The Nauru Lands Committee should be sure of the identities and bona fides of persons that appear before them. This will prevent the inclusion of ‘nicknames’ in their official records.”

29. From her affidavit filed on 23 December 24, the Applicant deposes as follows:
 - a. She is the daughter of Karaina Deireragea (nee Demaunga) and Maradang Ketner- from a defacto relationship. (How long was this defacto relationship? The Applicant does not state. The Applicant’s birth certificate, issued on 18th January 2019 does not state who her father is.)
 - b. Karaina Deireragea (the Applicant, Mela Temaki’s mother) is the daughter of Eidogonit Demaunga.
 - c. Eidogonit Demaunga is the Applicant’s biological grandmother.
 - d. Eidogonit Demaunga was married to Kamtsi Ketner (Simon Aku’s father)
 - e. Karaina Demaunga (Applicant’s mother) is deemed to be Kamtsi’s stepdaughter- (through Kamtsi Ketner’s marriage to Eidogonit Demaunga)
 - f. The Applicant, Mela Temaki is deemed to be Kamtsi Ketner’s granddaughter.
 - g. Maradag Ketner (the supposed father of the Applicant) is the son of Merenbeiya Ketner.
 - h. Merenbeiya Ketner is the sister of Kamtsi Ketner (Simon Aku’s father)
30. I agree with Counsel for the Applicant that the Applicant does have standing to appeal the decision of the NLC that is the subject of this appeal under Section 7(1) of the Nauru Lands Committee Act 1956.

31. Counsel for the Applicant states that – ‘It is trite law that when a mother who gave birth to her child after living in a defacto relationship with a person, it would recognize the child as being the child born out of the defacto relationship unless there is proof that he is not the father.’
32. I note the sworn affidavit of the Applicant’s mother, Karaina Deireragea where she said:
- i. Her mother, Eidiogonit Demaunga, married Kamtsi Ketner. She was engaged to Maratake Ketner, the nephew of her step-father, Kamtsi Ketner.
 - ii. Maratake Ketner was the biological father of her first child, Mella Temaki (nee Demaunga).
 - iii. Kamtsi Ketner is the grandfather of the Appellant, Mella Temaki **under Nauruan custom.**
33. I also note from my judgment of 02nd December 24 that- **Mella’s mother, Karaina Demaunga was 18 years old when Mella was born on 28th May 1980.** I ask, if Karaina Demaunga was living in a defacto relationship and engaged to Maratake Ketner, **why was his name not recorded on Mela Temaki’s birth certificate as her father?**
34. It is apparent from the above that the applicant has no biological link to Kamtsi Ketner (Simon Aku’s father), whom she’s claiming to be her grandfather. It is also apparent that she is the biological granddaughter of Eidiogonit Demaunga, (Karaina Demaunga’s mother) and wife of Kamtsi Ketner.

Rule 12(3) (a) Failure to Stay the Execution Will Render the Appeal Nugatory

35. I have considered fully the submissions by Counsels on this point. I consider the submission by Mr Clodumar that if stay is not granted, the release of funds to the trustees will result in the dissemination of such funds (not necessarily for the benefit of Adam Aku) and if the appeal is allowed, the appeal will render the appeal nugatory more persuasive than the Respondents. I add that based on the materials before me, if the appeal is successful and the NLC awards the estate of Simon Aku to the Applicant, the 1st Respondent is not in a position to repay the monies that the trustees would have spent. The submission by Mr Tagivakatini that this provision on rendering an appeal nugatory ‘should be reserved for cases of vacant possession or building of houses instead of rental income from phosphate- bearing lands or RONWAN payments’ is untenable. It is not supported by case law or the wordings of Rule 12.

Rule 12(3)(b) Prospects of the Success of the Appeal

36. I find that the Applicant has an arguable appeal. In particular, the Applicant, Mela Temaki and Adam Aku as the beneficiary under the 1st Respondent were both adopted under Nauru customs. Clearly, they were not adopted under the provisions of the *Adoption of Children Act* 1965. This raises matters that are important in the public interest. As Fatiaki CJ said in the *Tsiode v Adeang* case, such matters need ‘to be decided by a final appellate Court.’

Rule 12(3)(c) Effect of the Stay on a Third Party

37. I find that the continuing of a stay in this instance maintains a level playing field amongst the parties. I further find that the third parties suggested by the Respondent will not be affected.

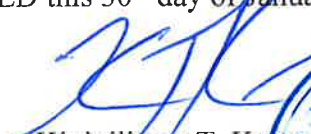
Rule 12(3)(d) Balance of Convenience

38. I find that the balance of convenience favors and leans towards the Applicant in not having to go through further processes to recover trust monies that may have been spent by the trustees for Adam Aku, should the appeal be successful and the NLC rules in her favor. Additionally, it is not certain as to when the Nauru Court of Appeal will sit this year. Extending the stay order will not greatly inconvenience the Respondents.

CONCLUSION

39. For the foregoing reasons, the interim stay order that I granted on 02nd January 2025 continues until the determination of this appeal.

DATED this 30th day of January, 2026


Kiniviliame T. Keteca
Judge

