



IN THE NAURU COURT OF APPEAL  
AT YAREN  
CIVIL APPELLATE JURISDICTION

**Civil Appeal No. 5 of  
2020**  
Supreme Court  
Land Appeal Case  
No. 15 of 2019

BETWEEN

**ANITA HARRIS**

APPELLANT

AND

**NAURU LANDS COMMITTEE**

FIRST  
RESPONDENT

AND

**BENEFICIARIES OF  
PORTION 255**

SECOND  
RESPONDENTS

BEFORE:

**Justice R. Wimalasena,  
Acting President  
Justice Sir A. Palmer  
Justice P. De Silva**

DATE OF HEARING: **27 October 2023**

DATE OF RULING: **22 November 2023**

CITATION: **Anita Harris v Nauru Lands  
Committee and Other**

KEYWORDS: Leave against refusal of appeal out of time; leave to appeal  
out of time; interlocutory order; lack of jurisdiction; Nauru  
Lands Committee

LEGISLATION: Section 3, 19, 20, 21, 22 and 23 (1) of the Nauru Court of  
Appeal 2018; Section 7 of the Nauru Lands Committee Act  
1956; Section 7(1)(b) of the Nauru Lands Committee  
Amendment Act No. 9 of 2012

CASE CITED: Nova Dongobir v Handsome Adumar and Others; Civil  
Appeal No. 03 of 2020 [14 February, 2023]

APPEARANCES:

COUNSEL FOR the Appellant: **Mr. V Clodumar**

COUNSEL FOR the First Respondent: **Ms. B Narayan**

COUNSEL FOR the Second Respondent: **Mr. R Tagivakatini**

## **RULING**

1. This appeal arises from the Supreme Court's ruling on 16<sup>th</sup> October 2020 which denied the Appellant, Anita Harris, an application for leave to appeal out of time in respect of

a Nauru Lands Committee [NLC] decision dated 23<sup>rd</sup> February 2014 published in gazette no. 120 of 2014.

2. A person who is dissatisfied with a decision of the NLC has the right to appeal to the Supreme Court. Section 7 (1)(a) of the Nauru Lands Committee Act 1956 (NLC Act) mandates that such appeal must be formally submitted within a period of 21 days commencing from the date of publication of the NLC's decision in the gazette.
3. The Appellant in this appeal had failed to prefer an appeal to the Supreme Court within 21 days in terms of Section 7 (1) of the NLC Act, and the said Applicant (Appellant) had invoked the jurisdiction of the Supreme Court by way of an application for leave to appeal out of time on 13<sup>th</sup> June 2019. The Supreme Court, after considering the application for leave to appeal out of time, ruled against the Appellant. As a result, the application for leave to appeal out of time was denied.
4. Being aggrieved by the said ruling, the Appellant, filed the instant application in the Court of Appeal seeking to reverse the aforementioned ruling. When this matter was taken up for hearing, learned counsel for the Appellant made submissions first. After the conclusion of the Appellant's submissions, the learned counsel for the 1<sup>st</sup> Respondent raised a preliminary objection with regard to the competency of this appeal. Since the said preliminary objection was in respect of the lack of jurisdiction, the Court decided to deal with it first, before addressing the merits of the case.
5. At that juncture, the Court adjourned the case briefly to deliberate on the matter. Subsequently, the Court decided that the preliminary objection raised on behalf of the 1<sup>st</sup> Respondent is a valid objection. Accordingly, the appeal preferred by the Appellant against the ruling of the Supreme Court was dismissed and the reasons were reserved.
6. We will now give the reasons for the dismissal of the appeal. It was the contention of the 1<sup>st</sup> Respondent that the ruling of the Supreme Court is not a final order and it is an order in the nature of an interlocutory order. The counsel for the 1<sup>st</sup> Respondent asserted that the Appellant is precluded from filing a direct appeal to the Court of Appeal against the said ruling and this appeal cannot be maintained in law.
7. Therefore, the question to be determined is whether the said ruling of the Supreme Court constitutes a final order or is of the nature of an interlocutory order.
8. It is noteworthy that the Appellant's Notice of Appeal dated 09<sup>th</sup> November 2020 explicitly states, "*TAKE NOTICE that the abovementioned **Appellant appeals** to this Honourable Court the Judgment of the Supreme Court granted by the Honourable Justice Khan on 16<sup>th</sup> day of October 2020.*" This is indicative that the Appellant had filed the Notice of Appeal to invoke the appellate jurisdiction within 30 days from the date of the Supreme Court ruling. Furthermore, the Appellant, in the Notice of Appeal, has stated the nature of appeal as "***The Appellant appeals against:** (a) the decision of the Supreme Court in Civil Case no. 15 of 2020.*" Consequently, it is very clear that the

Appellant had preferred an appeal to the Court of Appeal in terms of Section 19 (2) (c) read with Section 20 of the Nauru Court of Appeal Act 2018 (Court of Appeal Act).

9. Section 19 (2) (c) of the Court of Appeal Act stipulates that, “*Subject to subsection (3), an appeal shall lie under this part in any civil proceedings to the Court from any final judgment, decision or order of the Supreme Court on an appeal from a decision of the Nauru Lands Committee on questions of law only.*” It is imperative to note that Section 19 (2) (c) is applicable to “*any final judgment, decision or order of the Supreme Court on an appeal from a decision of the Nauru Lands Committee.*” In this respect, it was submitted by the counsel for the 1<sup>st</sup> Respondent that the Supreme Court’s ruling, for which this appeal was preferred, pertains to an interlocutory application seeking leave to appeal out of time against the determination of the NLC.
10. The learned counsel for the Appellant, in replying to the said preliminary objection, conceded that the impugned ruling made by the Supreme Court is not a final order, but an interlocutory order. The learned counsel for the Appellant further submitted that he relies on Section 19 (3) (f) of the Court of Appeal Act, not on Section 19 (2) (c), to invoke the jurisdiction of this Court.
11. Section 19 (3) (f) of the Court of Appeal Act states:

*(3) No appeal shall lie:*

...  
*(f) without the leave of the Supreme Court, or the Court from an interlocutory judgment, decision or order given by the Supreme Court except in cases:*

  - i. where the liberty of a person or an infant is concerned.*
  - ii. when an injunction is granted or refused.*
  - iii. where the appointment of a receiver is granted or refused.*
  - iv. where a decree nisi in a matrimonial cause or judgment is granted.*
  - v. where a decree nisi or order in an admiralty action determining liability is granted and*
  - vi. which may be prescribed by this Act and other written laws or the rules of the Court.*
12. Accordingly, it is very clear that leave must be sought first from the Supreme Court to appeal against an interlocutory order. Although it was submitted that the Appellant relied upon Section 19 (3) (f) of the said Act, it is observable that the Appellant is not in compliance with section 19 (3) (f). Further, Section 19 (4) of the Court of Appeal Act states “*where leave is required of the Supreme Court to appeal to the Court, the order in which the application shall be made first to the Supreme Court and if declined, to a single Justice of Appeal.*” Apparently, the Appellant neither sought leave from the Supreme Court nor from the single Justice of Appeal before preferring this appeal.
13. In this respect it is worthy to note that the Appellant who sought to obtain leave to appeal against the said ruling of the Supreme Court, failed to file and serve summons

on the proposed Respondents for leave to appeal within 21 days from the date of delivery of the Supreme Court ruling. Instead, the Appellant had filed a Notice of Appeal within 30 days of the ruling of the Supreme Court in terms of Section 22 (1) of the Court of Appeal Act.

14. In view of the aforesaid reasons, it is apparent that the contention of the Appellant's counsel that he invoked the jurisdiction of the Court of Appeal in terms of section 19 (3) (f) of the Court of Appeal Act is not tenable.
15. It was brought to the notice of the Court that a similar matter was determined in this Court in the case of *Nova Dongobir Vs Handsome Adumar and Others Civil Appeal No 03 of 2020* decided on 14<sup>th</sup> February 2023. It was decided in that judgment that the refusal of an application for leave to appeal out of time in respect of a NLC decision is merely an interlocutory order. The Court further emphasized; “*we are not inclined to accept the refusal of appeal out of time application against the determination of the Nauru Lands Committee amounts to a final determination of the civil proceeding within the scope of Part 6 of the Nauru Court of Appeal Act.*”
16. It is significant to note that in *Nova Dongobir* [supra] the Court discussed the criteria that should be applied to determine whether an order qualifies as a final judgment or an interlocutory order. This discussion involved an analysis of English cases, which further contributes to the examination of how to determine the status of a judgment through the application of the order approach test.
17. In this instance, it is essential to recognise that a Nauru Lands Committee determination is not considered final and conclusive due to the unrestricted right of appeal from such a determination. Therefore, a denial of an application to appeal out of time, which is based on a determination made by the Nauru Lands Committee, cannot be regarded as a final determination of the legal issue in question or as a final disposition of the parties' interests.
18. As aptly noted by the learned counsel for the Respondent, *Nova Dongobir* [supra] has definitively settled the expedient procedure to be adhered to when appealing a refusal to extend time to appeal, with regard to a decision of the NLC. It is incumbent upon the parties to strictly adhere to the proper procedure, and a failure to do so inevitably culminates in the dismissal of the appeal, as this Court does not have the power to entertain an application filed without a legal basis.
19. The judgment in *Nova Dongobir* [supra] was delivered by this Court in February 2023, giving the Appellant ample opportunity, if needed, to rectify this issue by seeking leave from the Supreme Court or failing which, from a single Justice of Appeal. However, the Appellant opted not to do so. Similarly, it is noteworthy that the Appellant filed the application for leave to appeal out of time before the Supreme Court, only after about five years from the publication of the NLC's decision. The unexplained and substantive delay, even if the application had been properly filed, casts doubt on its likelihood of success.

20. Be that as it may, considering the precedent established in *Nova Dongobir* [supra], it is evident that the refusal of an application for appeal out of time regarding the determination of a NLC, is an interlocutory order. As such, it does not qualify as a 'final judgment, decision or order of the Supreme Court on an appeal from a decision of the Nauru Lands Committee' that can be appealed according to section 19 (2) (c) of the Court of Appeal Act. As such, the correct procedure would be to comply with Section 19 (3) (f) of the Court of Appeal Act, to first seek leave.
21. Consequently, the Appellant failed to properly invoke jurisdiction of this Court. We see no reason to consider this matter any further. Therefore, we uphold the preliminary objection raised on behalf of the 1<sup>st</sup> Respondent and dismiss this appeal without costs.
22. At this juncture, learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents moved to withdraw the cross appeals, filed on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Since there is no objection by the Appellant, we allow the Respondents to withdraw the cross appeals. Subject to the withdrawal, cross appeals are also dismissed without cost.

Dated this 22 November 2023

Prasantha De Silva J.



  
Justice of Appeal

Rangajeeva Wimalasena J.

I agree

  
Acting President

Sir Albert Palmer J.

I agree

  
Justice of Appeal