IN THE NAURU COURT OF APPEAL
AT YAREN
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 8 of 2020
Supreme Court Case No. 3 of 2018

BETWEEN

DING DING JODIE BAM

APPELLANT

AND

ANGELINA SAMSON a.k.a ANGELINA TEMAKI

RESPONDENT

BEFORE: **R. Wimalasena P. (Ag); Sir Palmer JA; and C. Makail JA.**

DATE OF HEARING: **1 November 2023**

DATE OF RULING: **14 December 2023**

CITATION: **Ding Ding Jodie Bam v Angelina Samson**

KEYWORDS:	Appeal – Determination of the Nauru Lands Committee; Appeal out of time; Restitution – Unjust Enrichment; Effect of Orders of the Court and stay
LEGISLATION:	Section 22(1) of the Nauru Court of Appeal Act 2018; Section 6 and 7(i)(b) of the Nauru Lands Committee Act 1956; Section 13 of Limitation Act 2017; Civil Procedure Rules of Nauru 1972;
CASES CITED:	Minister for Immigration and Multicultural Affairs v. Bhardmaj (2001-2002) 209 CLR 597 at 614 – 615; Morris v. Kanssen [1946] AC 459 at 475; Pavey & Mathews Pty Ltd v. Paul (1987) 182 CLR 221 at 256 – 7
APPEARANCES:	
COUNSEL FOR the Appellant:	**Mr. V Clodumar**
COUNSEL FOR the Respondent:	**Mr. R Tagivakatini**
APPEAL:	~~Allowed~~ | Dismissed

JUDGMENT

1. This is an appeal against the orders of the Supreme Court dated 26th July 2019 and 17th January 2020 respectively, in which the court dismissed the defense of the defendant asserting that the Nauru Lands Committee had no jurisdiction to deal with the personalty estate of Eugene Amwano (deceased), and ordered that the Defendant, her family, relatives and agents to vacate the house (the subject of the dispute) on or about 30th January 2020.

A Brief Background of the case.

2. The Plaintiff (Respondent on Appeal) and Defendant (Appellant on Appeal) are cousin sisters. The father (Eugene Amwano-deceased) of the Plaintiff, and the mother (Esmeralda-deceased) of the Defendant, are sisters. They inherited their shares of the property from the estate of their late mother.

3. The property in dispute relates to the dwelling house which has been converted into a restaurant and more specifically referred to as MJ Rose Restaurant ("MJR Restaurant").

4. The dispute arose from the action of the Plaintiff in the Supreme Court to have the Defendant evicted from the property which she claims belongs to her.

The Claim of the Plaintiff in the Supreme Court

5. The claim of the Plaintiff[1] was filed on the 2nd March 2018. While the claim is somewhat convoluted and verbose it can be summarized as follows.

6. The Plaintiff (Angelina Samson) claims ownership of MJR Restaurant. She says it was given to her as a gift by her late father, Eugene Amawano ["Eugene (deceased)"] on his death. Eugene (deceased) died intestate in 2010.

7. She claims this transaction was endorsed and adopted by the Nauru Lands Committee ("NLC").

8. The determination of the NLC is set out in Gazette Notice No. 517 of 2010, and published on 29th September 2010. At page 6 there is a notation which reads as follows:

> "*NOTE 1: ... House (MJ Restaurant) in Ewa, Angelina Temaki to reside.*"

In "NOTE 2", of the same publication, the usual notice of right of appeal is printed in clear and plain terms as follows:

> "*Those who disagree with the above distribution may appeal to the Supreme Court Registry within 21 days of the publication of the Government Gazette.*"

9. This determination of the NLC is also reiterated in a publication contained in another Gazette Notice No. 524/2010 ("GN No. 524/2010"), in respect of the *Personalty Estate of Eugene (deceased).* At "Note 2", the allocation of the dwelling house was restated as follows:

> "*House Ewa (MJR Restaurant) Go to Angelina Temaki*".

And at the bottom of that Gazette Notice, the same right of appeal for those who may be aggrieved by the determination of the NLC, was set out as follows:

> "*Those who disagree with the above determination of this estate may appeal to the Supreme Court Registry within 21 days of the publication of this Government Gazette Notice.*"

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[1] Respondent in this appeal.

10. The determination of the NLC and rights of appeal regarding the decision of the NLC over the said property cannot be any clearer. The Plaintiff rightly claims, that this determination has never been appealed to the Supreme Court and is therefore effective and enforceable.

11. In or about 2012, an agreement or arrangement was entered into between the Plaintiff and Defendant to allow the Defendant to occupy the house on a temporary basis. There is no written agreement between them, however the Plaintiff claims it was a term of that arrangement or agreement that the Defendant would vacate the premises when notice is given to her.

12. She says that one of the circumstances which may give rise to such a request would be if and when she were to enter into a relationship with a partner. When that happens, she may then require the Defendant to vacate the property.

13. In or about 2014, she entered into a relationship with a partner, which resulted in the birth of a child. Subsequently, she sought recovery of possession of the property. She asked the Defendant to vacate the property, but to no avail.

14. As a result, she filed this claim in the Supreme Court to have the Defendant evicted from her property.

15. The orders sought were *inter alia* as follows:

    (a) An Order that the Defendant delivers to the Plaintiff vacant possession of the Dwelling House described as the MJR Restaurant situated at Lot 157, Aiburi / Eiburi in Ewa District, Nauru.

    (b) An Order for permanent injunction be imposed against the Defendant, his servants and/or agents restraining them jointly and/or severally from entering the Dwelling House described as the MJR Restaurant situated at Lot 157, Aiburi/Eiburi in Ewa District, Nauru.

    (c) An Order for permanent injunction be imposed against the Defendant, his servants and/or agents restraining them jointly and/or severally from interfering with the Plaintiff's occupation of the Dwelling House described as the MJR Restaurant situated at Lot 157, Aiburi/Eiburi in Ewa District, Nauru; and

    (d) The Defendant pays costs of this action to the Plaintiff.

The Defence in the Supreme Court.

16. In her defence, the defendant sought to challenge the ownership rights of the Plaintiff over the property by submitting that the determination of the NLC in 2010 regarding that property was a nullity, *void ab initio*.

17. Other factual parts of her defence have been summarized by the learned Judge in paragraph 7 of his judgment. These are set out as follows:

    (i) The restaurant was built by the mother of Eugene and Esmeralda as a dwelling house and was occupied by different families at different times including the defendant's mother, as well as the plaintiff's father before it was operated by a Chinese as a restaurant.

    (ii) When the restaurant closed in about 2009 it was left unoccupied and was at times vandalized.

    (iii) Eugene then gave the key of the restaurant to the defendant's sister who was told by Eugene that the restaurant belongs to Esmeralda family and for the sister to renovate.

    (iv) In 2010 the defendant moved into and occupied the restaurant and has spent about $6000 in renovations. She was given the key to the restaurant by one of her sisters. She did not ask or obtain permission from the plaintiff.

    (v) The Nauru Lands Committee has no jurisdiction to determine and distribute the personal estate of Eugene. The committee's jurisdiction in 2010 was limited to the ownership of, or rights in respect of land. Its decision and determination of the personal estate of Eugene published in September 2010 was a non-jurisdictional error (sic) and has no effect.

The Decision of the Supreme Court.

18. When the matter came before his Honour, he sought directions from counsel in chambers to narrow down and identify the issue(s) in dispute in the case for determination.

19. By consensus,[2] the issue for determination was narrowed down, although erroneously, to the question of validity of the determination of the Nauru Lands Committee published in September 2010, (see paragraph 7(v) of the judgment).

20. Somehow the court was misled into believing and accepting that the question of the validity of the determination of the NLC was a live issue (when it was not), for the validity and enforceability of its decision had never been challenged and overturned. That determination accordingly remained effective and binding on the parties and it was not open to the Court to delve into it.

[2] See paragraph 13 of the judgment

21. In any event, the learned judge heard submissions and after considering the arguments raised, made the following determinations:

> "**Results**
>
> *(i) The defense by the defendant alleging that the Nauru Lands Committee had no jurisdiction to make the Order is struck out and is dismissed.*
>
> *(ii) Costs for the Plaintiff and the Third Party to be taxed by the Registrar if not agreed upon.*
>
> *(iii) Since the remaining allegations in the Statement of Defense and Counter-Claim do not implicate the third party, the third party is removed and withdrawn from this action.*
>
> (iv) *This matter is adjourned to the 23rd September 2019 for mention....*"

22. It then adjourned and listed the Counter-Claim of the Defendant for recovery of costs of renovation and improvements to the house, on the 4th December 2019 for hearing. It delivered judgment on 17 January 2020.

23. The amount of the counter-claim for costs of renovation etc. to the house was $6000.

24. After hearing submissions, the court also dismissed this counter-claim and made orders *inter alia* as follows:

> "*1. The Counter-Claim is dismissed.*
>
> *2. The defendant, her family, relatives and agents are ordered to vacate the house by Thursday the 30th January 2020.*"

The Appeal.

25. We now turn to the appeal grounds raised before this court. The grounds relied on are three-fold:

> 1. *The judge erred in law when he struck out and dismissed the defendant's defence that the Nauru Lands Committee had no jurisdiction in 2010 to determine that the house sitting on portion 157 in Ewa District; and*
>
> 2. *The judge erred in fact when he dismissed the counterclaim for restitution saying that the Defendant did not have evidence to support her claim that she spent $6000 in repairs to the house; and*

3. *The judge erred in law by ordering vacant possession by the defendant 13 days after the decision was made in contravention of the mandatory 30 days under section 22(1) of the Court of Appeal Act 2018 for the defendant to appeal the decision of the Judge.*

Discussion.

26. The primary issue which the court below was somehow misled into considering, was whether the NLC had no jurisdiction in 2010 to determine that the house sitting on portion 157 in Eiwa District was part of the personal estate of Eugene (deceased). It was argued that the Committee's jurisdiction in 2010 was limited to the ownership of, or rights in respect of land only and not personal estates of the Eugene (deceased). It follows that its decision and determination on the personal estate of Eugene (deceased) published in September 2010, amounted to a jurisdictional error and had no effect.

27. In his submissions on appeal, Mr. Clodumar rightly conceded that no appeal had been lodged within the 21 days required under section 6 of the Nauru Lands Committee Act. However, he erroneously sought to argue that both section 13 of the Limitation Act 2017 and subsection 7(i)(b) of the Nauru Lands Committee Act, gave this Court the jurisdiction to hear the appeal on this point.

28. In his submissions on this issue, the learned Solicitor General correctly pointed out at paragraph 17 of the judgment that since no appeal had been filed within 21 days and no leave of the Court was sought to appeal out of time, the decision of the NLC had crystallized into a final order and not capable of being varied, altered or tampered with by the court or anybody.

29. In his findings and decision on this issue of jurisdictional challenge, the learned Judge correctly held in paragraphs 21 – 26 as follows:

> "*21. The focus of these proceedings is to determine whether the court should entertain the defendants defense of jurisdictional error leveled against the third party the Nauru Lands Committee alleging that the Nauru Lands Committee has no jurisdiction to deal with personal estate of Eugene.*
>
> *22. A decision that involves jurisdictional error is a decision that lacks legal foundation and is properly regarded, in law, as no decision at all*[3].
>
> *23. The defendant could have challenged the decision of the Nauru Lands Committee by way of appeal under section 7(1) Nauru Lands Committee Act or else by way of judicial review proceedings which are not subject to the 21 days limit imposed b section 7(1).*

[3] Minister for Immigration and Multicultural Affairs v. Bhardmaj (2001-2002) 209 CLR 597 at 614 – 615.

24. If there was failure by the Nauru Lands Committee to follow procedure as referred to in paragraphs 14 and 15 above, the Supreme Court in addressing the appeal brought within 21 days could uphold the appeal and pursuant to section 7(2) make orders such as substituting a new decision on merits or set aside the Nauru Lands Committee decision and remit it back to the Nauru Lands Committee for re-consideration.

25. Since the publication of the Nauru Lands Committee decision in Septembe 2010 the defendant has not filed an appeal, has not sought leave of the court to file an appeal out of time and has not challenged the decision by judicial review.

26. The Defendant cannot by these proceedings challenge the validity of the Nauru Lands Committee decisions on the grounds of jurisdictional error. Firstly, there are procedures under the Civil Procedure Rules which must be complied if judicial review is to be pursued. Those have not been complied with.
Secondly, the challenge mounted by the defendant in these proceedings is a subtle attempt to appeal the Nauru Lands Committee decision through the back door."

30. We could not agree more with the reasoning and decision of the learned judge on this issue seeking to challenge through "the back door", the jurisdiction of the NLC, and find no error in his finding on this issue.

31. We simply add as follows. Section 13 of the Limitation Act merely fixes a time limit of 20 years from when an action may be commenced for the recovery of land, "*from the day the cause of action accrued*". Section 13 raises no defence nor gives his client any right to be heard in this court regarding the issue of a jurisdictional error, for no action or proceeding had ever been instituted in the Supreme Court to challenge the decision of the NLC of 2010. Until that is done, it is immaterial.

32. The same reasoning applies to the provisions of subsection 7(i)(b) of the Nauru Lands Committee Act. While it provides for an appeal to be made after the 21 days had expired from the date of decision, by leave of the Court, it did not give jurisdiction to this court to hear the appeal, for no application for leave to appeal the decision of the NLC was ever made pursuant to subsection 7(i)(b) to the Supreme Court.

33. Both provisions accordingly have been misapplied and relied on.

34. With this background in mind, we now deal with the grounds of appeal as raised.

APPEAL GROUND 1. The judge erred in law when he struck out and dismissed the defendant's defence that the Nauru Lands Committee had no jurisdiction in 2010 to determine that the house sitting on portion 157 in Ewa District.

35. We are satisfied the learned Judge was entitled to make the finding he did in dismissing the defence raised by the Defendant that the NLC had committed a jurisdictional error. This assertion could not be sustained in law, for unless the decision of the NLC is overturned or set aside, it is binding on the parties.

36. It is important to keep in mind that the NLC is a creature of statute. Its' powers are set out under the Nauru Lands Committee Act 1956. In particular, at section 6 of the Act which provides as follows:

> "*6(i) The Committee has power to determine questions as to the ownership of, or rights in respect of land, being questions which arise,*
>
> *(a) between Nauruans or Pacific Islanders; or*
>
> *(b) between Nauruans and Pacific Islanders.*
>
> *(2) Subject to the next succeeding section, the decision of the Committee is final.*"

37. It is also important to note that the presumption of correctness as set out in the maxim: "*omnia praesumuntur rite et solemniter esse acta*", that is, "*all things are presumed to be correctly and solemnly done*" applies to the decisions of the NLC. This maxim establishes that acts of a public nature were correctly performed.

38. This maxim was described by Viscount Simmonds LC as "*one of the fundamental maxims of the law*"[4]. As it applies to the decision of the NLC in 2010, until struck down, it remains valid, applicable, binding and enforceable. The Plaintiff accordingly was entitled to seek relief from the Court to enforce her proprietary rights.

39. We find no error in the reasoning and decision of the learned judge in regards to the dismissal of the defence of a jurisdictional error raised by the defendant.

40. The proper course of action to take by the Appellant would be to seek leave to appeal out of time the decision of the NLC under section 7(1) of the Nauru Lands Committee Act, 1956.

41. We note that in 2010, there was no provision for leave to file an appeal out of time under the Nauru Lands Committee Act, 1956. That being the case, any challenge to decisions of the NLC after the 21 days' time period had lapsed, was to file an application for judicial Review under Order 38 of the Civil Procedure Rules of Nauru, 1972.

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[4] Morris v. Kanssen [1946] AC 459 at 475.

42. Since October 2012 however, the Nauru Lands Committee Act, 1956 has been further amended in relation to the appeal provisions to enable an aggrieved party to be able to file an application for leave to file an appeal out of time. Section 7(1) as amended provides:

> *"A person who is dissatisfied with a decision of the Committee may appeal to the Supreme Court against the decision:*
>
> *within 21 days after the decision is published; or*
>
> *with leave of the Court."*

43. This meant that since October 2012, an aggrieved party who has failed to file an appeal within the 21 days, may, by leave of the court file an appeal under section 7(1) of the Nauru Lands Committee Act, 1956. In the circumstances, an application for judicial review may be available only in very limited situations.

44. For the reasons we have set out in this judgment, we are satisfied Appeal Ground 1 should be dismissed herewith.

APPEAL GROUND 2: The judge erred in fact when he dismissed the counterclaim for restitution saying that the Defendant did not have evidence to support her claim that she spent $6000 in repairs to the house.

45. This is essentially a question of fact and entailed an assessment of the evidence adduced in support of or against this claim. The Appellant asserts that the learned judge erred in his determination on this claim for repairs and improvements done to the house during her period of tenancy, or occupancy of the property, by failing to take into account relevant evidence adduced in support of the counter-claim. Had he done so, he would have come to a different conclusion.

46. There are two issues for determination in regards to this appeal ground. First, is the question whether there is credible evidence of repairs that has not been considered, and secondly, whether the Defendant (Appellant) in this appeal, is entitled to be reimbursed for some or all of her expenses in the sum of $6000.

The Decision of the Supreme Court on this issue.

47. There were two issues which the court addressed in the counter-claim. First, is the question of costs expended for the repairs and improvements on the property, and secondly, the issue of unjust enrichment raised in support of the Defendant's counter-claim that it would be unjust for the Plaintiff to retain the benefit of the work done and improvements made without due compensation.

The issue of repair and costs incurred.

48. The issue of repair and costs was dealt with by the learned judge in paragraphs 3-6, 9-10, and 13-16 of his judgment.

49. At paragraph 13 of his judgment he said "*the focus of the determination is whether $6000 was spent by the defendant on repairs. If she did, it is common ground that the plaintiff should compensate her.*"

50. It is not in dispute that the Defendant occupied the house from about 2010 to 2018, a period of some 9 years. The claim for repair and costs incurred was supposedly done during that period.

51. In support of her claim for expenses, the defendant (Appellant) gave evidence and called her brother, Kurt Oscar to give evidence in support.

52. Their evidence in the court below has not been contested. The repair works referred to included new doors to the front and back of the house, new louver frames and glasses on all windows, new ceiling panels to replace missing and damaged panels, electrical repairs and painting of the house. Again it is pertinent to note that these have not been contested.

53. We are satisfied, contrary to the finding and comments of the judge in the court below, that this claim has not been made on a mere "oral allegation" by the Defendant without being supported by evidence. She and her brother both gave oral evidence in lieu of the production of receipts. They were subjected to cross examination and the veracity of their evidence tested.

54. The fact no receipts were produced or a list of items purchased and repair works done provided, or a builder's report obtained, the defendant did give relevant evidence of the expenses incurred and work done. In so far as the learned judge did not take this evidence into account we accept that he erred to that extent.

55. However, even if that was the case, there is a more substantial reason in his judgment for rejecting the counter-claim of the Defendant. We now turn to consider the doctrine of unjust enrichment which was relied on by the Defendant to justify her claim for recovery of expenses and compensation.

Doctrine of Unjust Enrichment.

56. This doctrine was relied on by the Defendant in her counter-claim and touched on by the learned judge in his judgment.

57. The doctrine of unjust enrichment originates from the law of contract and more specifically that governing the principles of restitution. It is now accepted as part of the remedies or relief that a party may seek even where there is no contract.

58. In the common text "Cheshire and Fifoot's Law of Contract[5]" at paragraph 26.1, the learned authors in describing unjust enrichment stated as follows:

> "*The law of restitution is a potential source of additional or alternative rights and obligations for contracting parties. The category of restitution most relevant to contracting parties is that of unjust enrichment. Unjust enrichment provides a potential right of action where a party has paid over money to another party, or transferred a non-monetary benefit, in connection with a contract never formed between them, or under a contract that was invalid when formed or terminated after it was formed. Unjust enrichment is a source of restitutionary obligation, independent of contract[6]. Claims can be made on the basis of unjust enrichment in respect of money or benefits transferred notwithstanding that no contractual right of recovery can be established.*"

59. The learned authors continue in the same paragraph and explain that there are two types of restitutionary claims that are based on unjust enrichment as follows:

- Recovery of money paid to the other party; and
- Recovery of the value of non-monetary benefits transferred to the other party.

60. They continue at the next page (1178) as follows:

> "*Such claims were formerly categorized as claims in quasi-contract (money had and received; quantum meruit or quantum valebat), and rationalized on the basis of an imputed or implied promise. This embellishment is no longer necessary. The High Court has unequivocally indicated that the common basis of recovery in such cases is a general duty imposed by law to make restitution for unjust enrichment.*"

61. They then go on to point out that the modern law of restitution subsumes all those claims previously classified as quasi-contractual and re-categorize them now under claims of unjust enrichment.

62. At the second paragraph, page 1178 they state as follows:

> "*The common elements of an unjust enrichment claim have been asserted to be:*

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[5] Cheshire and Fifoot's Law of Contract 9th Edition. NC Seddon and M P Ellinghaus

[6] Unjust enrichment 'stands as a branch of the law of obligations alongside other obligations such as tort and contract': Edelman and Bant, Unjust Enrichment in Australia (2006) 78.

1. *an enrichment,*
2. *at the plaintiff's expense,*
3. *that is unjust,*
4. *that is not subject to a defence,*
5. *that has a personal or proprietary remedy.*

However, unjust enrichment is not a 'definitive legal principle according to its own terms'. Rather, it is, in the much-quoted words of Deane J in Pavey & Mathews Pty Ltd v. Paul[7]*, (described in 26.6 below), 'a unifying legal concept which explains why the law recognizes, in a variety of distinct categories of case, an obligation on the part of a defendant to make fair and just restitution for a benefit derived at the expense of a plaintiff'.*"

63. In his judgment, the learned judge correctly states the law on unjust enrichment at paragraphs 7 and 8 and continued at paragraphs 17 – 20.

64. At paragraph 17 he notes that the issue of ownership in relation to the house had already been determined when the defendant (Appellant) moved into the house. Secondly, the Plaintiff had also given notice in 2014 to the defendant to vacate the house. Thirdly, she had followed this up by instituting proceedings in court for the eviction of the defendant.

65. Fourthly, he found that the repair works carried out by the defendant were not done at the request of the plaintiff or with his consent. He concluded accordingly, that the repair works were necessary works that were done by the defendant for her convenience, and therefore retained the benefit of it during her tenure of residence.

66. He ultimately ruled, that there is no unjustness or unfairness in what had transpired as to the benefit that may have been conferred (enriched), and dismissed the claim for recovery of costs.

Decision on the issue of unjust enrichment.

67. We are satisfied the learned judge correctly identified the elements pertaining to the issue of unjust enrichment and find no error in his reasoning and determination.

68. We are satisfied he correctly identified for instance, the crucial test of unfairness, or the element of injustice or, some circumstance which may show, *that it would be unfair, unconscionable or inequitable*, for the plaintiff to be allowed to retain the benefit of any repairs or improvements done to the house in the circumstances of this case.

69. We concur with his findings that whatever repair work was done on the property could not be classified as a benefit to the plaintiff, but *a fortiori* were done for the convenience of the

[7] (1987) 182 CLR 221 at 256 – 7.

defendant. We add, that the repair works performed were primarily done as of necessity for the sole benefit and purpose of the defendant during her tenure of residence. As the person in occupation of the property at the requisite time, it was necessary that they were done for her convenience and comfort and ultimately for her benefit.

70. They were not done at the request of the Plaintiff or under any existing agreement between them. It would appear that by that time, notice had already been given to her to vacate the premises.

71. In more common situations, where a tenancy agreement exists, repair and maintenance works, and upkeep of a building would be the responsibility of the landlord or owner of the property. In such situations, any works that needed to be done regarding repairs etc. are normally the responsibility of the landlord. Where any work is done by the tenant, it would normally be with the concurrence of the landlord so that any repair costs etc., can be offset from the rental, or reimbursed by the landlord.

72. That is however, not the case with regards to this property. There was no landlord and tenant relationship, or tenancy agreement. Instead, there was a mere agreement to allow the Defendant to occupy the building for a temporary period of time and significantly, at no cost or rental, because of their close family affinity. That was the understanding it seems in which the arrangement for the Defendant to occupy the house was made.

73. The Plaintiff derived no benefit from the use of the building by the Defendant for that period of 10 or so years. In other words, while the Defendant enjoyed free lodgings (at no cost), it would be expected that any repairs to the building should be done by the defendant at her cost, unless due notice was given to the Plaintiff. The fact this was not done is consistent with and supports the view that any such repairs were done at her behest and for her convenience and comfort and therefore to be borne by her.

74. We are satisfied on the evidence and material before this court, that the claim of unjust enrichment for repair works and improvements done to the house, to be without basis and merit. At least the Defendant could be expected to ensure that the building during her tenure of residence (at no cost) was regularly maintained and looked after. And so even if repair works had been done, we are satisfied the learned Judge was correct in having the counterclaim dismissed outright.

75. It would have been different if the Defendant was renting the property and carried out repairs to the building. In such situation, the Defendant would have a legitimate expectation to be reimbursed for the costs of repair etc., or to be offset from the rental and that it would be unjust to allow the Plaintiff to retain the benefit without due compensation made to the Defendant.

76. We are satisfied, in spite of the fact there is evidence of repairs being done, for the reasons given in this judgment we find the learned judge did not err in law in his assessment of the counterclaim and its dismissal.

Appeal Ground 3. The judge erred in law by ordering vacant possession by the defendant 13 days after the decision was made in contravention of the mandatory 30 days under section 22(1) of the Court of Appeal Act 2018 for the defendant to appeal the decision of the Judge.

77. This appeal ground assumes that any orders for vacant possession should not take effect until the appeal period of thirty (30) days allowed under section 22(1) of the Court of Appeal Act 2018 lapses. That is not the correct position in law. Any orders of the court on delivery take effect immediately and can be enforced thereafter, unless an order for stay of enforcement is obtained.

78. There is always opportunity for the losing party, in this case, the Defendant (Respondent) to run to the court for stay of the orders of the Court.

79. It is also pertinent to note that the Defendant in the court below was cognizant of the application for eviction from the outset. It did not come as a surprise and she should have been prepared all along in the event that the case did not go her way, to either vacate the premises with immediate effect, or to seek a stay of the orders.

80. While the Respondent in this appeal did not contest this ground, we do not find any reason to interfere with those orders for the reasons stated above. This appeal ground accordingly is dismissed as well.

ORDERS OF THE COURT:

1. **Dismiss Appeal of the Appellant.**

2. **Uphold orders of the Supreme Court for eviction of the Appellant herewith.**

3. **Direct that the Appellant is to vacate the premises within 30 days of the order of this Court.**

4. **Award costs of the Appeal in favour of the Respondent.**

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Justice Rangajeeva Wimalasena
Acting President

NAURU COURT OF APPEAL

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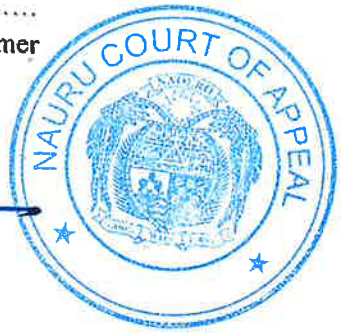
Justice Sir Albert Palmer
Justice of Appeal



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Justice Colin Makail
Justice of Appeal