

IN THE SUPREME COURT OF NAURU

CIVIL ACTION NO. 25/2001

BETWEEN: **WOLVERSTONE TATUM** PLAINTIFF
AND : **EIDODAGE TEIMITSI** DEFENDANT

Ribauw for the Plaintiff
Gadoengin for the Defendant.

Date of Hearing: 25 September 2001

Date of Decision: 28.09.01

DECISION OF CONNELL, C.J.

The Plaintiff had obtained on 6 September 2001 an ex parte interim injunction restraining the Defendant from further construction or development on Portion 114 "Mueon" in Uaboe District until the hearing of the action. An order was made for an urgent hearing which was heard on 25 September 2001.

Upon the conclusion of the hearing and upon the decision being reserved, the injunction was extended to the date of the decision and any further order made consequent upon that decision.

The Defendant, Mrs. Eidodage Teimitsi, a 77 year old widow holds a 1/5 share as landowner of Portion 114 "Mueon" in Uaboe District. Under the Nauru Housing Scheme, a petition was signed by 32 out of the 36 landholders of Portion No. 114 that they had no objection whatsoever for Mrs. Eidodage Teimitsi to build or construct a dwelling upon the land. Mr. Wolverstone Tatum, the Plaintiff, a 1/30 owner did not sign the petition along with three others holding small fractions. His objection was that the Defendant was building a business rather than a dwelling and that, whilst he was prepared to grant an occupancy to his aunt, the Defendant, he was not prepared upon her death to then lose his interest in the land and business which he considered might pass only to her direct beneficiaries.

At the hearing, on the evidence of the Plaintiff, the number of objections had risen by a further eight which represented in fractional terms approximately $\frac{1}{4}$ of the whole. So far as the evidence revealed in the document recording the objectors there was no objection to allowing the Defendant the privilege of exclusive use by her of the business during her lifetime but that, by such licence, it should not result in an extinguishment of the other landowners.

On the evidence before me, it appears clear, and I accept, that all the landowners, except for an infinitesimal group who have not recorded their wishes, are prepared to allow the Defendant, Mrs. Eidodage Teimitsi, to construct a dwelling and business on the land for her exclusive use during her lifetime.

The problem in this case really was what happens upon her death. Without any other circumstances intervening, does the

land retain, upon the death of the Defendant, its present land ownership plus the beneficiaries of her 1/5 estate? Alternatively, does the granting of the privilege or licence to the Defendant somehow change the land ownership so that following her death, all the land including the business and not just 1/5 will be passed to the beneficiaries of the Defendant?

The Defendant asserted that there was Nauruan customary law operating, as allowed by section 3 of the Custom and Adopted Laws Act 1971 which bestowed on the Defendant in such a case to have the land distributed upon her death amongst her beneficiaries alone. The Plaintiff feared such a possibility and was anxious to prevent it.

There is some misunderstanding of this question. Apart from the fact that Mr. Gadoengin for the Defendant did not produce any proof of such custom, there stands in his way

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section 3 of the Lands Act 1976. A fair reading of that section leaves no doubt that any customary law affecting a transfer of interests in land has been altered or limited by the statutory provisions contained in section 3 of the Lands Act 1976.

The unambiguous language of section 3 of the Lands Act 1976 makes it very clear beyond doubt that the existing ownership of land cannot be altered on Nauru by transfer, agreement, sale, lease, or grant without the consent in writing of the President. Any person who attempts to achieve this without consent is subject to a monetary penalty but, more importantly, any transaction in contravention of the statute shall be absolutely void and of no effect. It is, therefore, not possible to make effectively a change to the landholding by any informal customary consensual act. So long as such a consensual act provides nothing more than a privilege or licence during

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the lifetime of the landholder or, for that matter, any non-landowner party the act is not contravened.

To analyze the transaction is important. The landowners, for whatever good reason, are permitting the exclusive use of their land for purposes of business to the Defendant. If it were more than that, such as to upset any present freehold interest, undertake a transfer inter vivos, or even a lease, then to make it effective, it would require the consent in writing of the President pursuant to section 3(3). A simple business arrangement by the landowners giving an exclusive use or licence to the Defendant would not be governed by section 3. But if it extends to a grant or gift or even a lease then it requires Presidential consent in writing. What I have said would, of course, not prevent a transfer inter vivos of land if that was what was intended, with the written consent of the President as occurred, for example, in

the land transferred to Demauw Bill in *Demauw Bill v Pauline Eongen*, Civil Action No. 11/1999.

In this case, as presently recorded on the documentation to the Court, the arrangement is simply a business arrangement for the Defendant that will not outlast her life and will not affect the present freehold estate ownership. Upon the death of the Defendant, any dwelling or business structure on the land, being a fixture, will form part of the land. The new landowners then would be the present landowners and any further beneficiaries consequent upon the death of any of the present landowners, together with the beneficiaries of the 1/5 estate of Eidodage Teimitsi, the Defendant. Any decision on the future of any dwelling or extant business on the land would be decided by a meeting, no doubt, of all the then landowners.

Given the circumstances revealed at the hearing, I am


prepared to accede to the application of the Defendant and discharge the injunction. I shall also instruct the Registrar to transmit this decision to the Nauru Lands Committee.

In accordance with this Decision, **I ORDER** that –

1. the interim injunction granted on 6 September 2001 and extended on 25 September 2001 be discharged forthwith,
2. this decision be forwarded for information to the Nauru Lands Committee,
3. the action be otherwise dismissed.
4. there be no order as to costs.


BARRY CONNELL
CHIEF JUSTICE

A Certified True Copy:


SAMPATH B. ABAYAKOON
REGISTRAR, SUPREME COURT