



## REPUBLIC OF NAURU

IN THE SUPREME COURT  
OF NAURU

Civil Action No. 11/2003

**Between** Peter Ika and Anor. **Plaintiffs**  
**And** L. Stephen & Ors. **Defendants**

Hearing Dates: 18 November 2003, 23/24 April 2004, 6 July 2004, 13 July 2004,  
28/29 September 2004, and 5/6/ October 2004

Pres Nimes for Plaintiffs  
Reuben Kun for Defendants

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### DECISION

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This matter, to determine a right of occupancy of the dwelling house in the Baitisi district, has taken an inordinate amount of court time. It has been associated with two other actions Civil Actions No. 17/99 and No. 2/04, been the subject of seven chambers hearings and been heard in Court on nine separate occasions. Six pleaders and counsel have been involved at different times. The Court has conducted a view. Whilst the matter has its complexities, the time taken to complete the matter has been far too long and has largely been a result of false starts to the action and a seeming lack for one reason or another to obtain the evidence or to confront the real issues between the parties.

The issues at stake are -

- (i) Was the house, at Mangadab Portion CL 209 Baitisi, constructed under the Nauruan Housing Scheme and subject to the Nauruan Housing Ordinance 1957?
- (ii) If so, is Peter Ika a tenant under that scheme?
- (iii) If the house was not subject to the Ordinance, what rights do the defendant landowners or the plaintiff occupant have over the dwelling house?

#### The Nauru Housing Scheme

Under the Nauru Housing Ordinance 1957 ("the Ordinance"), Part II of the Ordinance legislated for the Nauruan Housing Scheme ("the Scheme").

In Section 4 of the Ordinance, the Scheme was defined as follows: -

'The Nauru Housing Scheme' means the scheme under which the British Phosphate Commissioners erected, with the approval of the Minister of State for Territories, three hundred and fifty houses for occupation by Nauruans.

The Ordinance set up a statutory scheme for the erection of these 350 houses. There was no evidence before the Court that established that the house originally built on Mangadab Portion CL 90 Baitsi was a house built under the Scheme. There was simply no evidence of tenancy, no acknowledgement of a tenancy under Section 12, and no evidence of compensation ever being paid to the landowner under Section 18.

The evidence produced indicated that the 350 houses were of type one or type two. The house it appears was not built until about 1965 and all the evidence agrees that it was a type three.

The Scheme under the Ordinance was statutorily limited in scope and the Court is in no doubt that the subject house was not built under the Scheme. Therefore, the Scheme does not apply and the second question whether Peter Ika became a tenant under the Scheme does not have to be answered.

The question that remains to be answered is the third of the above issues, what rights do the present defendant landowners or the plaintiff occupant have over the dwelling house?

### **History of the house and land upon which house was built**

The land upon which the house was built in the mid nineteen sixties, namely, Mangadab Portion CL 90 Baitsi, was owned by Harold Ebwade Stephen, the father of Lawrence Stephen.

The most credible explanation as to what took place in regard to the building of the house was provided by Lawrence Stephen, the son of Harold Ebwade.

He stated that his father had granted Teresia Eperi Agin, a right to build the house on his land. She was a devout Roman Catholic and wished to be close to the church. Harold Ebwade had felt sorry for her for she was a single parent with two sons born to Hedmon Gadeouwa. These sons were Wally Debeiyada Hedmon and Johnny Hedmon.

The house was subsequently built on the Stephen land, though after Stephen Ebwade had died, and Teresia lived as a permitted tenant with her partner Hedmon Gadeouwa and their two sons. The house, a type three, was built, as it appears, by the BPC at the cost of the Nauru Local Government Council. But it was not built under the statutory scheme, and any evidence of the financial or tenancy arrangements that may have been concluded between the Nauru Local Government Council and the occupant or even the estate of Harold Ebwade was not disclosed to the Court. Teresia, Hedmon Gadeouwa and Johnny Hedmon later died, and Wally Debeiyada Hedmon was left in the house. In the late 1980's, Wally built extensions to the house, which took up more of the land, Mangadab CL 90, now owned by the Stephen successors. Those extensions prompted objections by the landowners.

As a result, an arrangement was reached for a transfer of land in 1988. Mangadab Portion CL 90 Baitsi was rearranged and the area enclosing the house was redesignated Mangadab CL 209 Baitsi. A transfer was effected that gave the new Mangadab CL 209 to Wally Hedmon and Hedmon land in Ijuw was transferred to the Stephen interests.

At about the same time, Wally Debeiyada Hedmon married a Kosraean and soon after left to live in Kosrae. Wally Hedmon then allowed Sepe and Joseph Raidenen to reside in the house, where they remained for some twelve years.

However, a transfer back of the land to the Stephen interests was later effected in 1999. The land in Ijuw was returned to Wally Hedmon for CL 209, originally part of CL 90, so that, once again, the Stephen interests had consolidated control of the land on the original Mangadab CL 90 Baitsi.

### **The house after 1987**

Until Wally Hedmon left permanently for Kosrae, he had lived in the Baitsi house, at first, with his mother Teresia and Hedmon Gadeouwa, and then as the occupant himself.

After 1987, he asked Sepe and Joseph Raidinen to occupy the dwelling house on his behalf. They remained there until 1999.

Once the land was transferred back upon which the house stood, the defendant Stephen interests sought the occupancy. The evidence of Sepe Raidinen was that the defendant Lawrence Stephen was planning to move into the house and, therefore, asked her to find another place. In the meantime, Sepe and Joseph Raidinen had spoken with Wally Hedmon in Kosrae who had informed them that Peter Ika was constantly asking him to be allowed to occupy the house.

In 1999, the Raidinens left taking the Hedmon possessions with them and the defendant Stephen contracted with Starret Dongobir to carry out renovations. Dongobir carried out numerous renovations, which cost about \$3,000. After occupancy of the house for a short time, Lawrence Stephen became ill requiring hospital treatment in Melbourne, Australia. The house was locked up. During his absence, Peter Ika and family broke into the house and have occupied it ever since. Currently he is under an order to quit, which has been stayed pending the outcome of this case.

### **The claim of Peter Ika**

The plaintiff Ika also holds an unrevoked enduring power of attorney dated 1 April 1999 for the other plaintiff Wally Debeiyada Hedmon. Peter Ika is a grandchild of Hedmon Gadeouwa through his first marriage with Christina Karl. He is an issue of Martina Ika. He is, therefore, a nephew of Wally Hedmon through the first marriage. For some time as a young boy he stayed with Teresia and Hedmon Gadeouwa at the house in CL 90 Baitsi. He is younger than Wally Debeiyada Hedmon. Whilst he had stayed, as a young boy, with Teresia, and later for some time with Wally Debeiyada Hedmon at Baitsi, he had later moved away and, following his marriage, resided in Boe. It has been already recorded above that when Wally went to Kosrae in 1987, the house occupancy remained with the Raidinens, Sepe and Joseph, for some twelve years.

Whilst Wally Debeiyada and Johnny (deceased) are sons of Teresia and Hedmon Gadeouwa, Peter Ika was not a blood relative of Teresia, but related through the first marriage. He was not legally adopted by Teresia and Hedmon Gadeouwa. His claim for occupancy must rest upon any power of attorney that he holds on behalf of Wally Debeiyada Hedmon.

### **The agreement between Harold Ebwade Stephen and Teresia**

The house, the subject of the dispute, was built on Harold Ebwade's land at Mangadab CL 90 Baitsi. Further, until about 1987, a space perhaps of some twenty-two years, Teresia and her partner, and the two sons born to Teresia, were in clear occupancy. By 1987, Teresia, Hedmon Gadeouwa, and one son Johnny had died, so that Wally, without issue, was the sole surviving member of the direct family group. In 1987, he left with his Kosraean wife to live in Kosrae where he still remains, some seventeen years later.

At issue are the original arrangements made between Teresia and Harold Ebwade for the occupancy of the house placed on the Harold Ebwade land. The evidence is sparse and based largely on recollection by the witnesses. Whilst all the evidence points to the house being built by the BPC at the behest of the Nauru Local Government Council, the initial contract and arrangements are not clear except to say that it is clear to me that it was not a house built under the statutory scheme.

John Demaure, at first, stated that Hedmon Gadeouwa owned the house but later corrected this somewhat when he said the house was not given to Hedmon Gadeouwa but to Teresia. Allen Gadeouwa stated he knew that Hedmon Gadeouwa did not buy the house and that Teresia went and asked Harold Ebwade for a place to build a house, and further that probably the house was given to Teresia rather than Hedmon Gadeouwa. It was Peter Ika's evidence that Hedmon Gadeouwa had asked the Council for the house and that it had been placed on Harold Ebwade's land. He also said he was unaware of the original arrangements as he was not born at the time. His belief, in cross-examination, was that the house belonged to the Nauru Local Government Council.

The evidence of the defendant, Lawrence Stephen, the son of Harold Ebwade Stephen, was to the effect that his father had felt sorry for Teresia a single parent then with two sons and he permitted her to have a house built on his land, which was close to the Roman Catholic church to which she was a dedicated adherent. It was the contention of Lawrence Stephen that Teresia had promised to exchange land upon which the house was built with a portion of her own but she died without fulfilling that promise. In the late 1980's, the defendant Stephen and his eldest sister spoke with Wally Debeiyada Hedmon, the surviving son of Teresia's children to fulfil the mother's promise. That constituted the 1988 transfer of land, as earlier mentioned, but it did not fulfil requirements for it was a piece of land that had a number of families on it as well. As a result and following the departure of Wally Debeiyada Hedmon to Kosrae, there was a transfer back. At that point, it was the contention that the house on the land, now transferred back, was that of the defendants. The Raidinens left and the defendants carried out repairs and occupied the house until the defendant Stephen went overseas for hospital treatment during which time Peter Ika seized the occupancy.

The submission pressed by the defendants was that the house was built on the Stephen land to allow the occupancy by Teresia on a lifetime only basis. On the other hand, the plaintiffs assert that there had been by Harold Ebwade a customary grant of an interest in land and whilst not formally registered it represented a covenant over the land that was known to both the testator and beneficiary and their families. Long occupancy, so the submission relates, testifies to this position.

The 1988 transfer of the land does not support the contention of the plaintiffs that there had been a customary grant, and the transfer back in 1999 would lend some support to the view that the initial arrangement between Harold Ebwade and Teresia was that the house arrangement may have been on a lifetime only basis. Of course, as often happens in Nauru, the assertion of rights is not always immediate and awaits what may be described as necessity. If indeed the house arrangement was on a lifetime only basis why was the right not asserted upon the death of Teresia in 1976? Allowing the natural son to continue in occupation may have been no more than an extended 'grace and favour' arrangement by the beneficiaries of the Harold Ebwade estate.

Indeed, this seems to be the view of the Nauru Lands Committee expressed in its letters dated 24 September 1998 to Marlene Moses, Acting Secretary for Internal Affairs, and dated 16 September 1999 to the Registrar of the Supreme Court. In earlier proceedings, the plaintiffs had raised the issue of whether there had been an abandonment of domicile and the legal questions there arising. However, if, in fact, Wally Debeiyada Hedmon was in occupancy on a 'grace and favour' basis following the death of Teresia, then the continued absence overseas for some seventeen years would, at least, enable the defendant landowners to consider that the permanent continuing occupancy by Wally Hedmon had ceased.

### **Conclusion**

I find on a balance of probabilities as follows: -

1. Whilst the house was originally built in the middle 1960's by the Nauru Local Government Council, it was not built under the statutory scheme and the lack of any administrative evidence before the Court on the government's interest enables the Court to determine that the government has no surviving interest.

2. Harold Ebwade Stephen permitted the house to be built on his land Mangadab Portion CL 90 Baitsi under an agreement with Teresia Eperi Agin.
3. There was no customary grant of land to Teresia or the Hedmon family.
4. Under the Harold Ebwade/Teresia agreement, the house was to be built for her lifetime use with her family.
5. Upon her death, the Harold Ebwade estate permitted the continuing occupancy through her surviving son Wally Debeiyada Hedmon.
6. The transfers of land that took place in 1988 and 1999 give credence to the view that the house was to be in the future occupied by the beneficiaries of the Harold Ebwade Stephen estate.
7. Peter Ika has no rights himself to the occupancy of the house, and his occupancy, under the power of attorney, will cease when the occupancy right of Wally Debeiyada Hedmon ceases.
8. There is no evidence before the Court that Wally Debeiyada Hedmon evinces any intention to resume permanent occupancy of the house.
9. The house situated on land now described as Mangadab CL Portion 209 Baitsi is under the ownership of the defendant beneficiaries of the Harold Ebwade estate, and they are now entitled to the occupancy.

I shall hear the parties on costs and the question of the Order to quit.

  
Barry Connell  
CHIEF JUSTICE  
8 November 2004  
