

**IN THE SUPREME COURT
REPUBLIC OF NAURU**

Civil Case No.14 of 2011

Iba Hiram
Plaintiff

V

Clay Solomon
1st Defendant

H K Logistics
2nd Defendant

JUDGE: EAMES, C.J.
DATE OF HEARING: 22, 25 November 2011
DATE OF JUDGMENT: 28 November 2011
CASE MAY BE CITED AS: Iba Hiram v Clay Solomon and HK Logistics
MEDIUM NEUTRAL [2011] NRSC 25
CITATION:

Contract – Customary grant of ownership of house by plaintiff to her daughter – Landowners sign consent agreement – Plaintiff’s apparent signature attests to her agreement - Daughter enters lease agreement with 2nd Defendant – Daughter dies intestate – First Defendant widower continues lease agreement as next of kin – Plaintiff sues for recovery of rental payments and declaration that she retained all rights to the house - Plaintiff claims her daughter was only granted temporary right of occupation and lease was entered as agent of plaintiff –Plaintiff claims landowners consent agreement procured by fraud and her signature a forgery – Forgery is not established – Claim dismissed.

APPEARANCES:

For the Plaintiff David Aingimea (Pleader)

For the Defendant Vinci Clodumar (Pleader)

CHIEF JUSTICE:

1 This action relates to a house known as MQ29, which sits on portion 23 in Denigomodu District. The plaintiff is one of the landowners of portions 23, 27 and 28 which adjoin each other. In

JUDGMENT

all, there are six houses, two houses on each Portion, being the agreed entitlement of the three families that make up the landowners of the combined lots. MQ 29 is one of two houses which landowners agreed belonged to the plaintiff's family.

2 In about 2003 the plaintiff's daughter, Blueneldi Hiram, who was married and had children to the first defendant, Clay Solomon, moved into MQ 29 with her family.

3 Clay Solomon contends that the premises were badly dilapidated when he and his wife moved in 2003. They moved in because the extended family were concerned with the state of the house. He paid for the costs of extensive repairs then at a Christmas party in December 2004 or 2005 at MQ29, where all the grandchildren and family were present, the plaintiff had announced: "This house I now give to you and Blueneldi, it now belongs to Blueneldi and the kids"

4 Clay Solomon said his wife took steps to ensure that all of the landowners agreed to her owning the house. She approached each landowner with a document, provided by the Lands and Survey department, seeking their signature. Of all of the landowners only three did not sign their consent; all of the others agreed to what the plaintiff had announced.

5 One of the signatures on that document purported to be that of the plaintiff, Iba Hiram. The document, under the heading "Republic of Nauru, Nauruan Housing Project", contains the following statement:-

"We, the undersigned hereunder as part owner of the land named Anibubu portion #23 District of Denigomodu have no objection for Mrs Blueneldi Solomon (Hiram):

1. To own MQ 29 house which was situated in the above portion.
2. To use and build houses for her owned (sic) use.

6 Some twenty names appeared there-under, with signatures beside all names, save three.

7 Both Blueneldi and Clay had worked for Air Nauru, but Blueneldi lost her job in 2006 and she then leased the house to the second defendant, HK Logistics, on 14 June 2006, vacating the premises for that purpose. The family moved to other accommodation.

8 Blueneldi died on 10 September 2009. Clay Solomon claims that in 2010 the plaintiff approached him, suggesting that the rental return should be shared equally between them. He declined.

9 The plaintiff claims that her daughter had been living in MQ 29 only by virtue of a verbal permission given by the plaintiff which was revocable at any time. Clay Solomon contends that full ownership interests in the house MQ 29 had been granted by the plaintiff to Blueneldi for the enjoyment of herself, her husband and her children. He contended that far from it being the case that the house was provided for temporary accommodation of his wife and family, it was an absolute grant. He agreed that the landowner's agreement document referred only to Blueneldi and not to him. He agreed that the grant was made to his late wife and not to him.

10 The plaintiff claims that she had a verbal agreement with her daughter to lease out MQ 29 to the second defendant. The plaintiff claims that the lease agreement which was duly entered was entered by Blueneldi solely as the agent for the plaintiff and that the plaintiff had granted no interest to her daughter on the property such as would have entitled her to lease the property on her own behalf.

11 Upon the death of Blueneldi Hiram on 10 September 2009 the lease continued, with the

payments of rent being made to Clay Solomon in lieu of his wife. In his defence he pleads that the estate of the late Blueneldi Solomon, who died intestate, will be distributed by determination of the Nauru Lands Committee in the event of there being no family agreement. Clay Solomon claims the ownership of MQ 29 as the next of kin of Blueneldi. He agrees that he signed extensions of the lease to HK Logistics after his wife's death.

12 The plaintiff claims damages against Clay Solomon, seeking an amount equivalent to sums paid for rent to Clay Solomon by HK Logistics. The plaintiff seeks a declaration that the lease agreement between the late Blueneldi Solomon (nee Hiram) and the second defendant, is no longer valid after the death of Blueneldi.

13 The plaintiff obtained an interim injunction from the Registrar and now seeks a permanent injunction. An interim injunction was granted on 16 May 2011 restraining HK Logistics from paying any money to Clay Solomon under the lease. On 26th August 2011 the order was varied to allow \$80 per fortnight to be released to Clay Solomon. Although he was receiving a substantial salary as an employee of HK Logistics, in addition to receiving rent the 1st defendant made Mr Solomon contest that the rental payment were an essential factor in his ability to meet the needs of his children. The first defendant had had to make an application for variation of the injunction in the interest of the three children, the plaintiff's grandchildren. Two of the children are disabled, one requiring special care. Clay Solomon wishes to have the interim injunction discharged.

14 The plaintiff recognizes that if the landowners consent document is valid then her contention that her daughter was leasing the property on the plaintiff's behalf, rather than on Blueneldi's own behalf, would have no substance. If the document truly represents the wishes, as then expressed, by the plaintiff and most landowners, it was not in dispute that she could not now revoke her agreement, and to demand the property back.

15 In response to that, the plaintiff has sworn that she did not, in fact, sign the document acknowledging and approving the transfer of ownership to her daughter. She claims that the signature which appears on the document was a forgery perpetrated by either her daughter or Clay Solomon. Mrs Hiram claimed that she had never seen the document before this year, when her pleader showed it to her when it emerged after these proceedings had commenced.

16 The plaintiff maintained those assertions in her evidence before me. She was shown a number of documents on which, as she agreed, her own genuine signature appeared. She agreed the signatures on all of those documents appeared to be identical to the signature that appeared on the landowner's authority document, although she maintained that her signature was nonetheless a forgery.

17 In support of her claim the plaintiff had a further document placed before the landowners this year. She instructed her Pleader to prepare a revocation document. Her son, Livingstone, then took the document to the landowners and invited them to sign. That document reads:-

"Letter of Authority by Landowners

We the undersigned landowners of the land named Anibubu portion No. 23 in Denigomodu District (hereafter referred to as the land) hereby revoke fully in its entirety any grant made by us or assumed to have been made by us with respects to the said land where Blueneldi Hiram was purportedly given ownership by us of the house known as MQ 29, on the said land and further we revoke any authority given to the said Blueneldi Hiram to use and build houses for her own use on the said land. Our previous authority was give under the understanding that Iba Hiram had consented to the previous grant."

18 Some 29 names appear there-under, with seven or eight not having signed.

19 In support of her case, the plaintiff called her son, Livingstone Hiram, who said that he took around the revocation document to the landowners, who told him that they had not known that Iba Hiram's signature had been forged, and that they only signed because they thought she had. One of the signatories, Joseph Hiram, has sworn an affidavit in which he claims that he was given misleading information by Livingstone Hiram, which induced him to sign it. Seven other signatories have deposed, in what amount to "form" affidavits, but seem nonetheless reliable, that their signature on the original document had not been predicated on them believing that Iba Hiram had also signed. Mr Aingimea suggested, from the Bar table, that these affidavits may have been obtained by bribery, but I have no such evidence.

20 Livingstone Hiram denied that he misrepresented the situation when speaking to the landowners, or that he had given them different accounts as to why they should sign the new document.

21 He denied that he had been harassing his mother about her having signed the original document and about her decision to transfer the house to Blueneldi. He denied that the transfer of interest in the house had caused arguments in the family, himself being one opponent of the transfer. He agreed that the family had asked Blueneldi and her husband to move in to the property because the house was being vandalized but he claimed that it was only for a temporary purpose.

22 Although Livingstone Hiram was present at the Christmas party in December 2004 or 2005 which was held at MQ 29, he denied that his mother had made any statement about handing the property over to Blueneldi.

23 In the course of the plaintiff's evidence I had to direct Livingstone Hiram to stop trying to coach his mother. I directed him to depart from the seat he had moved to, in order to sit alongside her as she gave evidence in her wheelchair. I found Mr Livingstone Hiram to be an unimpressive witness.

24 Some of the landowners who signed the document lived in close proximity to the plaintiff and to Blueneldi and her family at the time the document was compiled. If the document had been forged then the risk of exposure of the fraud was high. All it would have taken was for one of the landowners to have a discussion with the plaintiff or a member of the family about the terms of the document that he had signed, for the plaintiff to have then discovered that such a document existed and that her signature had been forged on the document. Mr Aingimea said that most of the landowners (if not all) lived elsewhere on the island and, thus, there was little chance of the forgery coming to the notice of Mrs Hiram. He said that the production of such documents was a commonplace and not likely to generate any discussion. Be that as it may, I remain satisfied that the risk of exposure must have been high, in my opinion, if the document was forged.

25 Clay Solomon was familiar with the plaintiff's signature, as was his wife. They had both seen her sign documents, e.g. travel documents when they were working with Air Nauru Lines and she was travelling. They would fill in the departure and landing cards for her, but she would always sign herself. He says that it is the plaintiff's signature on the original landowners' document. Mrs Hiram said that her daughter often signed her name when conducting her affairs, but Clay Solomon denied that to be so and no witnesses were produced to confirm this practice. Mrs Hiram does not seem to me to be the sort of person who would let other people sign her name on documents, certainly not in circumstances where the 'agent' would produce a deliberate, calculated and very careful forgery, intended to pass as her actual signature.

26 Mr Solomon contends that this action represents a vindictive response by the plaintiff to an argument they had about her contact with her grandchildren. In 2008 he had taken the children to the plaintiff's house and she asked for them to have extended stays with her. In particular, she wanted

her granddaughter Brittany to remain with her. Clay Solomon and Blueneldi agreed to that and she stayed for a weekend. The plaintiff then asked if she could keep Brittany with her further, and they agreed to that. The plaintiff then asked that Brittany stayed for even longer periods with her, to keep her company. Blueneldi was upset about that proposal.

27 After Blueneldi died on the 10th of September 2009 the children all remained with Clay Solomon, except for Brittany, who spent close to a year with her grandmother, at the request of the grandmother.

28 As noted earlier, in 2010, Clay Solomon said the plaintiff asked him to split the rent on MQ 29 with her, but he refused. He helped her with an airfare, paying her \$1200 dollars, but she remained angry about not seeing enough of Brittany. On the 1st of January 2011 he brought all the children to the plaintiff's house, but not Brittany. He told the plaintiff that Brittany had a skin infection. The plaintiff was deeply upset and accused Solomon of lying. He said in his evidence that she then threatened that she would take everything away that she'd given to Blueneldi, and all of the things that had belonged to her. From that point on, things became bad between them and on the 5th of January 2011 she wrote a letter saying that she revoked everything that she'd given and had transferred to Blueneldi.

29 The letter of 5 January 2011, addressed to Mr Solomon, reads:-“This letter is to notify you that I hereby revoke the authority assigned my late daughter Blueneldi Solomon regarding the use of portion No. 23 Denigomodu District, specifically house No. 29. I am also revoking any and all other assignments I may or may not have signed with my late daughter in regards to use of our late family land. I will be following up this letter with information regarding how I intend to utilise this property”

30 A copy of that letter was sent to HK Logistics. Mr Clodumar submitted that this letter demonstrated that the plaintiff was aware of the existence of the landowners' agreement document. Mr Aingimea submitted that it proved the contrary, because it made no reference to the landowners and assumed she was exercising merely a personal authority to revoke approval for temporary possession. I am not persuaded by one or other argument, but what is clear is that the plaintiff was reacting very strongly to some stimulus.

31 It would be an extreme emotional reaction in response to the perceived denial of further contact with Brittany, if that belief provoked the plaintiff to try to revoke what had been an absolute grant to her daughter of MQ 29. That the plaintiff was capable of reacting with such emotional disproportion was demonstrated when she gave evidence. Questions put to her about the dispute concerning Brittany evoked an extreme emotional reaction. That no doubt reflects her genuine perception that she has been acting in the interests of her grandchildren, but it also reflects the depth of her sense of betrayal.

32 The plaintiff, in my view, was not a persuasive witness. I do not accept her claim that her signature was forged. When presented with a document written by her daughter in her own hand the plaintiff claimed that she did not recognize her daughter's writing, which I find difficult to accept when her daughter had assisted her in her business affairs. She was determined to deny that she had indeed signed the original document. My own comparison of the various genuine signatures with the disputed signature makes me confident that they are identical. It would be a difficult signature to forge. The onus of proof is on the plaintiff to satisfy me that her signature was forged. She has failed to do so.

33 I'm satisfied, therefore, that not only had all interest in MQ29 been handed over on a permanent basis to Blueneldi by her mother, but also that her mother had confirmed her agreement to that by signing the authority document with the other landowners.

34 Accordingly, she had given up her interest in the house and had no claim on the rental payments which had been received by virtue of the lease with HK Logistics.

35 Subject to any other arguments, the injunction should be cancelled and the plaintiff's claim should be dismissed.

36 Mr Aingimea foreshadowed that there might be issues as to whether Clay Solomon, as a non-Nauruan, was entitled to be the lessor or gain the benefit of rental from the property. The question of distribution of Blueneldi's estate will need to be resolved by the Nauru Lands Committee if agreement is not reached within the family. I put those issues to one side. They may not arise. What no one disputes is that the three children will have an interest in their mother's estate. What is also clear, in my opinion, is that the plaintiff gave away her interest in the house.

37 Orders:

- 1) I declare that when Blueneldi Hiram entered a lease agreement with HK Logistics on 14 June 2006 she did so as the owner of the house MQ29, and not as an agent of her mother, Iba Hiram.
- 2) I order that the Interim Injunction granted on 16th May 2011, as varied on 26th August 2011, be discharged.
- 3) The plaintiff's claims are dismissed.

The Hon Geoffrey M Eames AM QC
Chief Justice
28th November 2011