



## **RULING**

1. This is an application for interim injunction by the Plaintiff to restrain the defendants from paying out capital to the beneficial owners under the RONWAN Consolidation Act 2014.
2. The Plaintiff's case is that all the Plaintiffs and maybe others who are not parties to this proceeding are entitled to payment of interest as provided for in the Nauru Phosphate Royalties Act 1968 and 1990. The Plaintiffs are known as lifetime interest only and were paid interest on the Capital that has been invested since 1968.
3. Parliament passed RONWAN Consolidation Act 2014 which was certified on 29 October 2014, the effect of which is to repeal provisions of Nauru Phosphate Royalties Act 1968 and stop paying interest to the lifetime owners.

## **PLAINTIFF'S APPLICATIONS**

4. I will briefly outline the applications made by Mr. Clodumar on behalf of the Plaintiff which is as follows:
  - a. Mr. Clodumar made an ex-parte application on the 31 October 2013. The matter was listed before the Chief Justice Madraiwiwi and he stated that Counsel should properly frame the affidavit with correct titles and supporting affidavit;
  - b. The matter again came before the Chief Justice on 3 November 2014 by way of an ex-parte application and the Chief Justice held the application to be irregular in that the Counsel was seeking to intervene on behalf of clients and it was ordered that it should be properly instituted by the actual parties who would be litigants in this matter;
  - c. This matter was brought back before the Chief Justice later on the 3 November 2014 when he ordered that the application should be heard inter-parte on 6 November 2014 at 9am. He further ordered that all the defendants were to be served;
  - d. I note that the first defendant was served on the morning of the 6 November 2014 and the second defendant was not served;
  - e. I adjourned this matter to today and the first defendant was served and Ms. Lekanaua appeared on its' behalf;
  - f. The Plaintiff's application was not properly formulated in that no undertaking was given as to damages which are a basic requirement of an injunction application. None of the parties took objections to this matter until I raised it and by then the arguments were completed.
5. The Plaintiff is not seeking an order for injunctions against the second defendant. Mr. Clodumar concedes that he is precluded from doing so by virtue of section 14 (2) of the

Republic Proceedings Act 1972, but he was seeking an order for injunction against the first defendant. Section 14 (2) reads as follows:

*“The Court shall not in any civil proceedings grant any injunction or make any orders against the President, the Cabinet, a Government Debarment, any instrumentality of the Republic, a Minister or any Officer of the Republic if the effect of granting the injunction or making the order would be to give any relief against the Republic which could not have been obtained in proceedings against the Republic”.*

6. Counsel for the first defendant has argued that the first defendant comes within the definition of “an instrumentality of the Republic” and therefore an order for injunction cannot be made against it. Mr. Clodumar disagrees with this submission. He submitted that the first defendant is a body cooperate and therefore an order for injunction can be made against it stopping it from paying out the capital to the beneficial owners.

7. No material has been placed before me as to whether the first defendant is indeed a body cooperate. I note that in the past injunction orders were made against the first defendant and in particular in action numbers 21 and 23 of 2014. In these cases the action was instituted by the Plaintiffs.

8. Under the Nauru Phosphate Royalties Trust Act 1968, the Nauru Phosphate Royalties Trust described as a body cooperate and in the interpretation section of the Republic of Proceedings Act 1972 “instrumentality of the Republic” is defined as follows:

*“means a body established by or under an Act or Ordinance and Constituted by the President or an Officer of the Republic or by two or more such officers either with or without the President”*

9. Under section 14 (2) I am therefore precluded from making an order against the first defendant as it is an instrumentality of the Republic.

10. In the circumstances the Plaintiff’s application for interlocutory injunction is refused and I make no orders as to costs.

DATED this 7 day of November 2014

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Mohammed S Khan  
Judge