



SUPREME COURT OF NAURU

[CIVIL JURISDICTION]

Land Appeal No. 07/2017
Miscellaneous Cause No. 24/2017

Between **MAWARIN BARROT HARRIS & ORS**

PLAINTIFFS

And **NAURU LANDS COMMITTEE**

1st DEFENDANT

And **BEN. OF ESTATE OF GLORIA HARRIS**
La-Wanda Harris
Klenny Harris

2nd DEFENDANT

Before: Judge Vaai
Plaintiff: A Lekenaua
Defendant: V. Clodumar

Date of Hearing: 06 December 2017
Date of Decision: 06 December 2017

RULING

1. Before the court is an application by the second respondents for an order to vary the interim injunction order granted ex-parte by the registrar on the 22nd September 2017.
2. At the conclusion of the hearing of submissions on the 6th December 2017 I made the order revoking and discharging the interim injunction. The following constitute my reasons for discharging the order.

Background

3. The plaintiffs and the second respondents are beneficiaries of the estate of their late mother Gloria Harris. The assets of the estate consist of the family home at Buada and the deceased's personal assets.
4. The Nauru Land Committee (NLC) in its determination of the distribution of the estate excluded the first named plaintiff as a beneficiary to the personal estate. It also determined that :

"the house is to continue as it is and to be supervised by La-Wanda who is in charge of maintaining the upkeep of the house"
5. Determination by the NLC was, as required by law, published in the Gazette of 18th August 2017.
6. By Notice of appeal dated 6th September 2017 the plaintiffs appealed the decision to the Supreme Court.

Interim Injunction

7. Following the filing of the appeal the plaintiffs also filed an ex-parte notice of motion seeking orders inter alia to restrain the second defendant La-Wanda from exercising any authority over the house or anything to do with the house. It also sought an order restraining the distribution of the estate pending the outcome of the appeal.
8. On the 22nd September 2017 the Registrar granted the interim injunction ex-parte.
9. La- Wanda wants to vary the interim injunction order by removing part 1 of the order which restrains her, by herself or agents from exercising any authority over the house.
10. The application is opposed by the plaintiffs. Counsel for the plaintiffs contended that the balance of convenience favors the granting of the injunction as irreparable injury will be suffered for which damages will not be an adequate compensation. If the personal estate was allowed to be distributed the plaintiff's descendants will be deprived of their entitlements.

Discussion

11. It must be said at the outset that there was absolutely no basis for the interim injunction application to be dealt with ex-parte. There was no urgency involved.
12. Secondly the balance of convenience, contrary to the submission of plaintiff's counsel does not in my view warrant the order granted. The object of the interim injunction is to protect the plaintiff against injury by violation of his rights for which he cannot be adequately compensated in damages if the disputed facts and law were resolved in his or her favor at the substantive hearing. At this stage of the litigation no attempt should be made to resolve disputed facts in the affidavits nor to rule on the legal issues involved. Those matters should await the substantive hearing for resolution.
13. The plaintiff's need for protection must at the same time be weighed against the interests of the defendant to be protected against injury resulting from the

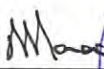
restraint on his or her rights for which he or she cannot be adequately compensated under the plaintiff's undertaking in damages if the court was to rule in his or her favor at the trial.

14. The concerns of the plaintiffs that the personal assets of the estate may be distributed while awaiting the outcome of the appeal was initially in my mind difficult to comprehend simply because normally when an appeal is lodged against a decision that decision is stayed pending the determination of the appeal. However counsel for the respondents has convinced me that is not necessarily the position concerning NLC rulings. If that is the case the plaintiffs should have sought an order in its Notice of Appeal to stay the execution of the determination of the NLC.
15. I am prepared to grant that order and I will grant it in this ruling.
16. In any event even if the personal estate is distributed and the plaintiffs succeed in the appeal, the plaintiffs would be adequately compensated by an award of damages against the other seven beneficiaries; or the payment of future entitlements from the rentals and royalties due to the estate be paid to the plaintiffs.
17. As far as the house is concerned the issue of damages or loss for very obvious reason do not arise. And the plaintiffs are appealing against the ruling of NLC which granted the supervision of the house to the first defendant. That appears on the facts in the affidavits of both parties to be a sensible and practical option as La-Wanda is not only the eldest child of the deceased mother, but she is also living in the house. What the interim order has effectively done by restraining LaWanda is to grant in favor of the plaintiffs one of the orders they are seeking in their appeal, before the Supreme Court has spoken and ruled on the appeal.

Result

- a) The interim injunction is discharged
- b) The distribution of the personal estate is stayed pending the outcome of the appeal
- c) Each party to bear its own costs

This 13th day of December, 2017.


Rapi L Vaal
JUDGE

