



IN THE SUPREME COURT OF NAURU  
AT YAREN

MISCELLANEOUS CAUSE NO. 11/2014

BETWEEN

Diana Itsimaera, Augustine Hedmon, Marlene Moses,  
Bernadette Aliklik, Gloria Harris, Murphy Ribauw  
Rose Amwano and others

PLAINTIFF

AND

Beneficiaries of the Estate of Deceased Robert Debrum

FIRST DEFENDANT

AND

Nauru Lands Committee

SECOND DEFENDANT

Before: Khan ACJ  
Date of Hearing: 9 June 2017  
Date of Judgment: 29 September 2017

Case may be cited as: Itsimaera and others v Estate of Debrum and others

**CATCHWORDS:**

Whether an action for judicial review under Order 38 Rule 1 can be filed without leave of the court- whether the action has any legal basis- whether it should be struck out under Order 15 Rule 19 or inherent jurisdiction of the court.

Held- action struck out under inherent jurisdiction of the court.

**APPEARANCES:**

Counsel for the Plaintiff: V Clodumar - Pleader  
Counsel for the First Defendant: P N Ekwona - Pleader  
Counsel for the Second Defendant: J Udit, Solicitor General

## RULING

### INTRODUCTION

1. This is the plaintiff's application to strike out the action pursuant to Order 15 Rule 19 of the Civil Procedure Rules 1972 (CPR).
2. Order 15 Rule 19 states:

Rule 19 (1) The Court in which any suit is pending may at any stage of the proceedings order to be struck out and amended any pleading or endorsement of any writ of summons in the suit, or anything in any pleading or indorsement on the ground that –

- a) It discloses no reasonable cause of action or defence as the case may be;
- b) It is scandalous, frivolous or vexatious;
- c) It may prejudice, embarrass or delay the fair trial of the suit; or
- d) It is otherwise an abuse of process of the Court;

And may order the suit be stayed or dismissed or judgment be entered accordingly, as the case may be.

### BACKGROUND

3. On 11 February 2014, the plaintiff filed an Originating Summons pursuant to Order 38 Rule 1 of CPR for leave to file an application for judicial review to review the decision of Nauru Lands Committee Determination in Government Gazette No. 389/1989 (G.N.45 of 27 September 1989).
4. On 19 May 2014, the plaintiff filed an ex parte application for interim injunction to restrain the payment of Ronwan and the capital to the second defendant.
5. On 26 June 2014 the Registrar, Mr G Leung, granted an interim injunction in the following terms:
  - i) No monies, personality or funds of any description whatsoever are to be paid out, dispersed or removed from the Estate of Robert Debrum until the substantive determination of this matter or until any further orders of the Supreme Court.
6. On 29 September 2014, the plaintiff filed a writ for an order for certiorari seeking amongst other orders to quash the decision of the Nauru Lands Committee in Gazette No. 389 of 1989.

### APPLICATION TO STRIKE OUT

7. The first defendant's application to strike out the action under Order 15 Rule 19 is on the basis that the plaintiff filed the writ for an order for certiorari on 29 September 2014 without leave of the Registrar under the provisions of Order 38 Rule 1.
8. All the parties agree that the Registrar did not grant leave for the filing of the application for judicial review and the application for an order for writ of certiorari was filed without leave of the Court.
9. Mr Clodumar was always under the belief that leave was granted by the Registrar, Mr Leung, for the plaintiff to file the writ of certiorari.
10. On 5 February 2016 the Registrar, Mr Jitoko, clarified that leave was not granted under Order 38 Rule 7 by his predecessor; and he gave the plaintiff leave to the plaintiff to file a fresh application for leave inter partes. The plaintiff filed an inter partes application for leave on 29 February 2016 and no determination was made on that application by the Registrar.

#### CONSIDERATION

11. Order 38 Rule 1 states:

**“NO SUIT FOR ORDER FOR MANDAMUS, ETC; WITHOUT LEAVE**

1(1) No suit for an order for mandamus, prohibition or certiorari shall be commenced unless leave therefore has been granted in accordance with his rule.”

12. Order 38 Rule 1 is very clear in that ‘no suit for an order mandamus, prohibition or certiorari shall be commenced unless leave has been granted’. In this matter the writ of certiorari was filed without leave of the Court ( or the Registrar); so that the writ was filed without any legal basis. The first defendant filed an application under Order 15 Rule 19 to move the Court for a strike out of the application. Under Order 15 Rule 19 the grounds for strike out are limited to cases where:
  - a) no cause of action has been disclosed;
  - b) the action is scandalous, frivolous or vexatious;
  - c) the action may prejudice, embarrass or delay the fair trial; or
  - d) otherwise is an abuse of the process of the Court.
13. Apart from using Order 15 Rule 19 to move the court for the strike out application the first defendant should have stated in the application that it was also made under and pursuant to the inherent jurisdiction of this court.
14. This action has been pending since 2014 with no progress. Under the inherent jurisdiction of this Court, I order that the writ for certiorari shall be struck out as it filed without leave of the Court and in striking out the writ for certiorari the whole action is

struck out and all the orders made in this action are set aside and in particular, the order for interim injunction by Registrar Mr Leung.

15. The striking out of this action does not raise the issue of 'res judicata' as there was never a proper action before the court. The plaintiff is at liberty to file an application for leave to file appeal out of time under s7<sup>1</sup> which has granted this court powers to extend the period of appeal beyond 21 days.

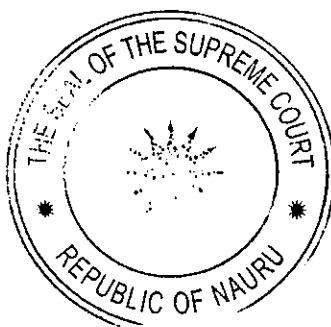
CONCLUSION

16. This action is struck out with no orders as to costs.

DATED this 29 day of September 2017



Mohammed Shafiullah Khan  
Judge



---

<sup>1</sup> Amendment to Nauru Lands Committee Act which came into force on 10 October 2012