



IN THE SUPREME COURT OF NAURU
AT YAREN

LAND APPEAL No. 3 of 2018

BETWEEN	JEROME REWERU & OTHERS	PLAINTIFF
AND	NAURU LANDS COMMITTEE	1 st RESPONDENT
AND	DARCY DEGAIRUK	2 nd RESPONDENT
AND	TSITSI FAMILY	3 rd RESPONDENT
AND	AKARUWO FAMILY	4 th RESPONDENT
AND	MILTON DUBE & SIBLINGS	5 th RESPONDENT
AND	SAM DEIDENANG & SIBLINGS	6 th RESPONDENT
AND	AKIRI FAMILY	7 th RESPONDENT

Before:	Khan, J
Date of Hearing:	28 August 2018
Date of Ruling:	31 August 2018
Case may be cited as:	<i>Reweru v Degairuk</i>

CATCHWORDS:

Land Appeal – Appeal out of time – Application for leave to file appeal out of time to be commenced by way of originating summons in accordance with the provisions of Order 6 of the Civil Procedure Rules 1972. In support of the application the applicant is required to file an affidavit setting out amongst other things the length of the delay, the reasons for the delay, the chances of the appeal succeeding if an extension of time is granted, the degree of prejudice to the respondent if time is extended and blamelessness of the applicant.

Counsel for the Applicant:	J Olsson
Counsel for the 1 st Respondent:	J Udit, Solicitor General
Counsel for the 2 nd Respondent:	PN Ekwona
Counsel for the 3 rd to 7 th Respondent:	K Tolenoa

RULING

INTRODUCTION

1. The applicant filed an application on 16 March 2018 for leave to file an appeal out of time in relation to the determination of Nauru Lands Committee (NLC), which was published in GN 7/1992.
2. The application was filed against the following parties:
 - (i) Nauru Lands Committee (NLC) – first respondent;
 - (ii) Darcy Degairuk and Others – second respondent.
3. The applicant filed the following documents:
 - (i) Originating summons, in which it was stated ‘Notice of appeal out of time’;
 - (ii) Written submissions with the heading ‘Notice of application for leave to file an appeal out of time’;
 - (iii) Affidavit of Jerome Reweru in support, with the heading ‘Notice of application for leave to file an appeal out of time’.
4. On 8 June 2018, an order was made for the applicant to include all parties as respondents, instead of describing them as ‘others’. Ms Olsson filed an amended application in which the second respondent was described as ‘Darcy Degairuk, Tsitsi Family, Akaruwo Family, Milton Dube & siblings, Sam Deidenang & siblings and Akiri Family’.
5. A further order was made on 22 June 2018 for the applicant to list all the parties as individual respondents and Ms Olsson filed a further amended notice in which she named the additional respondents as respondent numbers 3 to 7.
6. Ms Olsson only amended and added respondents 3 to 7 in her written submissions and not the originating summons or the affidavit of Jerome Reweru. When an order for

amendment is made, all documents have to be amended and served, not only one document (written submissions), as was done in this case.

7. It appears that the Solicitor General was only served with the amended notice (written submissions) and that prompted him to raise the issue that an application for leave to file an appeal out of time has to be commenced by way of originating summons, as provided under Order 6 of the *Civil Procedure Rules 1972* (CPR).
8. Ms Olsson submitted that CPR does not apply to Nauru Land Committee determinations and she further submitted that the *Nauru Lands Committee Act* does not require an applicant to commence an application for leave to file appeal out of time by way of an originating summons.
9. Mr Ekwona supported Ms Olsson's submissions and submitted that the *Nauru Lands Committee Act* does not state how the application has to be commenced and he also submitted that CPR does not apply to Nauru Lands Committee matters. Mr Ekwona later retracted his submissions and submitted that an application for leave to file an appeal out of time could be made under Order 38 of the CPR.

CONSIDERATION

10. Mr Ekwona's submissions are at the very least confusing, as on the one hand he submits that CPR does not apply to Nauru Land Committee determinations and on the other he submits that the provisions of Order 38 can be used to file the application. Order 38 deals with judicial review and Order 38 rule 2 states that an application for leave for judicial review must be made by an originating summons *ex parte*.
11. Section 10 of the *Civil Procedure Act 1972* (CPA) provides that:

Every suit shall be commenced in such manner as may be prescribed by rules of court.

12. For civil cases, which include land matters, the procedure set out in the CPR has to be followed.

LAND APPEAL

13. Section 7(1) of the Nauru Lands Committee (Amendment) Act 2012 provides that a person dissatisfied with the decision of the NLC has only 21 days to file an appeal to the Supreme Court. The appeal has to be filed in accordance with the procedures set out in Practice Direction 1 of 2015, which was made by the Chief Justice under the powers vested in him under section 72(2) of the CPA.

14. Order 6 of the CPR makes general provisions for the commencement of a suit or an action. It provides that an originating summons has to be filed to commence proceedings. In this matter the applicants are attempting to file an appeal against a decision made in 1992 and the only way the proceedings can be commenced is by way of originating summons and in this case under Order 6 rule 4.

15. In the originating summons filed on 16 March 2018 the applicant sought the following orders:

- (a) Leave is granted to appeal on the decision of the Nauru Lands Committee;
- (b) The Court quashes the decision of the Nauru Lands Committee;
- (c) Such further orders as may be deemed necessary by this Honourable Court;
- (d) Directs the NLC to make fresh determination of the one-half share of Peter Abuami in "Abotiji", Land Portion 94, Buada District to the Plaintiff.

16. If the court was minded to grant leave for the applicant to file appeal out of time, then it could have only made orders in respect of (a) and (c) and at that stage the court would have had no powers to make orders in respect of prayers (b) and (d) so those prayers should not have been included in the application.

17. In an application for leave to file an appeal out of time, an applicant has to file a supporting affidavit in which he is required to state inter alia: the length of the delay, the reasons for the delay, the chances of the appeal succeeding if an extension of time is granted, the degree of prejudice to the respondent if time is extended and blamelessness of the applicant.¹To enable the court to be able to determine the chances of appeal succeeding the applicant has to file the proposed 'grounds of appeal' with the application.

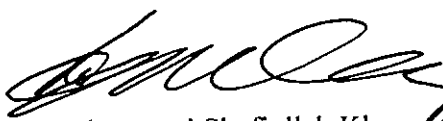
18. Ms Olsson further submitted that her documents filed in this matter, are similar to the documents filed in *Salote Kepae and Others*.² I have perused that file and notice that the proceedings were commenced by way of originating summons. In this case as well, as I have stated earlier, the proceedings was also commenced by way of originating summons. A close examination of the originating summons filed in this case, as well as in the case of *Salote Kepae*, reveals that they are almost identical to Form No. 2 of Appendix A (which is originating summons under Order 6).

CONCLUSION

19. I issue a direction that all applications for leave to file appeal out of time in respect of determination by the Nauru Lands Committee, the following documents are to be filed:

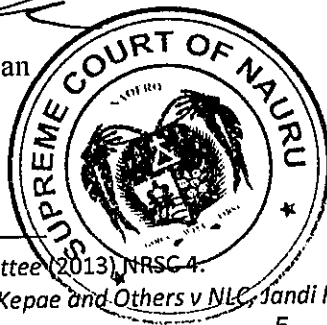
- (i) Originating summons under the provisions of Order 6 rule 4;
- (ii) An affidavit in support setting out the matters referred to in paragraph 17 above together with proposed grounds of appeal.

Dated this 31 August 2018



Mohammed Shafiullah Khan

Judge



¹ *Capelle v Nauru Lands Committee* (2013) NRSC 4.

² Land Appeal 02/2017, *Salote Kepae and Others v NLC, Jandi Kam, Rosalinda Harris and Isca Kam*.