



IN THE SUPREME COURT OF NAURU
AT YAREN

Civil Suit No. 54 of 2016

BETWEEN

Lad Agege

Plaintiff

And:

Silas Denitage

Defendant

Before: Khan, J
Date of Hearing: 9 April 2019
Date of Judgement: 12 April 2019

Case may be cited as: *Agege v Denitage*

CATCHWORDS:

Where the defendant made an application to join additional parties in his counterclaim against the plaintiff pursuant to the provisions of O. 12, r.3 of the Civil Procedure Rules 1972- Where the defendant made an application under O.15, r.19 to strike out the application- whether the joining of the additional parties was connected to the original subject matter of the dispute.

Held: It was not connected to the original subject matter of the dispute and the application was dismissed.

APPEARANCES:

Counsel for the Plaintiff: V Clodumar
Counsel for the Defendant: C Giouba

RULING

INTRODUCTION

1. This is an application by the plaintiff to strike out the defendant's application to join in third and fourth parties in these proceedings. This application is made pursuant to order 15 rule 19 of the Civil Procedure Rules 1972 (CPR) which states as follows:

- 19(1) The Court in which any suit is pending may at any stage of the proceedings order to be struck out or amended any pleading or in the indorsement of any writ of summons in the suit, or anything in any pleading or in the 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 and vexatious;
 - c) It may prejudice, embarrass or delay the fair trial of the suit; or
 - d) Is otherwise an abuse of process.

BACKGROUND

2. The plaintiff and defendant are first cousins and they entered into certain arrangements whereby the plaintiff was allowed to use the defendant's unit known as 'Block 24, Room 4' (unit).
3. The plaintiff and defendant met in October/November 2014 when the plaintiff requested the defendant to allow him to use the unit. At the time of the meeting the unit was vacant and in a dilapidated condition as it was vandalized and was used as a drinking spot.
4. According to the plaintiff the arrangement was to allow the him to renovate the unit and convert the master bedroom into a shop to enable him to generate income for the construction of his house; and also, to live in the remaining part of the unit. After his house was constructed the he was to return the unit to the defendant.
5. Following the arrangement between the plaintiff and the defendant the plaintiff commenced renovations towards the end of 2014 and it was completed by mid-2015. The renovations cost the plaintiff approximately \$19,035.00.
6. Having completed the renovations, the plaintiff opened up a shop and the defendant used to visit him frequently asking for financial and other assistance.
7. The plaintiff after completing the renovation of the kitchen, bathroom, toilet, living area and the remaining bedrooms entered into a tenancy agreement with Eigugu Holding Corporation (EHC) on or about 12 October 2015 for a period of 2 years at a rental of \$1,200.00 per month.
8. Subsequent to the letting of the premises to EHC some differences arose between the plaintiff and the defendant.
9. When the plaintiff was out of the country, EHC removed all its furniture and personal effects and the defendant took up occupation of the unit.
10. After the defendant took occupation of the unit, the plaintiff filed the present claim on 27 July 2016.

PLEADINGS

11. The defendant filed his defence and counterclaim on 31 May 2017 through his pleader Miss Giouba and at paragraph 10 of the counterclaim it is stated as follows:

“[10] That I, my wife and children, family members who came to our house suffered injuries from the plaintiff’s siblings abuse, threats, property damages, activities endangering me and my family’s wellbeing and bullying tactics to rid of us from our rightful dwelling house, Block 24, Room 24.”

12. On 5 June 2017 the defendant made an application to amend his counterclaim to add Minora Caleb (plaintiff’s sister) and Atako Agege (plaintiff’s brother). The defendant alleged that the plaintiff’s sister abused his family and his brother damaged his property. The application to add the plaintiff’s brother and sister as third and fourth defendants was made pursuant to the provisions of O.12, r.3 of CPR which reads as follows:

“1) Where a defendant to a suit, other than suit commenced under s.14 of the Act, who makes a counterclaim against the plaintiff alleges that any other person whether or not a party to the suit, is liable to him along with the plaintiff in respect of the subject matter of the counterclaim, or claims against such other person any relief relating to or connected with the original subject matter of the suit, then, subject to paragraph (2) of rule 6 he may join that other person as a party against whom the counterclaim is made.”

13. On 2 July 2017 the Registrar, Mr Jitoko, made an order for the defendant to file a Summons pursuant to O.12, r.3 of CPR and instead of doing that Miss Giouba filed a ‘Third Party and Fourth Party’ Summons addressed to Minora Caleb and Atako Agege.

STRIKE OUT APPLICATION

14. On 1 March 2018 Mr Clodumar filed the motion under O.15, r.19 of CPR to strike out the adding of the plaintiff’s brother and sister as an abuse of process of Court; and further that their addition as parties was inconsistent with the subject matter of the dispute.

SUBMISSIONS

15. Miss Giouba filed written submissions on 9 March 2018 and she also made oral submissions. Mr Clodumar made oral submissions. Essentially, his submission was that the defendant’s act of adding the third and fourth party had nothing to do with the subject matter of the dispute and therefore is an abuse of process of court.

CONSIDERATION

16. Order 12 rule 3 of the CPR is identical to O.15, r.3 of the Supreme Court Practice 1997. In the explanatory notes at¹ it is stated as follows:

“Para. (1) of this rule is wider in its scope than the former O.21, r.11, since it allows the joinder of a person to the counterclaim made against the plaintiff, not only where that person is liable “along with” the plaintiff, but also where the relief claimed against that person relates to or is connected with the original subject-matter of the action.”


WHAT IS THE SUBJECT MATTER OF THE ACTION?

17. The subject matter of the action is the dispute between the plaintiff and the defendant about arrangements for the renovating of the unit and then for the use of it by the plaintiff. In my respectful opinion the joining of the proposed third and fourth parties is not connected to the ‘original subject’ of the dispute.
18. If the proposed third and fourth party were acting for and on behalf of the plaintiff then the defendant, if he has proof that they were doing so, can seek remedies against the plaintiff in his counterclaim; but if they were acting independently of the plaintiff then he will have to file a separate claim against them.

CONCLUSION

19. In the circumstances the plaintiff’s application to join the third and fourth parties is an abuse of process of court and is dismissed. I make no order as to costs.

DATED this 12 day of April 2019


Mohammed Shafiullah Khan
Judge



¹ Page 194 of the Supreme Court Practice