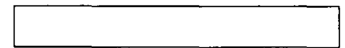
IN THE SUPREME COURT
REPUBLIC OF NAURU



Civil case No.24/2011

Tracey Denuga

Applicant

V

Tonilla Brechtefeld and Kane Amandeus — 1st Respondents
Curator of Deceased Estates — 2nd Respondents

JUDGE:	Eames, C.J.
DATE OF HEARING:	28 November 2011
DATE OF JUDGMENT:	28 November 2011 (Ex tempore); Revised 8 December 2011
CASE MAY BE CITED AS:	Denuga v Brechtefeld and Others
MEDIUM NEUTRAL CITATION:	[2011] NRSC 26

Interim Injunction - Application to restrain payments of interest on personalty - Previous application under Order 38 Civil Procedure Rules 1972 for leave to bring proceedings for judicial review rejected - No reasonable prospects of success on judicial review proceedings based on present material - Balance of convenience weighs against granting interim injunction.

APPEARANCES:	Practitioners
For the Applicant	In Person
For the 1st Respondents	Mr D Aingimea
For the 2nd Respondent	Mr D Lambourne

CHIEF JUSTICE:

1. On 28 November 2011 I heard an application brought by the applicant, Tracey Denuga, seeking an injunction restraining the Curator from distributing Ronwan payments which were due to be paid out on 30 November 2011. The application was brought on late in the day, as a matter of urgency. I gave brief ex tempore reasons for my decision dismissing the application. The transcript of the hearing fully explains my decision, but for the convenience of parties it is appropriate that I both summarise and expand upon those reasons.

2. This action first came on for hearing before me on 21 November 2011. Ms Denuga was then represented by Mr Pres Nimes Ekwona. The first respondents were represented by Mr David Aingimea and the Curator by Mr David Lambourne, the Secretary for Justice. On that occasion Mr Ekwona applied for leave to commence proceedings by way of judicial review, pursuant to Order 38 of the Civil Procedure Rules 1972. Leave could not be granted to commence such proceedings unless an arguable case was demonstrated.

3. A transcript of that hearing fully sets out the discussion that then transpired between Mr Ekwona and myself. I said that the claim was not clearly made out, was vague and uncertain as to the orders which it sought to challenge (but which appeared to have been made up to a decade ago), and was not supported by relevant affidavit evidence.

4. Mr Ekwona conceded that there were substantial difficulties with the case. Counsel for the respondents submitted that the application to commence judicial review proceedings should be dismissed. Mr Ekwona urged me not to dismiss the proceedings but to allow him the opportunity to re-draw the application and to provide further affidavit material in support of the application. I said that, having regard, to the fact that the applicant had been under a disability for some years due to mental illness, I would allow Mr Ekwona the indulgence of an opportunity to reframe and support the Order 38 application. The matter was adjourned back to the list for call over before the Registrar.

5. On 28 November Ms Denuga made application for an injunction restraining the Curator from distributing Ronwon payments, due to be paid out on 30 November. None of the deficiencies in the application for leave to commence proceedings by way of judicial review, which Mr Ekwona acknowledged on 28 November, had been addressed by Ms Denuga for the hearing on 28 November. Furthermore, Ms Denuga had not served the other parties with notice of the application or the summons or affidavit she sought to rely upon.

6. At the outset of the hearing I asked Ms Denuga if Mr Ekwona was representing her in the application for an injunction. She was somewhat uncertain whether that was the case. I offered to stand the matter down so that Mr Ekwona could be contacted to attend the hearing, but Ms Denuga said that she would proceed without legal representation.

7. The application for an interim injunction could not succeed unless the applicant could demonstrate that the proceedings by way of judicial review have reasonable prospects of success and that the balance of convenience favours the granting of an injunction. As Lord Diplock held in *American Cyanamid Co v Ethicon Ltd*:

> "The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial."[1]

8. The governing principles were set out in the judgment of Gummow and Hayne JJ in *Australian Broadcasting Corporation v O'Neill*[2] where their Honours held:

> "The relevant principles in Australia are those explained in *Beecham Group Ltd v Bristol Laboratories Pty Ltd*. This Court (Kitto, Taylor, Menzies and Owen JJ) said that on such applications the court addresses itself to two main inquiries and continued:
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> 'The first is whether the plaintiff has made out a prima facie case, in the sense that if the evidence remains as it is there is a probability that at the trial of the action the plaintiff will be held entitled to relief ... The second inquiry is ... whether the inconvenience or injury which the plaintiff would be likely to suffer if an injunction were refused outweighs or is outweighed by the injury which the defendant would suffer if an injunction were granted.'

9. In this case, on the present materials, the Order 38 application for leave to commence judicial review proceedings could not succeed, primarily because the proceedings for judicial review would themselves have no reasonable prospects of success on the present material. That would be sufficient reason to refuse to grant an interim injunction, however, it was unnecessary for me to make a finding in that regard because, for reasons I will discuss, it was apparent that the balance of convenience would not have favoured the granting of an injunction, in any event.

10. I advised Ms Denuga, that although I would dismiss the present application for an injunction, I would grant her leave to bring a further application for an interim injunction, if she was able to provide relevant evidence and could re-frame her case by addressing the present deficiencies that I had identified to Mr Ekwona. I made an order that the transcript of proceedings on 21 and 28 November be prepared and made available to Ms Denuga to assist her in that endeavour.

11. There were other good reasons why the application for an interim injunction was

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1 [1975] AC 396 at 406

2 (2006) 227 CLR 57 at 81-82 [65].

bound to fail, having regard to the balance of convenience.

12. As became apparent in the hearing on 28 November, there was no point in restraining Ronwan or the Curator from making the proposed payments on 30 November. As Mr Lambourne pointed out during the hearing, what was proposed to be paid out was merely interest since 2005 on the personalty estate of Morde Amandus.

13. Mr Lambourne noted that during the application for leave to commence judicial review proceedings, Ms Denuga had stated that she was not challenging the distribution of the personalty estate of Morde Amandus. Ms Denuga did not deny that to be the case during the hearings of 21 November or 28 November. There would, thus be no purpose served, by restraining payments relating to personalty.

14. The application for an interim injunction is therefore dismissed.

15. On 22 November 2011 Mr Ekwona had conceded that the Order 38 application was not ready to proceed. I ordered that the proceedings be returned to be called over by the Registrar in a directions hearing. The next directions hearing is 19th January 2012. If the revised pleadings and further affidavit evidence was prepared by that date it would be possible to have the Order 38 application listed for hearing in the next sessions of the Supreme Court, to commence on 6 March 2012.

The Hon Geoffrey M Eames AM QC
Chief Justice
8 December 2012