



IN THE SUPREME COURT OF NAURU
AT YAREN DISTRICT
CIVIL JURISDICTION

CIVIL SUIT NO. 37 OF 2021

BETWEEN

EDES JORDAN (nee Batsiua) of Boe District and
FAAFOI AUWOBO of Boe District

Plaintiffs

AND

CHOECHOE TATUM of Aiwo District

First Defendant

AND

RUDOLTH TATUM of Meneng District

Second Defendant

Before: Khan, ACJ
Date of Hearing: 15 May 2023
Date of Ruling: 30 May 2023

Case to be referred to as: *Jordan and Auwobo v Tatum*

CATCHWORDS: Application to strike out claim under order 15 rule 19 of the Civil Procedure Rules 1972 – Whether *locus standi* falls within the ambit of the provisions of order 15 rule 19 – What is *locus standi* – Whether the defendants have satisfied the test for the strike out application.

APPEARANCES:

Counsel for the Plaintiffs: T Tannang
Counsel for the Defendants: J Olsson

RULING

INTRODUCTION

1. The plaintiff filed a writ and an application for interlocutory injunction on 8 December 2021 claiming that they were the owners of land known as “Ubwewewi” Portion 189 Boe District (portion 189) and that the defendants are trespassing on it and they are also building a dwelling house thereon.
2. The application for interlocutory injunction was listed for hearing on 14 December 2021 at 10am.
3. When this matter was called on 14 December 2021 both the defendants were in attendance and stated that they were served on 13 December 2021 and asked for time to seek legal representation. The first defendant stated that he was not building a house but was carrying out renovations to the existing house. Mr Tannang, the plaintiffs’ counsel, agreed to have the matter adjourned to 29 December 2021 to allow the defendants to obtain legal advice.
4. On 29 December 2021 Mr Lee, from the Public Legal Defender’s Office, appeared on behalf of both the defendants and informed the court that he had limited instructions as the defendants wanted to engage a private lawyer and the matter was adjourned to 28 January 2022. The matter was not called on 28 January 2022 and it was further adjourned to 9 February 2022. On 9 February 2022 there was no appearance of the defendants, so the matter was further adjourned to 2 March 2022.
5. On 2 March 2022 Miss Olsson appeared on behalf of the two defendants and informed the court that she would be filing an application to strike out the claim and the matter was adjourned to 10 March 2022.
6. On 3 March 2022 Miss Olsson filed her memorandum of appearance in which she described the first defendant’s name as “Itsiow Tatum”. She also filed a summons to strike out the claim under Order 15 Rule 19 of the Civil Procedure Rules 1972 (CPR) and affidavits in support of that application. In the summons to strike out the claim she named the first defendant as “Itsiow Tatum” and in one of the affidavits filed in support of the application she named the first defendant as “Kristel Itsiow Tatum”.

7. Unfortunately, the first defendant's name was changed by Ms Olsson in breach of Order 17 Rule 1 of the CPR which states:
 - 1) No party to a suit in any Court shall, without leave of the Court, amend the Writ of Summons, the Originating Summons, the Memorandum of Appearance or any pleading or other documents in that suit save for the purpose of correcting a clerical or typographical error.
8. The clerk of the court should not have accepted both the memorandum of appearance and the summons to strike out with names which were different to that stated in the writ of summons and the statement of claim. If the name of the first defendant was wrong then Miss Olsson could have brought it to the attention of the plaintiffs' counsel or could have moved the court to have it corrected.

PLAINTIFFS' CLAIM

9. The second plaintiff claims that her husband's, whose name is not disclosed in the affidavit in support of the application for interlocutory injunction holds one half share in portion 189. She claims that her husband is deceased and that she inherited his share as a life time only (LTO) and her name is shown in exhibit FA2 – a document prepared by a senior data officer from the office of Director of Lands & Survey describing her as LTO of one half share of portion 189.
10. The first plaintiff in her affidavit in support states that she inherited her husband's Solomon Batusua's share in portion 189 and his name is published in GN 24/2012 as holding 1/56th share.
11. The plaintiffs' claim is that the defendants are trespassing on their land portion 189.

STRIKE OUT APPLICATION

12. As I stated earlier, the defendants filed a strike out application on 3 March 2022 in which they sought the following orders:
 - 1) That the Plaintiffs have wrongfully named the 2nd defendant as a party in the claim.
 - 2) That the Plaintiffs have no locus standi.
 - 3) That the Plaintiffs disclose no reasonable cause of action or defence, as the case may be.
 - 4) That the Plaintiffs' claim is struck out.

- 5) Any other Orders that the Honourable Court deems appropriate.
- 6) That the costs of and incidental to this application are costs in cause.

13. On 10 March 2022 I made the following orders:

- a) Miss Olsson to file and serve written submissions within 14 days on the strike out application;
- b) Plaintiffs' counsel to file and serve written submissions in reply within 7 days thereof;
- c) Miss Olsson to file and serve written submissions within 14 days thereof, if any.

14. Miss Olsson did not file her written submissions as ordered on 10 March 2022 and on 5 May 2022 she sought a further 14 days to do so and was granted a further 14 days by consent of Mr Tannang.

15. On 7 June 2022 Miss Olsson informed the court that her written submissions was not complete and sought a further 14 days to file it. She was again granted a further 14 days by consent of Mr Tannang.

16. On 6 September 2022 Miss Olsson did not appear for the defendants and Miss Lekanua appeared on behalf of the plaintiffs and informed the court that written submissions had not been filed by Miss Olsson in accordance with orders of 10 March 2022 and subsequent extensions granted thereafter. She made an application for a hearing date to be assigned for the hearing of the interlocutory injunction. I adjourned the matter to 12 September 2022 for the hearing of the interlocutory injunction.

17. On 12 September 2022 again there was no appearance of Miss Olsson or the defendants and I made an order for service of notice of adjourned hearing on the defendants and adjourned the matter to 4 October 2022. On that day it was further adjourned to 1 November 2022 when Miss Olsson appeared and asked for further time to file written submissions in support of the strike out application and once again by consent of the plaintiffs' counsel she was granted a further 14 days to file and serve written submissions and the matter was adjourned to 7 December 2022.

FRESH APPLICATION TO STRIKE OUT

18. On 14 November 2022 Miss Olsson filed a fresh application to strike out the plaintiffs claim and the application states as follows:

- 1) That the plaintiffs have no locus standi;
 - 2) The claim discloses no reasonable cause of action or defence, as the case may be;
 - 3) Any other orders that the Honourable Court deems fit;
 - 4) Costs in the cause.
19. The fresh application was listed for hearing on 21 November 2022 and there was no appearance of the plaintiffs' counsel and Miss Olsson informed the court that she will file her written submissions by 21 November 2022 and it was filed on that day.
 20. On 7 December 2022 Mr Tannang asked for further time to file written submissions in reply and he was ordered to file and serve written submissions within 7 days and Miss Olsson to file her reply within 14 days thereof and the matter was adjourned to 27 January 2023.
 21. On 27 January 2023 Mr Tannang asked for further time to file written submissions and he was ordered to file it by 30 January 2023 and Miss Olsson was ordered to file her reply by 22 February 2023 and the matter was adjourned to 14 March 2023.
 22. Mr Tannang filed written submissions on 14 March 2023 and Miss Olsson was granted 14 days to file written submissions in reply and the matter was adjourned to 12 April 2023. On that day Miss Olsson sought further time to file a reply and was allowed further time to file reply which was allowed and the matter was adjourned for hearing on 15 May 2023.

HEARING OF THE STRIKE OUT APPLICATION

23. At the hearing of the strike out application I asked Miss Olsson to explain as to why did she file two sets of strike out applications. Her response was that there was a delay in the hearing of the first application, which is why she filed the fresh one on 19 November 2022.
24. The delay in the hearing of the first strike out application was caused by Miss Olsson's failure to comply with the orders made for filing of written submissions dating back to 10 March 2022, which was eventually filed on 21 November 2022. I wish to state that parties cannot simply file multiple applications, as to do so, as was done in this case, would be an abuse of the process of the court.
25. Miss Olsson relied on the fresh application and in her submissions; she stated that the application for the strike out was on the basis that the defendants, her clients, only

received the affidavit in support of the application for interlocutory injunction and not the summons which was listed for 14 December 2021. This cannot be a ground for a strike out application under Order 15 Rule 19 of the CPR. Miss Olsson was quiet adamant that she only received the affidavit from her clients and not the summons and that her clients did not receive the summons. If the defendants did not receive the summons to attend court on 14 December 2021 then it begs the question as to why did they attend the court on that date. The plaintiffs' affidavit did not state the date on which the defendants were required to attend court and the only document that did so was the summons filed, so I draw the inference that the defendants were served with the summons as well as the affidavits in support.

26. The other ground for the strike out application is that the plaintiffs did not have *locus standi*. Mr Tannang in his response relied on the case of *Adam v Amandus*¹ where Fatiaki CJ stated at [14] as follows:

[14] Plainly, there is no such ground as: “no locus standi” nor can it be pleaded as a bare assertion without some supporting facts either challenging or disputing the plaintiff's averments of the factual basis and origin(s) of her claim. For instance, it is not denied that the land and disputed house are part of the late Leslie Adams estate or that the plaintiff is his lawful widow who acquired a life interest in her late husband's estate.

27. In advancing her argument on *locus standi* Miss Olsson submitted that the Nauru Lands Committee did not determine the plaintiffs to be landowners. It is correct that the Nauru Lands Committee has not determined the plaintiffs to be landowners in Gazette No. 24/2012 but the second plaintiff is the LTO of her late husband's share in accordance with the documents prepared by Director of Lands and Survey and the first plaintiff is claiming to have obtained her rights upon the death of her husband.

WHAT IS LOCUS STANDI

28. *Locus standi* is defined² as:

“A place to stand on. To say that a person has no locus standi means that he has no right to appear or be heard in such a proceeding...”

TEST FOR STRIKING OUT

29. The test for striking out is stated in the case of *Polish Ex-Servicemen's Association Sub Branch (No. 5) Canberra and District Inc (A00195) v Polish Ex-Servicemen's Ass*

¹ [2021] NRSC 36; Civil Case No. 25 of 2017 (7 September 2021)

² In Jowitt's Dictionary of English Law 2nd Edition by John Burke

Branch Australian Inc (No. A00025) BC 201309097 (unreported judgement of ACT)³ where it is stated at [22] as follows:

[22] In *ACTW Corporation v Mihaljevic* [2004] ACTSC 59 Master Harper set out the test for striking out a pleading as disclosing no reasonable cause of action at [26] – [27]:

The test for striking out a pleading as disclosing no reasonable cause of action is a high one. Dickson J (sic) said in *Dey v Victorian Railways Commissioners* (1949) 78 CLR 62:

“A case must be very clear indeed to justify the summary intervention of the Court to prevent plaintiff submitting his case for determination in the appointed manner by the Court ... Once it appears that there is a real question to be determined whether of fact or law and that rights of the parties depend upon it, then it is not competent for the Court to dismiss the action...”

30. In *Tamakin v Ronphos*⁴ Eames CJ stated at [14] as follow:

[14] An application to strike out an action will be granted only in a plain and obvious case; the case must be unarguable: *Nagle v Fiedler* [1966] 2 QB 633 at 651 per Salmon LJ; see too *Drummond-Jackson v British Medical Association* [1970] 1 WLR 688. The absence of a cause of action must be clearly demonstrated: *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125, at 129 per Barwick CJ.

31. As discussed above, both the plaintiffs have the right to file the claim against the defendants. In the circumstances, the strike out application is misconceived and is dismissed. I order the defendants to pay the plaintiff’s costs of this application which is summarily assessed in the sum of \$300.00.

32. Mr Tannang had informed the court 10 March 2022 that he will be amending the statement of claim but he has not done so to date. To move this matter forward I issue the following directions:

- a. Plaintiffs to file and serve an amended statement of claim within 14 days;
- b. Defendants to file and serve statement of defence within 14 days thereof.

³ [2013] ACTSC 35

⁴ [2012] NRSC 9

- c. Any reply to the statement of defence to be filed and served by the Plaintiffs within 7 days thereof.

DATED this 30 May 2023


Mohammed Shafiqullah Khan
Acting Chief Justice

The seal of the Supreme Court of Nauru is circular, featuring a central emblem with a shield and a crown, surrounded by the text "SUPREME COURT OF NAURU" and a star at the bottom.