



**IN THE SUPREME COURT OF NAURU  
AT YAREN  
CIVIL JURISDICTION**

Civil Suit No.03 of 2024

**BETWEEN:** **MILTON DUBE of Aiwo District**

**Plaintiff**

**AND:** **LEO SCOTTY of Boe District**

**Defendant**

**BEFORE:** Keteca J

**DATE OF HEARING:** 10<sup>th</sup> June 2024

**DATE OF SUBMISSIONS:** 21<sup>st</sup> June 2024

**DATE OF RULING:** 28<sup>th</sup> June 2024

**CITATION:** Milton v Leo Scotty

**KEYWORDS:** Interlocutory Injunction, interest in land v rights to the land, practice of family agreement,  $\frac{3}{4}$  majority of landowners

**APPEARANCES:**

Counsel for the Plaintiff: Mr T. Tannang

Counsel for the Defendant: Mr V. Soriano

**RULING**

**BACKGROUND**

1. The plaintiff filed a Summons supported with his affidavit seeking an interim injunction against the defendant restraining him, his families, and agents from interfering with the construction of the plaintiff's private dwelling and operations on land portions 82 and 100 in Aiwo District.
2. The defendant filed his affidavit in response on 06<sup>th</sup> June 24. The matter was heard on 10<sup>th</sup> June 24 with written submissions filed on 21<sup>st</sup> June 24. Only the Mr Soriano, Counsel for the defendant, filed written submissions.

### **THE APPLICATION**

**3. The plaintiff deposes as follows:**

- a) He is the son of the late John Dube who died in 2016. John Dube was a landowner of portions 100 and 82 in Aiwo District, Nauru.
- b) On his father's death in 2016, the plaintiff inherited and holds 1/180 share on both portions of land.
- c) The late Angela Scotty was also a landowner in the same portions of land. The defendant inherited a share of the lands from his late mother.
- d) In the early 1980s, he and his late father, John Dube had received the full consent from the landowners at that time to utilise the said lands.
- e) In Civil Action no. 01/1988, the late Angela Scotty took out an injunction to stop the late John Dube and the plaintiff from using the said lands for any commercial purposes.
- f) The interim injunction in Civil Action 01/1988 was lifted on 03<sup>rd</sup> February 1988 where CJ Sir Gaven Donne ruled:

*"Interim Injunction lifted on the undertaking of the defendants that the excavation is for the purpose of building a house and underwater cistern on the said land (and) are not for the purpose of constructing bricks for sale and the permanent construction of water tanks for commercial gain and further that should any use this (sic) than that stated by the defendants be contemplated, it will be put to all the owners of the land for their prior approval."*

- g) In 2013- 2015, he used the said lands 'as a lay down area' for containers as well as for extra parking spaces. They had run out of parking space at their place near the O-dn Aiwo Hotel. To secure items on the lands, they were fenced off in the past 10 years.
- h) Last year, he intended to construct a house on the land for his own use.
- i) The defendant has threatened his workers that he will destroy the works if the plaintiff tries to carry on with the construction.
- j) He seeks an interim injunction against the defendants.

**Affidavit in Response by the Defendant**

**4. The defendant deposes as follows:**

- a) He inherited shares on lands known as 'Eatetubwiye' on portions 82 and 100, Aiwo District from his late mother, Angela Scotty.
- b) It would not be fair to him and new landowners to be bound by an agreement (the 75% Consent) that was made 36 years ago. The circumstances have changed.
- c) As co- owner of the stated lands, an agreement made and consent given 36 years ago was binding only on the late John Dube (father of the plaintiff) and Angela Scotty (mother of the defendant).
- d) The plaintiff should obtain a new consent from 75% of the current landowners before he can proceed with any construction on the lands.
- e) He relies on the case *Adumur v Dongabir* [2018] NRSC 40 which dealt with the issue of whether historical family agreements bind 'new landowners.'

- f) From the above case, he believes that the law is- *'The successor, as beneficiary to the deceased's estate should, in fact and in law, seek anew the approval of the majority of the other landowners..'*
- g) That the injunction sought not be granted.

## THE LAW

5. In *Buramen v Dageago* [2022] NRSC 13; Civil Action No. 6 of 2022 (2 May 2022) A/CJ Khan stated at [2] and [3] as follows:

*[2] I stated in Kam v Scotty [2021] NRSC 49; Civil Case No.27 of 2021 (3 December 2021) at [4] as follows: "The principle to be applied in application for interlocutory injunction have been authoritatively explained by Lord Diplock in American Cyanamid Co. Ethicon Ltd [1975] UKL 1; [1975] A.C.396; [1975] 1 All E.R 504 H.L. as follows:*

- a. The plaintiff must establish that he has a good arguable claim to the right he seeks to protect;*
- b. The court must not attempt to decide this claim on affidavits; it is enough if the plaintiff shows that there is a serious matter to be tried;*
- c. If the plaintiff satisfies these tests, the grant or refusal of an injunction is a matter for the exercise of the Court's discretion on the balance of probabilities.*

6. Lord Diplock adds:

*'And, what Lord Diplock referred to as the "governing principle:"*

- Whether an award of damages would be an adequate remedy, the basis for which he explained as follows:*

*"... the governing principle is that the court should first consider whether, if the plaintiff were to succeed at trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable would be [an] adequate remedy and the defendant would be in a financial position to pay them, no interim injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage."* (Emphasis added).

## PLAINTIFF'S SUBMISSIONS

7. Mr Tannang submits that the plaintiff has a good and arguable claim and there is a serious question to be tried. The crux for this ground is the ruling by CJ Donne in 1988 when he lifted the injunction then.

8. Mr Tannang further argues that the balance of convenience favours the plaintiff as he has been on the land since 1988. It was only in 2023 that the defendant tried to interfere with his client's intent to construct a house on the property. He adds that any further delay, may result in his client not being able to build his house.
9. Counsel concludes that damages would be inadequate here and there is no reason why construction should be stopped.
10. Counsel agrees that there would be no difficulty at all in the plaintiff getting the consent of 75% of the current 'new landowners' but the plaintiff should not be required to do that because of the existing consent between the late John Dube and Angela Scotty.
11. Mr Tannang submits that there would be total chaos if an injunction is not granted here; especially as the plaintiff had started building his house in 1988. The court notes that there is no evidence before the court that any dwelling house was being constructed apart from the land being used to place containers in and part of it used as a carpark.

#### **DEFENDANT'S SUBMISSIONS**

12. Mr Soriano refers to *Adumur & Ors v Dongabir* [2018] NRSC 40 in support of his argument that the plaintiff does not present a serious question to be tried or have a good arguable claim.
13. He refers to a passage from CJ Jitoko's judgment in the case where he said :  
*'Family agreement only endows the recipient to the right over the land portion given him and to no other. The successor, as beneficiary to the deceased's estate should, in fact and in law, seek anew the approval of the majority of the other landowners, in order to continue to live in occupation of the land and the house built on it by his/her benefactor.'*
14. Mr Soriano missed out the next sentence of the judgment. It reads:  
*'However, as the court has observed, the tradition and customs of Nauru, expects that the beneficiaries can continue to remain in possession of the land as if the approval previously obtained from the other landowners or through family agreement, equally applied to them.'*
15. Counsel submits that only the first limb of CJ Jitoko's judgment applies here and that the plaintiff in this case should **"seek anew the approval of the majority of the other landowners, in order to continue to live in occupation of the land and the house built on it by his/ benefactor."**
16. Based on this requirement, according to Mr Soriano, the Plaintiff needs to get the approval or consent of the existing landowners now and not rely on one that was given to the plaintiff's father 36 years earlier.

17. It is noteworthy, as observed by CJ Jitoko-

*"The importance of the consent of the other landowners through a family agreement was emphasized by the court in **Audoa v Finch (2008) NRSC 3** where Milhouse CJ observed that the practice of seeking the consent of the landowners is both a moral and legal obligation, the failure to consult and seek their agreement will make the party liable to them. He added:*

*"The whole ethos of Nauru is toward consideration of feeling and rights of the others. The institutions of the country are based on that ethos. It is more than moral obligation. It should be and is a legal obligation as well..."*

*This court could not agree more. However, as important as the family agreement is to the right to occupy and build, the agreement is not, as I had emphasized above, good for all time or, in this instance, the plaintiffs' rights to occupy portion 129 and 130 is in perpetuity, for to do so, would deny the other landowners to the two portions from exercising any of their legal rights as owners of the land.'*

18. Another passage in the judgment is noteworthy and determinative of the question whether the family agreement or consent given to the late John Dube 36 years ago still subsists now? Can the plaintiff, Milton Dube rely on that consent and construct a private dwelling on land portions 82 and 100 in Aiwo now, notwithstanding that his father and he had not done so in the previous 36 years?
19. I note what CJ Sir Donne observed when he lifted the injunction in 1988. It was on the undertaking of the defendant then (John Dube- the plaintiff's father) that- **"Interim Injunction lifted on the undertaking of the defendants that the excavation is for the purpose of building a house and underwater cistern on the said land.**
20. The court notes that there is no evidence that a house has been built since the lifting of the injunction, **36 years ago.**
21. The passage referred to in [18] above is this observation by CJ Jitoko:

*'Is such an agreement binding for all on all future generations? In my respective view the presumption that a family agreement subsists and binds future interested parties, is not supported by law. The nature of the land ownership on Nauru will not allow the possible perpetual alienation of the common ownership of land in favour of a particular family or person. In this case, whilst the plaintiffs may have legally inherited their shares in the two land portions in question and may in addition claim the continuing occupation of the property and the structures erected therein, albeit, by customs through the family agreement entered into between their parents and the defendants' parents, the law still recognizes the defendants' rights to the same land, including the right to be consulted on the future use.*

22. He concludes:

*"In the end, the court finds that the plaintiffs, in wishing to construct a new building on land portions 129 and 130 Denigomodu district, will require the approval of the defendants and/or the three-quarter majority of the other landowners.'*

23. From the above discussions, it is apparent that the plaintiff in the present case does not have a serious question to be tried. **Counsel for the plaintiff has agreed that it will not be difficult to get the consent of the existing landowners now.**
24. Considering the discussion above, I agree with the contention of the defendants that the plaintiff, having not acted on the 36-year-old agreement given to his late father to build a dwelling house on the land, needs the consent of 75% of the current existing landowners. This will be a new agreement. **As stated in the discussion above- the plaintiff in this case should “seek anew the approval of the majority of the other landowners.’** In my considered view, this will properly reflect and observe, as **“The whole ethos of Nauru is toward consideration of feeling and rights of the others.’** Seeking the approval of the current landowners will also promote respectful relations between the landowners and the lessening of the possibility of future family disputes that can lead to unnecessary conflicts within the landowning unit.
25. Having held the above, I will not consider the other elements of the test in applications for interlocutory injunctions.

## **ORDERS**

22. The application for an interlocutory injunction by the plaintiff is dismissed.
23. Costs will be in the Cause.

**DATED** this 28<sup>th</sup> day of June 2024

  
**Kiniviliame T. Keteca**

**Judge**

