



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

Land Appeal 05/2017

BETWEEN : Ebeni Tom & Others

1st Appellant

AND : Antonius Heinrich & Others

2nd Appellant

AND John Julius & Others

3rd Appellant

AND : Beneficiaries of Estate of Ediribaina Thoma

1st Respondent

AND : Beneficiaries of Estate of Gadabu

2nd Respondent

AND : Beneficiaries of Estate of Gumware Jones

3rd Respondent

AND: Nauru Lands Committee

4th Respondent

BEFORE: Keteca J

DATE OF HEARING: 12th May 2025

DATE OF RULING: 23rd May 2025

KEYWORDS: Land Appeals, Re-Hearing De Novo

APPEARANCES:

COUNSEL for the Appellant: Ms J Olsson

**Respondents: Ms T Capelle for 2nd Resp
Ms S Hazelman for 3rd Resp
Ms P Grundler for 4th Resp**

RULING

BACKGROUND

1. This matter was listed for hearing of 12th May 2025. Ms Hazelman, for the 3rd respondent submitted that the appeal should be by way of a re-hearing or rehearing de novo.

LAW

2. Ms Hazelman relied on *Cook v Fritz* [2013] NRSC 2 where Eames CJ said the following:

[98] *'In a rehearing de novo the court is exercising original jurisdiction and is dealing with the matter as though for the first time. It is required to consider judicially whether the application should succeed on the merits.'*

[114] referring to *Allesch v Maunz*:

'For present purposes, the critical difference between an appeal by way of rehearing and a hearing de novo is that, in the former case, the power of the appellate court are exercisable only where the appellant can demonstrate that, having regard to all the evidence now before the appellate court, the order that is the subject of the appeal is the result of some legal factual or discretionary error, whereas in the latter case, those powers maybe exercised regardless of error.'

[122] *Were the appeals restricted to appeals stricto sensu, that would raise serious questions about the entitlement of the parties to call fresh evidence, a course which has regularly been permitted by the courts. Nothing in the language of rs. 7 restricts the appeal to one conducted stricto sensu, and the grant of power 'to make such orders on the hearing of the appeal... as it thinks just' should be regarded as enabling the court to hear fresh evidence when it is just to do so. Thus, a rehearing is certainly contemplated by the Act.'*

[123] The fact that the appeal comes from an administrative tribunal is one factor pointing to a legislative intention that the appeals be by way of re-hearing de novo.'

DISCUSSION

3. I agree with the submissions of Ms Hazelman. This matter will be by way of 're-hearing de novo.' Parties will be allowed to rely on the records of the NLC and to call fresh evidence.

CONCLUSION

4. This matter will be put before the Registrar for further directions in preparation for a re-hearing of the matter.

DATED this 23rd day of May 2025


Kiniviliame T. Keteca
Judge

