



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

**Civil Case No. 02 of 2025**

**BETWEEN : SALIKA HEDMON of Ewa District, Nauru.**

**Plaintiff**

**AND : OIJEN DIEMA of Ewa District**

**Defendant**

**BEFORE: Keteca J**

**DATE OF HEARING: 27<sup>th</sup> May 2025**

**DATE OF RULING: 28<sup>th</sup> May 2025**

**CITATION: Hedmon v Diema**

**KEYWORDS: Interlocutory Injunction**

**APPEARANCES:**

**COUNSEL FOR the  
Plaintiff:  
Defendant:**

**V. Clodumar  
T. Tannang**

## **RULING**

### **BACKGROUND**

1. On 03<sup>rd</sup> April 25, I granted an Interim Injunction against the Defendant, his agents and servants to stop the construction of his building on Land Portion 167.
2. On 02<sup>nd</sup> May 25, the Defendant filed a Motion seeking the discharge of that Interim Injunction.

## **AFFIDAVIT of the DEFENDANT**

3. Oijen Diema deposes as follows:

- a) In 2023, he obtained the consent of co-landowners to build his house on land named 'Ibori', portion 167. The plaintiff had constructed an incomplete 'footing' on the same land. He believed that the plaintiff had constructed the footing without the approval of the landowners.
- b) The 'footing' built by the plaintiff was L shaped. It encroached onto a neighbour's land.
- c) In 2023, he started constructing his house. Part of the plaintiff's 'footing' was opened to allow tree cutting equipment through. His house is almost complete. The roof is left. He has spent over AUD\$60,000 so far on his house.
- d) He has no issues with the plaintiff building her house next to his.
- e) The plaintiff's father also has a house on the same portion of land. This was built in 2010 and completed in 2014.
- f) The plaintiff should build her house next to her father's so other co-landowners can have a share in the land.
- g) The plaintiff's 'footing' is worth about \$1,000 and damages will be an adequate remedy if she succeeds in her claim.
- h) He undertakes to pay the said damages.

## **AFFIDAVIT OF THE PLAINTIFF**

4. Shalika Hedmon deposed:

- a) She opposes the application to discharge the interim injunction.
- b) She obtained the relevant consent to build on Land portion 167 in 2021. The defendant obtained such consent later in 2023.
- c) She relies on the case of *Demaunga v Deireragea* [2017] NRSC 87, Civil Suit No. 8 of 2016. She was the first to obtain the relevant consent.
- d) The defendant damaged her 'footing.'
- e) She accepts that *'the construction of the defendant's house has progressed to the stage that the external wallings(sic) are done and the next step may be to construct the roofing.'*
- f) She seeks an equitable solution for the damage done to her 'footing.' Specific and general damages will be sought.
- g) The remedy she is seeking in the statement of claim is compensation for the damage done to her 'footing' or to rebuild the 'footing' at an alternative site.

## **DISCUSSION**

5. Both parties in this dispute received the landowners consent to build on Land portion 167 in 2021 and 2023 respectively. It is apparent that the dispute is based on assumptions on both sides that neither party had received the requisite consents from co- land owners. Each party on their own and through their respective Counsels could have obtained such relevant information from the Secretary of Land Management at the material time.

6. It is also apparent that this dispute could have been avoided by according each other the basic courtesy of consultation and discussion instead of working on assumptions which are baseless. The parties are co- landowners. Why is it so difficult to consult one another? Why is it so difficult to discuss matters of mutual concern before taking steps which could be detrimental to another co-landowner?
7. The defendant has started building his house on the site. As the photos show, the four walls have been constructed. The structures for the roofs are next.
8. Counsel for the Plaintiff submits that *Demaunga v Deireragea* [2017] NRSC 87, Civil Suit No. 8 of 2016, is relevant here and it supports the contention of the plaintiff. In that case, Justice R.L Va'ai held:

*' It is common ground that the Nauru land tenure system is based on the concept of common ownership where land is held by individuals in undivided shares; a distinct share in property which has not yet been divided amongst the co-tenants.*

*It is also common ground that the rights to use the land owned by a number of co-tenants, can only be obtained through the consent of the majority of all the co-owners.'*

*When the majority of the landowners, including the plaintiff, granted their consent to the defendant in 2013 to build on the land, there was ample space for the defendant to build besides the plot which the plaintiff had already levelled and space occupied by other buildings already on the land.*

Justice Va'ai held that there was a case of unjust enrichment there.


9. In the present case, there is no claim of unjust enrichment on the part of the defendant. The plaintiff clearly states in paragraph 3 of her affidavit that she seeks an equitable solution in the form of specific and general damages.
10. In turn, the defendant has already spent over AUD\$60,000 to build his house. It is almost complete. He undertakes under paragraph 21 of his affidavit that he will compensate 'the defendant's "footing"' and any other damages.
11. I find that damages will be an adequate remedy for the plaintiff in this matter.
12. I mention in passing that since the Nauru Court of Appeal decision of *Oppenheimer (trading as Capelle & Partner and Pacific Occidental) v Tom* [2024] NRCA 10; Civil Appeal 3 of 2019 (8 August 2024) and my decision in *Solomon v Brechtefeld* [2024] NRSC 40; Civil Action 10 of 2021 (18 December 2024) there has not been any legislation enacted to govern the land transactions between co- landowners. This covers land not being sought by the government for the phosphate industry or a public purpose.

13. As I said in the *Solomon v Brechtefeld* case-  
*'To ensure the peaceful co-existence and mutual respect between the people of Nauru, and to provide a statutory basis on the issue of consent, on land dealings between landowners of Nauru, I, like the Nauru of Court of Appeal, also suggest that the legislature consider what percentage of landowners need to give their consent in such land dealings.'*
14. May I add that since the decision of the Court of Appeal in the *Oppenheimer v Tom* case of August last year, the lacuna in the law has led to other disputes which are currently before this court.

## ORDERS

15. The application by the defendant to discharge the interim- injunction dated 03<sup>rd</sup> April 25 is allowed.
16. The defendant is to file and serve his Statement of Defence within 28 days from the date of this Ruling.
17. Parties are to pursue the settlement of this matter as regards the compensation for the plaintiff's 'footing.'
18. This matter is referred to the Registrar for further directions on the substantive claim.
19. Costs in the cause.

DATED this 28<sup>th</sup> Day of May 2025

  
Kiniviliame T. Keteca

Judge

