

IN THE SUPREME COURT
REPUBLIC OF NAURU

No. 1 of 2011

Anita Koroa

Plaintiff

v

Defendants

Landowners of Portion 15
Atoredeto, Aiwo

JUDGE: EAMES, C.J
DATE OF HEARING: 22 November 2011
DATE OF JUDGMENT: 22 November 2011 (Ex tempore)
CASE MAY BE CITED AS: Anita Koroa v Landowners Portion 15
MEDIUM NEUTRAL CITATION: [2011] NRSC 22

Land Law - right to possession of house granted to plaintiff in 2000 by Landowners, for purpose of electricity being supplied - House leased by occupant in 2006 relying on 2000 agreement but without asking permission from landowners - 75% of landowners enter their own agreement to lease the house - Held: original occupant did not have power or authority to lease the house without landowners approval.

APPEARANCES:

For the Plaintiff David Aingimea (Pleader)
For the Defendants Miniva Depaune (Pleader)

CHIEF JUSTICE:

- 1 This is a claim for relief by way of declaration and damages in which the plaintiff claims that the defendant landowners of Portion 15 granted the plaintiff possession of a residential property known as MQ43 on the land to which she, as well as they, were landowners.
- 2 Claim was made that, in accordance with Nauruan customary ways, once consent had been given granting the plaintiff possession of the house on that land the consent must mean that she has the absolute and final right for all purposes, so as to deal with the premises on that land.
- 3 The plaintiff agrees that when consent was given to her entering into possession of the house MQ 43, it was done for the purpose of her being able to have electricity reconnected to the house. She had been living in the house for some period of time but the electricity had been cut off on the first day that she had moved into the house, and she and her family had resided there without electricity. The electricity authority required that she demonstrate that she had the permission of the landowners to be on the property before they would reconnect the power.
- 4 The plaintiff went to the landowners with a list of the names of the landowners and sought their approval and signatures. The first document which was given to the landowners added at the top of the page words which read, in handwriting; - "The undersigned agreed, member of our family, co-lesser Anita Koroa reside in MQ 43 Aiwo. Thank you kindly."
- 5 Some of the people who signed that document were only shown that one document. Others were shown a second document, which had been prepared as a result of one of the landowners, Kim Aroi, (speaking on behalf of her family), saying that they would not sign the authority document unless there was some other document specifying first, that it was solely for the purpose of electricity being restored that their signature was being given, and, secondly, that it was only a temporary arrangement. As a result of her request a document titled "To Whom It May Concern" was prepared which read:

"We the undersigned, see attached form, hereby agree and give our consent. Co-landowner and family member Mrs Anita Koroa and family, to reside at MQ43 (former NPC settlement) until further arrangement or agreement. Please understand that all things are temporary. As required, please kindly reconnect the electricity to MQ 43 and allow Anita Koroa and her children to lead a normal and healthy life. Thank you sincerely for your kind and prompt action."

6 Approximately half the landowners would have also seen that document, prior to signing.

7 Mrs Koroa agrees that at the time that this document was prepared and signed, no question of the property being leased was in her mind, nor had it been discussed with any of the landowners who were signing.

8 As she understood then, the purpose of the exercise was, indeed, simply to ensure that the electricity would be reconnected. Eventually, through the intervention of others, the electricity was restored in the premises and she continued to live on the premises for some time. However, in 2006 she entered an agreement to lease the house with AusAid and on that occasion provided to AusAid a copy of the signatures which had been obtained in 2000 for the purposes I've just described. That document was then attached to a deed of family agreement which was signed by Mrs Koroa, and which document had been prepared by the AusAid representatives. That document recorded a family agreement of the 20th of July 2006, between the beneficial owners of the property known as MQ 43 and Mrs Anita Koroa.

9 It recorded *"the landowners have agreed to Mrs Anita Koroa to occupy the property."* Further it read, *"Whereas Anita Koroa who was the present occupant of the property, has agreed to vacate the residence if a suitable arrangement could be made to rent the property out on a medium to long term basis."*

10 It recorded that she has been approached by the Australian Department of Foreign Affairs and Trade (DFAT) to rent the property. It continued: *"Anita Koroa is authorised to enter into discussions, negotiate and execute, where necessary, an agreement, provided that*

such negotiation and agreement is restricted to the property referred to in this document. It says:-“In witness whereof the parties have signed” and it shows the signature of Anita Koroa and underneath the words “See attached list of landowners signatures.”

11 In fact, none of the landowners were asked in 2006 to sign that agreement, or to approve that agreement. Their signatures from 2000 (or rather, a photocopy of their signatures from 2000) was simply attached to the agreement with AusAid in 2006.

12 AusAid remained in the property and Mrs Koroa moved to the Solomon Islands where her husband was a native. In 2008 she returned to Nauru, intending to advise AusAid that she did not want to lease the property out again, and that she would simply reside on the property herself. AusAid, however, said that they would not deal with her on her own but would negotiate with the landowners. Having told her that, she was then affectively cut off from the negotiations which took place.

13 As a result of those negotiations, the Republic became the lessee of the premises. Thereafter AusAid suggested to the landowners that a meeting of the Nauru Lands Committee be held. More than 75 percent of the landowners, as is required under the Lands Act, then gave approval to the land being leased. It was first leased to the Republic, and the Republic, in turn, subleased it to the Commonwealth of Australia, or one of its agencies.

14 This claim, in effect, is for the loss of profits which had derived from the lease in the above circumstances. Whereas the profits from the lease had been entirely going to Mrs Koroa, they now, by virtue of the decision of 75 percent of the landowners, were being shared amongst all of the landowners (including Mrs Koroa).

15 So the question is, whether having been given possession of the property in 2000 in the circumstances in which she was, Mrs Koroa had an interest which allowed her to lease the property and to stop the landowners from, in turn, purporting to lease out the property themselves. It is put by Mr Aingimea, that it is a matter of Customary Law that if possession is given in the circumstances that it was given here, it is not merely a temporary arrangement but it is one which cannot be changed by the

landowners, and which carries with it full rights for Mrs Koroa to make full use of the property, including by way of rental, as occurred here.

16 In support of this proposition, the plaintiff relies on the affidavit evidence of David Gadaraoa, who deposes, as Vice- Chairman and Acting Chairman of the Nauru Lands Committee, that it is a custom of Nauru that once permission has been given by landowners to a person to be the occupant of a house that is considered to be “men an wak” i.e the door of your home, for the person granted occupancy. He adds, “This extends even if the person granted the right of occupancy is not a landowner. The person given the grant has complete rights over the said house”. Mr Gadaraoa did not give evidence to explain what he means by “complete rights.”

17 In circumstances where the property here was no longer occupied by Mrs Koroa and had been leased out, then I’m not persuaded, on that evidence, that there is any customary tradition that would prohibit the landowners from exercising their rights as landowners, so as to themselves lease out the property. In the circumstances here it seems to me that whatever might be, in some circumstances, the broad ambit of Customary Law, in this case what has been proved is that the original agreement for occupancy of the house was expressly and specifically confined by the landowners in a way that it would not have encompassed the right of Mrs Koroa to lease out the premises as she did.

18 The onus is on the plaintiff in this case to establish that she had rights which overrode the rights of the landowners, which they exercised in 2008.

19 I’m not persuaded on this evidence that there was such a grant to Mrs Koroa as would found the basis for the claim that she has brought. In my view the case has not been made out, and the claim is dismissed.

The Hon Geoffrey M Eames AM QC

Chief Justice

22 November 2011