



IN THE SUPREME COURT AT NAURU
CIVIL JURISDICTION
YAREN

Civil Action No. 18 of 2005

BETWEEN

MONMAY DETEBNE AND OTHERS

PLAINTIFF

AND

PATRICK LEUNG AND OTHERS

FIRST DEFENDANT

AND

KIKI THOMA AND OTHERS

SECOND DEFENDANT

Before: Khan, ACJ
Date of Hearing: 5 December 2016
Date of Ruling: 13 December 2016

Case may be cited as: Detebne –v- Leung & Thoma.

CATCHWORDS:

Whether under Civil Procedure Act 1972 judgments or orders more than 6 years old can be enforced without leave of court- unless payment has been made within 12 months immediately before the proceedings for enforcement- whether judgment can be enforced against personal representative of estate or a person who intermeddled with the deceased estate- only to the extent of intermeddling.

APPEARANCES:

Counsel for the plaintiff: Mr S Valenitabua
Counsel for the first defendant: No appearance
Counsel for the second defendant: Mr V Clodumar (pleader)

RULING

INTRODUCTION

1. The plaintiff filed an application on 1 April 2016 seeking the following orders:
 - 1) This pending action be reactivated or revived and relisted in the court list of this Honourable Court for future proceedings thereof.
 - 2) The plaintiffs by themselves were servants and/or agents believed to pursue the enforcement of the terms of orders made in this action in this Honourable Court by the Honourable Chief Justice Mr Robin Millhouse on the 2nd day of July 2007.
 - 3) The first defendants, whether by themselves, their servants and/or agents, made payments to the plaintiffs of the full rentals payable to the land owners of the land known as "Atoeouw CL 38" until full settlement of the arrears in rentals due and payable to the plaintiffs in accordance with term 1 of the order dated 2 July 2007.
 - 4) The first defendants, whether by themselves, their servants and/or agents, made payments to the plaintiffs of the full rentals payable to the land owners of the land known as "Atoeouw CL 38" until full settlement of the arrears in rentals due and payable to the plaintiffs for the period July 2007 in accordance with term 1 of the order dated 2 July 2007 until a land lease agreement is entered into and executed by the parties in 2016.
 - 5) The second defendants, whether by themselves, their servants and/or agents, be restrained from collecting or receiving any rental money from the first defendants their servants and/or agents until the full arrears owed to the plaintiffs for the period 2001 to 2016 has been settled or paid.
 - 6) The plaintiffs and the first and second defendants immediately enter into a land lease agreement for the land known as "Atoeouw CL38" as per term 2 of the order dated 2 July 2007.
 - 7) Cost of this application be paid by the first and second defendants to the plaintiffs.

BACKGROUND

2. The plaintiff instituted this action in 2005 against the first and second defendants.
3. On 2 July 2007 Millhouse CJ made the following Consent Orders:
 - 1) By consent of both parties, the plaintiffs are to be paid rents consistent with the current commercial lease rate, that respective from January 2001 to June 2007. The amount of \$500 is to be paid to the plaintiffs monthly commencing July 2007 and remain effective until arrears are paid out.

- 2) That the parties to enter into a lease agreement.
- 3) Costs against the defendants.
4. Although the orders were made on 2 July 2007, no efforts were made by the plaintiff to enforce the orders; and no payment has been made to date and the parties did not enter into the lease agreement as ordered.
5. The plaintiff deposes in her affidavit that the first defendant was paying rents to the second defendant but none was paid to her and her co-plaintiffs.
6. The first defendant was a Chinese citizen and he returned to the Republic of China over 10 years ago.
7. The second defendant died on 11 December 2012 and nobody was appointed as his personal representative or his executor.
8. No attempts were made to serve the first defendant and instead the application was served on the following individuals at Chinatown in Denig. The people that were served are: -
 - 1) Mr Lau Yaufat (aka Bimbo) at DTR Store;
 - 2) Mrs Akauyasi Ika at Od-N-Aiwo Store;
 - 3) Mrs Asung at Regin Brem Store;
 - 4) Mr Unkingson at Q. Store No. 2;
 - 5) Mrs Deemy at T. Store;
 - 6) Miss Susan at DTR Store;
 - 7) Cheng Chi Giu at T. Store;
 - 8) Xiong Yan Nang at Nammi Store.
 - 9) Quaeo at Nakaka Store;
 - 10) Mr Zhong Fuhau Hau in Enoko Trading;
 - 11) Miss Wong Yo Jhu at Pacific Trading.
9. The persons that were served are the current tenants of the shop premises and is considered by Mr Valenitabua that they do not have any authority or any instructions to accept service on behalf of the first defendant.
10. The applications were served on the following persons: -
 - 1) Edmund Caleb;
 - 2) Brenda Caleb;
 - 3) Rocky Thoma;
 - 4) Nanero Thoma.
11. The process server deposed that she was advised that the persons referred to in paragraphs 8 and 10 hereof constitute the first and second defendants respectively.

THIS APPLICATION

12. This application was made to s.23 of the Civil Procedure Act 1972 (Act) which reads as follows: -

“23(1) No judgement or order of any court more than 6 years old shall be enforced without the leave of the court, or of a Judge or a Magistrate thereof, unless payment has been made into the court by or on behalf of the party liable thereof within the 12 months immediately before the issue of the proceedings for enforcement.

(2) The court may, if it thinks fit, grant leave on an ex parte application.

13. The applicant made this application inter parte and has served several persons on behalf of the first defendant. It is considered by Mr Valenitabua that none of the persons had any authority to accept service on behalf of the first defendant, so in the circumstances there is no service of the application on the first defendant. This application therefore cannot proceed against him.

SERVICE ON SECOND DEFENDANT

14. Mr Clodumar made his position very clear with regards to his appearance. Since there are no personal representatives or executors, he has not been instructed to act on behalf of the deceased estate of the second defendant. He said that he was only appearing on instructions of the family members of the deceased.

15. S.30 of the Act provides:

“30(1) Where a judgement-debtor dies before the judgement has been fully satisfied, the decree holder may apply to the court which passed it to enforce it against the personal representatives of the deceased or any person who has intermeddled with his estate.”

16. In this case, there are no personal representatives and it is not suggested by Mr Valenitabua that either of the persons served are the personal representatives of the deceased nor is there any evidence that any of the persons served has intermeddled with the estate of the second defendant. So, there is no service on the second defendant.

CONCLUSION

17. For the reasons given above, I find that there is no service of the application on either of the two defendants and the application is dismissed.

DATED this 13 day of December 2016



Mohammed Shafiullah Khan
Acting Chief Justice