

IN THE COURT OF APPEAL OF KIRIBATI
LAND JURISDICTION

HIGH COURT LAND APPEAL 1 OF 2021

BETWEEN KAATO TETEKI AND FAMILY

APPELLANT

AND BEING YEETING


RESPONDENT

Hearing: 22 July 2022

Before: Blanchard JA
Hansen JA
Heath JA

Counsel: Ms Maere Kirata for Appellants
Mr Banuera Berina for Respondent

Judgment:

29 July 2022 

JUDGMENT OF THE COURT

Introduction

[1] The respondent successfully applied to the Magistrates Court for an order evicting the appellants from his land at Benga 664a (the Land). The Single Magistrate hearing the application found the land to be owned by the respondent and that the appellants had no right of occupation. He refused the appellant's application for a stay of execution of the eviction order.

[2] The appellants appealed to the High Court against the order for eviction and applied for a stay of execution of the order pending the hearing of their appeal. The application for stay was refused. The appellants' appeal against that decision.

[3] Leave had not been sought as required by section 10(2)(f) of the Court of Appeal Act. Ms Kirata applied orally at the hearing.

High Court Decision

[4] The Commissioner who heard the application held there were not exceptional circumstances warranting a stay and there would be no injustice to the appellants if the stay were not granted. He saw no reason to doubt the finding of the Single Magistrate that the land in question is owned by the respondent and, with no legal title to the land they had been occupying, the appellants' prospects of succeeding in the appeal were 'questionable and weak'.

This Appeal

[5] The appellants face formidable obstacles in this appeal. They must show the High Court erred in the exercise of its discretion. They have been unable to do so. The Court rightly proceeded on the basis the respondent's title to the land had been established in the Magistrates' Court. The appellants have been evicted. They are reliant on the success of their appeal to the High Court to establish any right to return to the land. They are, in effect, asking this Court to anticipate success in that appeal and to deny the respondent the right of ownership upheld in the Magistrates' Court. That would be contrary to principle and the interests of justice. The appeal is without merit and must fail.

Result

[6] Leave to appeal is refused.

[7] The respondent is entitled to costs to be fixed if necessary by the Registrar.

Peter Blanchard

Blanchard JA

M. Hansen

Hansen JA

Heath

Heath JA

