

IN THE KIRIBATI COURT OF APPEAL
LAND JURISDICTION HELD AT BETIO
KIRIBATI

Land Appeal No. 5 of 2023

BETWEEN: KAMWAINGATETAAKE TOANI
FOR ISSUES OF BATAUA MWERETAKA
Appellant

AND: TEABIKE TEKAWA WITH SISTER
IOANNA TARANTEKAI
Respondents

Before: Salika JA
Nelson JA
Khan JA

Counsel: Ms Timeon Taaira for Appellant.
Mr Taoing Taoaba for Respondents.

Date of Hearing:

Date of Judgment:

FACTS

1. The subject land BWEBWE 593e was originally owned by MWERETAKA KAIQUA who was the father of NEI KAAI. NEI KAAI was the daughter of MWERETAKA KAIQUA.
2. The land was transferred to NEI KAAI MWERETAKA by the Magistrates Court in case Number 7/48 after her father's death. NEI KAAI was the

mother of the Respondents. She died leaving her surviving two respondent daughters. The two daughters have two different fathers but one mother, NEI KAAI.

3. After NEI KAAI's death, her daughters TEABIKE KAWA and IOANNA TARANTEKAI went to Court to register their names as co-owners of the subject land in place of NEI KAAI, their mother in case Number 63/93 in relation to the subject land in dispute.

4. After 26 years, the appellant challenged the registration of NEI KAAI's two daughters as co-owners of the subject land alleging fraud in case number Betlan 421/19.

5. The appellants alleged that the respondents fraudulently registered their names as co-owners in case number 63/93 and alleged that their mother NEI KAAI was never a registered owner of land BWEBWE 593e. The appellants further alleged that the BWEBWE 593e land was owned by MWERETAKA TOKITEBWA, their descendant and not MWERETAKA KAIIOUA, the respondents descendant. However, evidence at the Magistrate Court was that the BWEBWE land was co owned by both MWERETAKA TOKITEBWA and MWERETAKA KAIIOUA. It was further established by evidence that NEI KAAI was registered as landowner of BWEBWE 593e after her father's death in 1948.

6. The single Magistrate found the appellants failed to prove fraud. The single Magistrate's finding was based on the evidence produced before it.

7. The appellant aggrieved by the decision of the single Magistrate appealed to the High Court. The High Court dismissed the appeal on the same basis found by the single Magistrate.

8. The appellant appeals the High Court decision to this Court on a finding of facts. This Court has on many occasions heard such appeals and dismissed such appeals grounded on finding of fact only. Appeal cases we now refer to are such cases. Counsel and parties must learn from previous Court of Appeal decisions. Such case precedents are law in Kiribati. The case precedents are:

1. Land Appeal 9 of 2005.

Between:

Bateriki Bare (Appellant)
And:
Teriki Kanoame (Respondent).

2. Land Appeal No. 2 of 2010

Between:

Teribwebwe Tekabwebwere, Ioteba Kobaua, Taorerei Kobaua,
Katababa Tibwere and Meem Tengkoi
Appellants

And:

Akitaake Kairoronga
Respondent.

3. Land Appeal No. 10 of 2000

Between:

Korere Iabeta
Appellant

And:

Tina Momara
Nonouri Takirna
Respondents.

4. Land Appeal No. 3 of 2015

Between:

Attanteatu Tabeata
Appellant

And:

Ereua Bonto
Respondent

5. Land Appeal No. 7 of 2007

Tanimwakin Tiaeki
Appellant

And:

Bebeke Tekaai
Respondent

9. All the above cited cases stand for the proposition that appeals to the Court of Appeal which is this Court, from the High Court in its appellate jurisdiction can only be on a question of law. Counsel must read these case precedents and eliminate unnecessary litigations. All these are judicial pronouncements by the Court of this Nation.

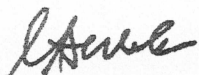
10. All Counsel practising law in the Kiribati Courts must recognize this as law and not continue to bring such unmeritorious appeals to this Court. This Court does not have jurisdiction to deal with such appeals based on questions of fact. The Court of Appeal in Land Appeal No. 7 of 2007 between Tanimwakim Tiaeki, appellant, and Bebeta Tekaa, respondent, said:

“This appeal cannot succeed. Whether there was fraud at the time of registration in 1948 is a matter of fact. So any challenge to the High Court’s decision that fraud had not been proven can only involve a question of fact. Appeals to this Court from the High Court in its appellate jurisdiction can only be on a question of law. This Court does not have jurisdiction to hear the appeal.”

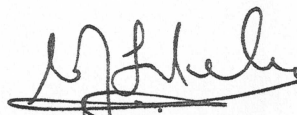
11. With respect, this is the law as articulated and pronounced by the Kiribati Court of Appeal. Again, with respect, we agree with the pronouncement of that Court in 2007.

12. In the circumstances, this Court has no jurisdiction to determine this appeal as the appeal does not raise questions of law.

13. The appeal is dismissed with costs to the Respondents to be agreed, if not, to be taxed.



Sir Salika
JA



Nelson
JA



Khan
JA