

**IN THE HIGH COURT OF KIRIBATI
(BEFORE B. SUTTILL C.)**

HCLA 187/1990

BETWEEN: ROTIATA BINOKA

Appellant

AND: TEUNAIA TOROTO

Respondent

J U D G M E N T

The applicant is present today, in person. The respondent is absent. Although there is no Affidavit of Service of the notice of today's hearing on the file we are satisfied that he is aware of today's hearing. His brother-in-law, Iaon Binoka was present in court today and he told us that he knew the respondent was aware of the hearing today. For completeness we should state that the hearing of this appeal was transferred from Maiana to Tarawa at the express request of the respondent.

At the applicant's request we heard his application in the absence of the respondent.

By a letter dated 30 September 1990 the applicant is seeking leave to appeal a decision of the magistrates dated 8 July 1988 in C/N 81/87.

That case was the distribution of lands registered under Rotiata Binoka. The applicant was not summoned and therefore did not attend these proceedings and was, as a result, he claims omitted from the distribution. He now wishes to substantiate his entitlement to a share of these lands by way of appealing the decision in C/N 81/87 and thus seeks our leave to do so.

As he was not a party to C/N 81/87 he cannot appeal the decision in that case. His remedy is to establish his claim in fresh proceedings in the magistrates court with himself as plaintiff and the parties on both sides in that case as defendants.

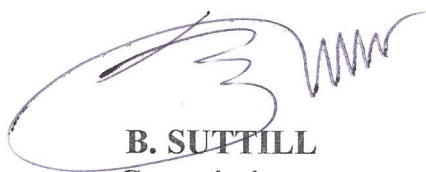
The applicant should have been told this as soon as his letter was received. There was clearly a complete lack of understanding of the law in this regard by those who received his letter.

The applicant should take a copy of this judgment to the magistrates court when he seeks to commence his fresh proceedings. It has been a misconception by certain magistrate courts that having dealt with a distribution in an earlier case

they are therefore barred from reconsidering the matter in the light of fresh parties and fresh issues. They therefore refer the matter to the High Court which has no original jurisdiction in land causes and matters.

Referring the matter to the High Court is therefore quite wrong and the magistrates court should deal with the issues raised in the fresh proceedings.


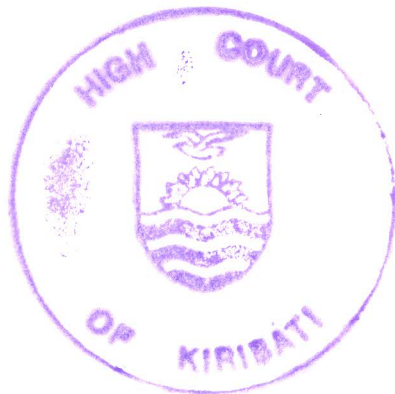
We have said that the applicant has no right of appeal. It follows therefore that his application to appeal out of time must fail and it is accordingly dismissed.



B. SUTTILL
Commissioner
(10/9/1996)



Tekaie Tenanora
Magistrate
(10/9/96)



Betero Kaitangare
Magistrate
(10/9/96)