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

HCLA 70/1990

BETWEEN:	**NEI KANREREI**	**Appellant**
AND:	**KPC - TARAWA**	**Respondent**

JUDGMENT

On 1 February 1961 a predecessor in title to the appellant leased Tabontebike 172u to a predecessor in title to the respondent. That lease was for 10 years and accordingly expired on 31 January 1971.

There appears to have been some confusion as to what land was comprised in that lease. The land is divided approximately North/South by the main road. A very brief perusal of the description of the land on page 2 of the lease compared to the sketch plan clearly indicates that the lease dated 1 February 1961 includes the land on both sides of the road.

It would appear from a judgment of the High Court in HCLA 15/87 between the same two parties that the land Tabontebike 172u was the subject of an agreement dated 16 April 1960 but that agreement, apparently, was never registered as a lease under section 11 (2) of the Native Lands Ordinance, Cap 61. There is also some confusion about HCLA 15/87. The lower court decision clearly speaks of "172u" whereas the High Court judgment speaks of "172-4," and goes on to say that the lease relates to land on the eastern side of the road. To repeat, 172u extends to both sides of the road.

Be that as it may, in C/N NT 33/90, from which case this appeal lies, the lease being spoken of was that of 1 February 1961, the extent being .40 acres and the consideration being £1.8.3 p.a.

The impression created by the record of this case in that the renewal of the lease is sought for 20 years at $200 p.a. We must regard the respondent as having held over in one form or another in the intervening period.

Why a lease which expired in 1971 wait for nearly 20 years before coming upfor renewal is not explained but in the intervening years there has been muchlitigation between the parties, mainly concerned with the failure of the respondent to pay the rent when it falls due, and the appellant seeking their eviction when this happens.

The appellant told us that this is what she was trying to do again in C/N NT 33/90 and that the record does not properly reflect the proceedings. She was seeking an eviction order and not a renewal of the lease.

However let us take for the moment the record at its face value.

The appellant proposes a renewal for 20 years at $200 p.a. It is quite clear that she will accept no less and in default requests the return of the land.

The respondent offers $20, not being able to afford more.

The court says that the lease must be renewed and sets the rent at that proposed by the respondent.

We may say in passing that it is that rent of $20 which formed the grounds of appeal as framed by the People's Lawyer. However we were told a different story and the appellant now does not want to renew the lease.

What are the duties of the court when acting in terms of section 11 (2) of Cap 61?

That sub-section reads:

"On being satisfied that the land to be leased is the property of the lessor and that the terms and conditions of the lease are fair both to the lessor and the lessee and that if the lease takes effect there will be sufficient land left to the lessor to support himself and his family, the court shall approve the lease and thereupon the presiding magistrate shall cause the clerk to enter a copy of the lease in the court register of native leases and to make an endorsement upon the lease to the effect that it has been approved and registered."

The regime contemplated here is crystal clear. The lessor or lessee or both approach the court with agreed terms. If those agreed terms meet objective criteria the court shall approve the lease. The court can only approve terms agreed by the parties. It cannot impose a lease on either party if a term therein is disputed by one of them. This must be so. A lease is a contract between two persons. There can never be a contract without agreement.

The court has no power to order the renewal of a lease as it did here. We notice that Maxwell C J made a similar order in HCLA 15/87, a course of action which does not lie within the power of the court.

The parties here were not in agreement as to the terms of the lease, which leads us to believe the appellant may be speaking the truth as to the remedy she sought. There was therefore no lease before the magistrates to approve if they saw fit. They have no power to impose a term on either party and the order they made is manifestly wrong and is accordingly set aside.

If follows that if there is no lease in favour of the respondents they occupy the land unlawfully and the appellant would be entitled to an eviction order if she sought one.

We are further of the view that section 17 of the Lands Code has no application in this case, the relationship between the appellant and respondent always having been, in one way or another, that of lessor/lessee.

The appeal, for the foregoing reasons, is allowed.

B. SUTTILL
Commissioner
(24/5/1996)

Tekaie Tenanora
Magistrate
(24/5/96)

HIGH COURT OF KIRIBATI

Betero Kaitangare
Magistrate
(24/5/96)