

IN THE HIGH COURT OF KIRIBATI) **High Court Land Appeal 105 of 1991**
LAND JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

BETWEEN: **TAUMANU PENANI**
NABUTI RINEAKI
KANONGNGA RURUIA APPELLANTS

AND: **NEI TABETA TIBAU** RESPONDENT

FOR THE APPELLANTS: MR BANUERA BERINA
FOR THE RESPONDENT: MS TAOING TAOABA

DATE OF HEARING: 3 AUGUST 2001

J U D G M E N T

This appeal was instituted 10 years ago, on 15 August 1991 but somehow the file was put away before a decision was made, and forgotten. The Chief Registrar came across the file last year. Of the three appellants, the second Nabuti Neneaki has died and the third Nei Kanongnga, despite efforts to find her, has disappeared. The Court thought that nevertheless the appeal should be heard now.

The appeal is linked to an even older one, No. 151/90 Taumanu Penani vs Tabeta Tibau and Katoro Kimaua which was heard by Muhammad CJ in 1991. The Chief Registrar has made the following note:-

On the 30th day of July 1991, this Court, Muhammad CJ presiding, gave the following decision in respect of an appeal against the decision of the South Tarawa Magistrates' Court in case 39/90:-

Matter to be remitted back to the Magistrates but direction to be given after hearing submission from lawyers and Appellant's lawyer to seek date for submissions.

The only record of this decision is a notation on the file in the handwriting of Muhammad CJ. There is no subsequent notation on the file.

Mr Banuera Berina for the appellant relied only on one of the four grounds of appeal in the Notice of Appeal:-

3. The Magistrates erred in law in failing to comply with the directions of the Honourable High Court.

Mr Berina added another to the effect that "finding of the Court cannot be supported by the evidence". That finding was:-

As the Court can see that there is no agreement between the parties about their boundaries, and since there is also some confusion from the plaintiff, the Court confirms the boundary that has previously been erected on the boundary between the lands of Taumanu Penani and Tabeta Tibau, which is a stone on the ocean side and marked coconut trees on the lagoon side, as shown on the sketch plan above.

Neither party had asked for that finding: the Court had not heard argument on it nor invited the parties to argue it.

Muhammad CJ made – we again follow the Chief Registrar's note – this finding:-

Matter to be remitted back to the Magistrates but direction to be given after hearing submission from lawyers and Appellant's lawyer to seek date for submissions.

So far as it may now be determined, the learned Chief Justice never did hear argument as to the directions to be given. However in the file there is the copy of a letter from Roddy Koaru, lawyer, dated August 12 1991 enclosing a draft consent order agreed, Mr Koaru said, by counsel. The draft:-

CONSENT ORDER

Before his Lordship F Muhammad CJ

His Lordship on the 30th July, 1991 after hearing Counsels for Appellant and Respondents in this appeal ordered that the appeal be remitted to the Bairiki Magistrates Court (Lands) for re-

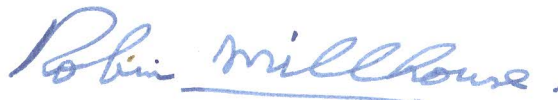
determination of the boundaries of and Tenangimaerere 623(e) & (i).

His Lordship further ordered that the Counsel for the Appellant serve an Affidavit dealing with the issue what is "1N" in Kiribati land tenure system to Counsel for the Respondents of which Affidavit was served on the 1st day of August, 1991.

That both Counsels having agreed that this Court do give the following directions that the Magistrates decision is set aside and they are to hear evidence from the Chief Lands Officer or retired Chief Lands Officer as to the issue of "1N" in Kiribati land Tenure system and to identify the old boundary marks and to redetermine the boundary accordingly.

It appears that the order was never made. We can see no reason why it should not have been and Mr Berina has invited us to make it now, Ms Taoaba consenting.

We allow the appeal and remit the case to the Bairiki Magistrates' Court (Land) for re-determination in accordance with these reasons.



THE HON ROBIN MILLHOUSE QC
CHIEF JUSTICE



Tekaie Tenanora
Magistrate



Betero Kaitangare
Magistrate