

IN THE HIGH COURT OF KIRIBATI

CIVIL CASE NO. 87 OF 2015

	[KIRIBATI HOUSING CORPORATION	PLAINTIFF
	[
BETWEEN	[AND	
	[
	[IOANNA BAKAATI	1 ST DEFENDANT
	[PERSONS UNKNOWN	2 ND DEFENDANT

Before: The Hon Chief Justice Sir John Muria

19 September 2017

Ms Taaira Timeon for Plaintiff

Ms Botika Maitinnara for Defendants

JUDGMENT

Muria, CJ: This is an application by the Kiribati Housing Corporation for recovery of a piece of land in Bikenibeu, pursuant to section 3 of the *Squatters (Recovery of Lands) Lands Act 2005*. The land which the applicant seeks to recover is described as:

“the area surrounding or adjacent to House C35u, Bikenibeu north”.

The applicant is a Government statutory body which is responsible for the management and control of all houses in South Tarawa. The right of the applicant to take control and manage the houses, together with the land upon which the houses are built, stems from a Deed of Assignment signed between the Government of Kiribati and the applicant on 31 December 1986. Reference of

the Deed was made in paragraph 4 of the affidavit of Mareko Tekarika filed in support of the applicant.

Relevantly, Clauses 2 and 3 of the Deed provide as follows:

“2. The Government and the Corporation agree that from the date hereof title, use, occupation, possession, management or control of all the houses situated throughout South Tarawa or any other property including furnitures and fittings and all fixtures and chattels therein contained in the said houses in which the Government holds any interest shall vest in the Corporation.

3. The Government and the Corporation agree that from the date hereof title, use, occupation, possession, management or control of any demised land or otherwise upon which the said houses are situated or being the sites thereof in which the Government holds an interest, shall vest in the Corporation and that from date hereof the Government shall for a period of three years continue to pay the rent payable in respect of such demised lands or otherwise upon which the said houses are situated or being the sites thereof after which period the Government and the Corporation shall review the provision of this clause”.

Having been given the authority to control, manage and administer the Government houses and land on which the houses are situated, the applicant has established a policy of having a 5 metres space-allowance between each house to ensure reasonable access between each of its houses. (See paragraph 6 of Mareko Tekarika’s affidavit).

The complaint in the present case is that the respondents have erected their private house within the 5 metres space-allowance next to the applicant's House No. C35u, Bikenibeu north. The respondent does not dispute erecting her house on the land in question. However, she stated that the Government gave her permission to build on the land and that the place where her house was built was not within five (5) metres from the applicant's House No. C35u at Bikenibeu north.

The respondent produced evidence that she and her late husband applied for and were granted approval to reside on the land Arebetau 668a/2a, Bikenibeu. Annexure "A" to the respondent's affidavit shows a copy of the respondent's application which had the approval of the various relevant authorities.

On the other hand, the applicant has relied on a policy that requires houses not to be built within five metres from its houses. No evidence of that policy has been produced, apart from the assertion by Mareko Tekarika in his affidavit that the applicant has such a policy.

Secondly, in view of the undisputed fact that the Government has given the permission to the respondent and her late husband to reside on the land next to the applicant's house, some evidence would be needed to ascertain that the respondent's house is located within five metres of the applicant's House No. C35u at Bikenibeu. The burden lies on the applicant to bring that evidence. None has been produced. Simply relying on a policy is not enough, especially in the present case, where the respondent has shown evidence of her right to reside on the land on or near the applicant's house.


In this regard, I accept the submission by Ms Maitinnara that evidence, by way of a survey, to ascertain whether the respondent's house is within five metres of the applicant's House No. C35u as demanded by its policy needs to be produced. Without that evidence, it would not be proper for the Court to grant the order sought in the present application.

The present application by the applicant must be refused with costs to the respondent to be taxed if not agreed.

ORDER: Application refused.

Costs to the respondent to be taxed if not agreed.

Dated the 6th day of December 2017



SIR JOHN MURIA
Chief Justice