IN THE HIGH COURT OF KIRIBATI 2019

CIVIL REVIEW NO. 20 OF 2018

	[AREBONTO KATANGITANG FOR	
	[ISSUES OF RARATU AND BEIA AKAU	**APPLICANTS**
	[	
BETWEEN	**[AND**	
	[	
	[UTIMWAAWA (TIAAM) TIMON	**RESPONDENT**

Before: The Hon Chief Justice Sir John Muria

27 September 2019

Ms Taaira Timeon for Applicants
Mr Raweita Beniata for Respondent

JUDGMENT

Muria, CJ: The applicants are seeking extension of time to apply for leave to issue certiorari proceedings in this case. The decision that the applicants are seeking to impugn was the decision made by the Magistrates' Court in Case TN 14/87.

Brief background

2. The case TN 14/87 was a dispute over the lands Terereua and Teitimeata in Tabiteuea Meang (TabNorth). The TabNorth Magistrates' Court dealt with the case and decided on 12 February 1987 that the lands Terereua and Teitimeata be transferred to Utimawa (Tiam) Timon.

3. The parties to TN 14/87 were Nei Tiuea Teririe (plaintiff) and Berekita Akata, Tiam, Tiuea Tima (defendants). At the hearing before the Magistrates' Court, the family of Baikita and Akata opposed the plaintiff's decision to transfer the lands to Tiam.

The applicants

4. The applicants were not a party to the case in TN 14/87. However, they said that they are interested party to the case. They now seek to challenge the decision of the Court made on 12 February 1987.

5. There is no suggestion that the plaintiff and the defendant in case TN 14/87 knew that other persons such as the present applicants were also interested party in TN 14/87 and that they ought to have been notified of that case. In any case, for more than 30 years there has been no challenge to the Court's decision either by the defendants in that case or by any interested persons until the applicants have brought the present proceedings.

Determination

6. The grant of an extension of time is always in the discretion of the Court to be exercised judiciously. The authority in Kiribati. The basis for the exercise of such discretion is set out in *Batee –v- Trustee of Jehova's Witness Church* [2006] KICA 17 where the Court states as follows:

> **"As those and other authorities make clear, leave will not normally be granted unless the applicant shows (i) an acceptable explanation for the delay, and (ii) that in all the circumstances it would be fair and equitable to extend time. Significant questions in approaching the exercise of the discretion will be the magnitude of the delay, the reasons for it, any prejudice suffered in consequence, and the strength of the appellant's case. In the end, however, there is an overriding requirement to do what is just".**

7. There can be no question that the delay of 31 years in this case is substantial. The applicants will have to satisfy the Court that despite the substantial delay of more than 30 years, there is good and acceptable reason to justify a grant of extension of time.

8. The reason offered for the delay is that the applicants were not aware of the case TN 14/87 and that they only found out in 2013 when a dispute arose between them and the respondents (see paragraph 11 of the affidavit of Bwaketi Arebonto sworn to on 14 December 2018). However, even if after they learnt of the case TN 14/87 in 2013, the applicants took another five years to file the present case. That does not add to any better explanation for the delay. It is in fact the opposite.

9. With regard to the suggestion that the applicants were not aware of the case TN 14/87 until 2013, the respondents provided the answer to the applicants' suggestion in paragraphs 5, 6, 7, 8, 9 and 10 of the affidavit of Tiam Timon sworn-to on 4 July 2019. Tiam Timon deposed as follows:

> **"5. The case TN 14/87 was decided on 12 February 1987 (emphasis added). Later in 1988 there was a case TN 33/88 decided by the same Magistrate Court of Tabiteuea North on 2 May 1988. The case is brought in respect of Tiuea Teririe an old lady whom most of the parties (her family relatives) want to have times with her and also because they want her (Tiuea) to stop selling out her lands. This old lady owned a number of lands and babai pits on Tabiteuea North and that is why most parties want time with her so that they can have shares in her lands. This case was brought by Kooki Kooki and others.**
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> **6. Kooki Kooki in that case clearly mentioned the reason why they initiate that case which is because Tiuea started to sell out her lands and also because Tiuea has given away some of her lands in Court which they did not agree with. He meant to say case TN 14/87 in which Tiuea give away her lands and pits to me and other beneficiaries as above.**

7. Other parties to that case are my father Timon, the old lady herself Tiuea Teririe and the applicant (Arebonto) himself. Even though the Applicant is not the party to TN 14/87 as he said before yet he knew about the existence of that case TN 14/87 (1987 proceeding) and the reason in bringing TN 33/88 to Court. Attached herewith is the true and correct copy of TN 33/88 and marked TT-2.

8. In 2012, in CN 147/12 decided on 13 November 2012, I brought an application before the Tabiteuea North Magistrate Court to stop Tongabiri and his family, Arebonto and his family, Taunran and his family and Kaotiua and his family from dealing with the lands of Tiuea Teririe that has been dealt with back in TN 14/87 (the 1987 proceeding).

9. In that case, the Applicant (Arebonto) clearly mentioned himself that he knew that the lands were given to me back in 1987 but that they were not invited to that proceeding and that is why he could not agree to me being the owner of such lands.

10. In that case too the Applicant (Arebonto) further testified that in 1988, they were invited to TN 33/88 and that they were happy because they were all summoned and invited but as regard the earlier proceeding in 1987 he remained disagree about it because he was not invited".

10. I accept the evidence of the respondents. From the affidavit of the respondents, it is obvious that the applicants knew about the case TN 14/87 as far back as 1988, 2012 and 2013. The cases TN 33/88, CN 147/12 and CN 132/13 clearly confirm his knowledge of case TN 14/87. I do not accept the applicants' suggestion that they did not know of case TN 14/87 until 2013.

11. The magnitude of the delay in this case of more than 30 years cannot be simply displaced by the bold assertion of the applicants that they did not know about the case TN 14/87 when in fact the evidence plainly shows that they knew of the case TN 14/87 since 1988. On the evidence before the Court, I am satisfied that the applicants do not have any acceptable 3explanation for the delay in this case.

12. It appears from the records of the cases TN 33/88, CN 147/12, CN 132/13 and the present case that the crux of the applicants' complaints against the respondent is that Nei Tiuea Teririe should not have given the lands in question to the respondent because he is only her adopted son. The evidence shows that Nei Tiuea's own son, Tewainu died issueless and so Nei Tiuea gave the lands to her adopted son, the respondent. The Magistrates' court of TabNorth approved the transfer of the lands to the respondent in TN 14/87.

13. There is no evidence to suggest that Nei Tiuea Teririe had not titles to the lands which she transferred to the respondent. Nei Tiuea Teririe had titles to the lands which she validly transferred to the respondent who registered them in his name. The respondent had been enjoying his titles to the lands since 1987 and unless the applicants can point to any legal defect in the transfer by Nei Tiuea Teririe to the respondent, his titles to the lands registered in his name cannot be disturbed.

14. The case of *Tabora –v- Uruatarawa* [2009] KICA 9 relied on by the applicants held that a delay of 17 years, though it was a substantial delay, the extension of time was granted, to challenge the respondent's title to his land because the person who transferred the land to the respondent had no title to the land to validly transfer to him. That is not the same as the case now before the Court.

15. The prejudice to the respondent is obvious in this case. The evidence shows that he has developed the lands since 1987 on the strength of the Court's decision in TN 14/87 in his favour. The cases TN 33/88, CN 147/12 and CN 132/13 have all recognized the respondent's right to the lands in question. Any action taken to disturb the respondent's titles to the lands Terereua and Teitimeata would be prejudicial to him.

16. There can be no breach of the rule of natural justice and fairness in this case and as such *Rineaki –v- Rineaki* [2017] KIHC 39 does not assist the applicants. It is inconceivable to wait 30 years before complaining about procedural fairness in this case.

Conclusion

17. In the light of the evidence and the authorities cited, the application cannot stand. It is refused with costs to be taxed if not agreed.

Dated the 6th day of December 2019

SIR JOHN MURIA
Chief Justice