

IN THE HIGH COURT OF KIRIBATI 2019

CIVIL APPEAL NO. 2 OF 2019

[IATAAKE KING APPELLANT
[
BETWEEN [AND
[
[EREMA MWANUA RESPONDENT

Before: The Hon Chief Justice Sir John Muria

15 November 2019

Mr Banuera Berina for Appellant
Ms Taaira Timeon for Respondent

JUDGMENT

Muria, CJ: This appeal by the plaintiff (appellant) who, in the Court below, brought a claim in nuisance against the defendant (respondent) over the defendant's verandah to her house extending over the plaintiff's land. The plaintiff had sought an order to remove the defendant's verandah and to pay damages in the sum about \$2,500.00. The Magistrates' Court rejected the plaintiff's case.

Grounds of Appeal

2. In his Notice of Appeal, the appellant raised three grounds of appeal, namely:

1. The Single Magistrate erred in law in failing to find that the Plaintiff had suffered damage as a result of the veranda of the Defendant's house encroaching onto his land.
2. The Single Magistrate erred in law that the claim for the removal of the veranda was a land claim and for that reason it must be filed in the Lands Court in that the claim was brought by the Plaintiff claiming damages for the nuisance he was suffering from caused by the veranda of the Defendant's house which claim also falls squarely within the civil jurisdiction of the Magistrates' Court the amount claimed in damages being less than \$8,000.00.
3. The finding that the Plaintiff had failed to prove the damage suffered is against the weight of the evidence.

The Evidence

3. The Court minutes show that in his evidence in chief, the appellant stated:

"I believe that there was a boundary determination that had been carried out between me and the opposing party, and that boundary determination was for the confirmation of my boundary with the opposing party. I believe it as shown on the map. *Ct mark it as Exh 'B1'*. It has been quite a while when I first bought my land at Tekaihangaki, and their veranda was there since that time until now. It has extended beyond their stone wall boundary. Damages to me since I did not consent and I have a garden in that area and these peoples' veranda had killed my plants such as cabbages, and so that is the inconvenience caused by them and the amount of \$2,500.00 is small compared to the length of time from 2001 until today. We need the payment of such amount since they knew it as well".

4. The respondent's evidence contained in the Court minutes shows:

"That is the land we are disputing. I've been there for a long time since 1970 until now. I have a brick house and a house made of Masonite. After the boundary determination that Masonite house of mine which we have live in since 1970 was disputed, and there was no legal proceedings against us since that time until now. My house and veranda were not in his land after the boundary determination".

5. It is obvious that the case between the parties was, first, for the removal of the respondent's veranda, which the appellant claimed was erected and extended over his land, and secondly, for damages for inconvenience and nuisance caused by the erection of the respondent's verandah over the plaintiff's land. Those were the two claims before the Single Magistrate.

6. The evidence from the appellant was that since he bought the land, the respondent's verandah had been standing over his land. This led to the boundary determination in BD 66/12 in which the Magistrates' Court clearly confirmed the boundary of the appellant's land 682e.

7. Despite the evidence given by the appellant and the respondent in BetCiv 86/18, and the presence of the evidence in the Court minutes of BD 66/12, the Single Magistrate made no finding as to issue of whether the respondent's verandah was located over the appellant's land. The Single Magistrate simply avoided determining that issue by stating that the question of the location of the defendant's verandah was a matter falling under the land jurisdiction of the Magistrates' Court and that it should be dealt with as such. That is clearly an error on the part of the Single Magistrate. This was a civil claim and should be dealt with under the civil jurisdiction of the Court.

8. As a result of the Single Magistrate's decision not to deal with the issue over the defendant's verandah, the Single Magistrate failed to consider the plaintiff's claim for damages caused by the verandah. Had he done so, the Single Magistrate would then go on to consider assessment of damages, if any, suffered by the plaintiff.

9. The appeal must be allowed. The case is remitted to the Magistrates' Court to hear the plaintiff's claim *de novo*, under the civil jurisdiction of the Magistrates' Court.

10. Cost of \$350.00 to be paid to the appellant.

Order accordingly.

Dated the 2nd day of December 2019

