

**IN THE HIGH COURT OF KIRIBATI
TE KABOWI AE RIETATA I KIRIBATI**

**Miscellaneous Application 109/2020
arising out of High Court Civil Case 30/2019**

BETWEEN **BETIO TOWN COUNCIL**
 Applicant
AND **NEBOATETAAKE AREKE WITH**
 SIBLINGS FOR ISSUES OF
 MAIBINIMONE TIBWE
 Respondents

Hearing: 22 March 2021
Appearances: Ms Kanrooti Aukitino Tooa for Applicant
 Ms Taaira Timeon for Respondent
Judgment: 4 March 2022

JUDGMENT

1. The Applicant applied to set aside the default judgment issued on 20 June 2019.
2. There are three grounds relied by the Applicants including that they have a substantial ground to defend the civil suit by the Respondent, that the delay was excusable and that the Respondent will not suffer irreparable harm if the application is granted.
3. The Respondent opposed the application.
4. In this type of application, the court has unfettered discretion whether to set aside a judgment according to our civil process Rules.
5. The first ground argued by the Applicant is their defence to the substantive civil suit by the Respondent having substantial ground including that the land in issue is leased by the government therefore the accretion to the said land should forms part of the leased land.
6. Section 12(2) of the *Native Lands Amendment Act* 1983 was correctly argued by the Applicant that the leased land by the government includes accretion to the land even after the commencement of the lease. There is sufficient ground for the Applicant to defend the civil suit against it.

7. Secondly, the Applicant argued that the main witness by the name of Sionica who in her affidavit said that the delay in filing the Applicant's defence was caused by her lack of understanding of the court's process and the document she received. I have difficulty in understanding this assertion given that she is an employee of the Council and receiving such document, she should have sought assistance from her superiors rather than leaving it unattended. Even though I disagree with this second ground, it does not match how the Applicant should be given time to defend the civil case against it with their arguable defence.
8. Finally, in terms of irreparable harm to be suffered by the Respondents if the default judgment is set aside, I agree with the Applicant that with their arguable defence, justice serves both parties for the default judgment to be set aside. However, I understand the financial burden that the Respondents have gone through in correctly getting the default judgment and this should be compensated by the Applicant.

ORDER OF THE COURT:

9. In exercising this court's discretion, I grant the application and set aside the default judgment with costs against the Applicant of \$250.00 to be paid to the Respondents one week from the date of this judgment.

