

IN THE KIRIBATI COURT OF APPEAL ]  
CIVIL JURISDICTION ]  
HELD AT BETIO ]  
REPUBLIC OF KIRIBATI ]

Civil Appeal No. 16 of 2016

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**BETWEEN**                      **DAVID GREIG AND OTHERS FOR  
AND ON BEHALF OF ALL ISSUES  
OF WILLIAM GREIG**                      **APPELLANTS**

**AND**                              **ATTORNEY-GENERAL FOR THE  
REPUBLIC**                              **RESPONDENT**

**Before:**                      Blanchard JA  
                                        Handley JA  
                                        Hansen JA

**Counsel:**                      *Mantaia Kaongotao* for appellants  
                                        *Ereta Bruce* for respondent

**Date of Hearing:**    14 August 2017  
**Date of Judgment:** 16 August 2017

## **JUDGMENT OF THE COURT**

[1]    On 14 August 2017 we ordered that these appeals be dismissed for want of prosecution, with no order for costs and the presiding Judge announced that we would give our reasons later. These are our reasons.

[2]    On 12 January 2017 the appellants filed a single notice of appeal against judgments of the High Court in separate proceedings dated 12 November 2010 and 11 December 2014. They claim to be the rightful owners of Fanning and

Washington Islands subject to the sovereignty of the Republic. Both appeals were years out of time.

[3] The former Chief Justice in his judgment on 12 November 2010 rejected the appellants' claim holding that their chain of title ended with the sale of both islands to Emmanuel Rougier under the order of the Court of the High Commission on 3 December 1907. He also held that in any event the appellants' action commenced in 2009 was time barred by s.8(2) of the *Limitation Act 2004*.

[4] The second action, commenced in 2012, sought an order reopening the first judgment based on the discovery of new evidence, to permit a retrial. The proceedings were misconceived. Except in cases where a judgment is sought to be set aside for fraud, the discovery of fresh evidence is only a ground for a rehearing, either before an appellate court or at first instance, if the appellate court finds that the evidence is relevantly fresh in accordance with the tests in *Ladd v Marshall* [1954] 1 WLR 1489 CA. The issue can only be raised in the appellate court on an appeal from the judgment.

[5] In any event Mr Kaongotao, who appeared for the appellants, could not produce any of the new evidence. We note that he was unable to do this at the hearing before the current Chief Justice even after he was given a lengthy adjournment. He was still unable to do this some 2½ years later, and five years after the second proceeding was commenced in 2012.

[6] In our judgment the long delays evidence a monumental failure to prosecute this claim with any diligence, and they probably demonstrate that the supposed new evidence simply does not exist. In any event Mr Kaongotao was unable to offer any answer to the decision of the former Chief Justice that

the original proceedings were time barred under s.8(2) of the *Limitation Act* 2004, or, we would add, by the UK legislation in force in Kiribati before 2004.

[7] Nothing has been done to prosecute these appeals since the notice of appeal was filed. Both matters were called over on 10 August, the first day of the current session, when Mr Kaongotao applied for them to be stood over to the next session in a year's time. The Court was not prepared to make that order at that stage and indicated that we would need to be satisfied that the new evidence existed, and that the appeals had some prospects of success. The presiding Judge indicated that otherwise the Court might dismiss the appeals for want of prosecution. They were stood over to 14 August.

[8] When the appeals were called in again on 14 August, Mr Kaongotao, who again appeared for the appellants, was unable to provide us with any information about the suggested new evidence, what it was and where it was, nor was he able to offer any explanation for the long delays, or indicate any answer to the limitation defence.

[9] In these circumstances the Court dismissed both appeals with no order for costs.



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Blanchard JA



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Handley JA



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Hansen JA