

**BETWEEN**        **TABWENA BURENTARAWA**

**APPELLANT**

**AND**                **WAITIE NABUAKA**

**RESPONDENT**

**Hearing:**            22 July 2022

**Before:**             Blanchard JA  
                              Hansen JA  
                              Heath JA

**Counsel:**           Ms Taaira Timeon for Appellant  
                              Mr Raweita Beniata for Respondent

**Judgment:**        29 July 2022 *Blanchard*

### **JUDGMENT OF THE COURT**

#### **Introduction**

[1]        The respondent is the titleholder of land at Tekauabanga 89-a (the **land**). The appellant had occupied the land for ten years when she brought fraud proceedings against the respondent. The claim was dismissed. The respondent then applied for and was granted an eviction order. The appellant appealed unsuccessfully to the High Court against that order. She appeals to this Court against the High Court's decision.

#### **The High Court decision**

[2]        There were two grounds of appeal before the High Court. The first was that the eviction order was erroneously made by the Magistrates' Court in its land jurisdiction. The appellant argued the eviction proceeding was brought in the Court's civil jurisdiction. The second ground was that the Magistrates' Court erred in granting the eviction order without conducting a boundary determination to confirm that the land belonged to the respondent. The High Court, comprising the Commissioner and two Land Appeal Magistrates, rejected both grounds.

[3]        The High Court was in no doubt that, in entertaining the eviction application, the Magistrates' Court was acting in its land jurisdiction, holding that 'it is straightforward and clear that this is a land matter'. It also upheld the respondent's submission that the appellant, having raised the jurisdictional issue only in response when the matter was first called, it was too late to raise the issue on appeal.

[4] As to the second ground, the Court, noting that there is no suggestion that the appellant owns land in Tekauabanga, held that she had no standing to seek a boundary determination. The Court said that the appellant having alleged fraud, it was incumbent on her to prove title to the land she wished to occupy.

### **This Appeal**

[5] The appellant submits the High Court erred in its findings on both grounds of appeal. The jurisdiction of the Magistrates' Court and the respondent's failure to prove the boundaries of his land are in issue.

### *Jurisdiction*

[6] The jurisdiction of the Magistrates' Court to determine land issues derives from s 23 and Schedule 3 of the Magistrates' Courts Ordinance (CAP.52) which relevantly provide:

23. (1) Subject to the other provisions of this Ordinance and of any other law for the time being in force, every magistrates' court shall have and exercise the jurisdiction in civil causes and matters for the time being set out in Schedule 1, in criminal causes and matters the jurisdiction for the time being set out in Schedule 2, and in land causes and matters the jurisdiction for the time being set out in Schedule 3.

#### SCHEDULE 3 (Section 23)

1. Each magistrates' court composed of 5 members in pursuance of section 7(4) or deemed to be so composed shall have jurisdiction to hear, try, determine and otherwise deal with land causes and matters.

2. In dealing with land causes and matters a magistrates' court shall, subject to sections 10(1) and 12 of the Native Lands Ordinance, hear and adjudicate in accordance with the provisions of the Land Code applicable or, where Code is not applicable, the local customary law, all cases concerning land, land boundaries and transfers of titles to native lands registered in the registers of native lands and any disputes concerning the possession and utilisation of native land.

3. Each magistrates' court composed as in paragraph 1 hereof shall have jurisdiction to hear, try determine and otherwise deal with the subject matter of Part VI.

[7] Section 2 of the Ordinance defines 'land causes and matters' as follows:

All causes and matters concerning land, land boundaries and transfers of title to native land registered in the Registrar of Native Lands and any disputes concerning the possession and utilisation of native land, and includes causes and matters concerning native wills, native adoption, native customary fishing rights, native leases and native paternity, and all matters referred to in Part VI and sections 35 and 36 of the Native Lands Ordinance;

[8] For the appellant it is submitted that eviction from land is a remedy available in tort for trespass to land and is a personal action heard by the Magistrates' Court in its civil jurisdiction. Ms Timeon argues that actions for the recovery of possession of land or eviction from land are

not causes and matters coming within Schedule 3. She relies on the decision of this Court in *SMEC v Temwakamwaka Landowners*<sup>1</sup> where a claim for trespass to land was held not to come within the land jurisdiction of the Magistrates' Court.

[9] We are satisfied, however, that the application for eviction, like the fraud case that preceded it, fell squarely within the land jurisdiction of the Magistrates' Court. As the High Court held, it is a dispute between two native I-Kiribati 'concerning possession of land'. The *SMEC* case is clearly distinguishable. It was a personal action for trespass to land seeking to recover damages after the appellant had taken gravel from the respondent's land without first obtaining the respondent's consent. It was a claim in tort involving land but was not a dispute over land. This case concerns land boundaries and the right to possession of native land. Without question it should be dealt with by the Magistrates' Court in its lands jurisdiction.

*Evidence of boundary*

[10] Ms Timeon argues that there was no evidence before the Magistrates' Court to show the appellant did not have title. She says the Court should have required the respondent to conduct a boundary determination, not with the appellant but with his adjoining landowner to ensure there was enough evidence to support his claim for eviction.

[11] In our view, however, it was sufficient for the respondent to establish that he was the owner of the land. His right of ownership had been upheld in the fraud proceedings. He was entitled to an eviction order. If the appellant claims she is not on his land, it is for her to adduce evidence accordingly. This ground of appeal must also fail.

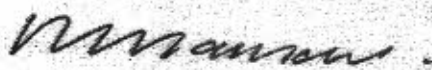
**Result**

[12] The appeal is dismissed.

[13] The respondent is entitled to costs to be fixed if necessary by the Registrar.



Blanchard JA



Hansen JA

<sup>1</sup> 1998 KICA 4; Land Appeal 08 of 1997 (9 March 1998).

*Heath JA*

Heath JA