

BETAO HIGH COURT LAND APPEAL SESSION  
(BEFORE HON JUSTICE V O MAXWELL C.J.)

HCLA8/88

BEYWEEN:                      BORAU MATAUEA                      Appellant  
AND:                              KAROTU MATAUEA                      Respondent

Heard on 2nd March  
and 3rd July, 11th  
October 1989

JUDGMENT

This appeal came up for hearing at Beru High Court Land session on 2nd March 1989 and was transferred to South Tarawa Land Appeal session for hearing on the application of the parties now residing on South Tarawa.

The appeal is against the decision of the Lands Magistrates Court in Beru in case No 49/87 delivered on 25th September 1987.

The Appellant the junior brother of the respondent in case No 49/87 applied for a distribution of their mother's estate in accordance with her will filed in court.

The magistrates after hearing the evidence of both of them held as follows:-

"Karotu is to be registered on these lands, Aontebon 115-6, Teaikana 319-2 and Tebatano 308-5.  
Borau is to be registered on these lands and pits: Kautinakoa 477-8, Tengea 209-37, Tebue 357-21 and Bukinikainga 504-4 and R.1622."

It is this decision that the appellant is appealing against after seeking and being granted leave to appeal out of time. The grounds of appeal filed on his behalf by Mr Banuera Berina are as follows,

- 1) That the Lands Magistrates' Court and the Lands Commission erred in fact and in law in failing to invite all interested parties to the hearing.
- 2) That the decision is unsatisfactory in that there is nothing in the evidence to warrant the giving of half of KABAeka 275-i to Karotu Matauea.

At the hearing Mr Banuera did not appear, the appellant then argued his appeal.

The first ground relates to the registration of the Respondent on Land KABAeka 275-1(a) by the Lands Magistrates on 29th May 1957 and confirmed by the Lands Commission in case No 332/57 on 27th July, 1957. This ground was however not argued during the appeal and quite rightly too.

By section 4 of Native Lands Ordinance Cap 61 of the Laws of Kiribati, any title registered by the Lands Commission is indefeasible and as such no court in Kiribati can entertain any action which purpose is to impeach the title. Therefore ground one of the grounds of appeal fails.

Ground 2 was abandoned by the appellant and he substituted the following ground which reads:-

"That the magistrates erred in not complying with the will of our mother N. Teutae Iuta which gave me all of her properties on Beru."

In other words he is saying that the magistrates erred in overruling his mother's will.

The will was dated 17th February 1985 and is a valid will according to law.

The question the magistrates had to decide is, should the gift in the will be confirmed?

Section 10(i) of the Lands Code Cap 61 of the Laws of Kiribati provides,

"An owner's will disposing of his property may be allowed by the court if it is in accordance with this Lands Code."

Section 2 of the Lands Code Cap 61 provides as follows,

"If any next-of-kin of an owner deliberately neglect that owner (land not on account of his own sickness, or because the owner refuses his help, or for any other reason) the owner may direct that the next-of-kin is to receive no share of his property; provided that during the owners lifetime the neglectful next-of-kin has been successfully prosecuted for his neglect."

The effect of this section is that an owner cannot disinherit his child or next-of-kin unless the child or next-of-kin has been successfully prosecuted for neglect in the lifetime of the owner.

The magistrates had this provision in their minds hence they held that the respondent was not guilty of neglect and as such they will not comply with the terms of the will.

We share the views of the magistrates and therefore ground two as argued by the appellant fails.

The appellant is not entitled to inherit the estate of their mother to the exclusion of his brother. Therefore we dismiss the appeal as lacking in merit.

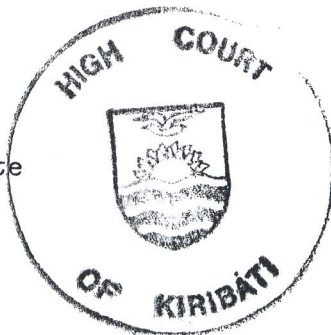
ORDER

1. Appeal dismissed without costs.
2. The decision and the distribution made by the magistrates are both confirmed.

*V O Maxwell*

The Hon Justice V O Maxwell  
CHIEF JUSTICE

*Betero K.*  
BETERO KAITANGARE  
Land Appeal Magistrate



*Te Kai Tenanora*  
TEKAI TENANORA  
Land Appeal Magistrate