

IN THE HIGH COURT OF KIRIBATI
(BEFORE THE HON R LUSSICK C.J.)

HCLA 50/90

BETWEEN: TAAKE BAMATANG Appellant
AND: AUKITINO MARITINO Respondent

Mr B Berina for the Appellant
Respondent in person

Date of Hearing: 14 August 1997

J U D G M E N T

Taake Bamatang applies for leave to appeal out of time against a boundary determination made by the Kuria Magistrates' Court (Lands) on 16 October 1987 in case No. 69/87.

If such leave is granted, the following grounds of appeal are relied upon:

1. The procedure was improper in that the parties were not sworn nor informed of their rights to cross-examination.
2. The decision was unreasonable that the subdivision made is impossible to implement as the width of each portion is too narrow.

The applicant claims that at the conclusion of case No. 69/87, in which he was not legally represented, he was not informed by the magistrates' court that he was entitled to appeal. He was brought back to court again on 5 March 1990. In that case the Magistrates' Court erected boundaries to which he

objected, and he was advised that he had a right to appeal that decision. He filed an appeal the following day. What he did not realise, until he consulted his present counsel in May of this year, was that the 1990 proceedings were merely an enforcement of the 1987 decision.

The applicant has sworn an affidavit in attestation of the truth of such facts. We gave the respondent an opportunity to ask questions of the applicant but he declined.

We also required the respondent to confirm on oath his claim that at the hearing of case No. 69/87 the court did in fact advise the parties of their right of appeal. This he did, but we were left with the impression that he was not quite sure whether it was the proceedings in 1987 or the proceedings in 1990 which he recalled. What is more, we note from the minutes of the 1987 proceedings that there is no record of any such advice having been given to the parties.

We therefore accept that on the balance of probabilities the magistrates in case No. 69/87 failed to advise the applicant that he had a right of appeal.

We have no difficulty in finding that the appeal has merit. We need only to consider the first ground of appeal. The respondent himself concedes that none of the witnesses in the 1987 were required to take the oath. Such procedure is irregular and contrary to the requirements of section 51 of the *Magistrates' Courts Ordinance* and Rule 30(c) of the *Magistrates' Courts Rules*.

It is also apparent from the court minutes of the 1987 proceedings, and from the cross-examination of the respondent before us, that the parties were not given the opportunity to cross-examine other witnesses. Again, an irregularity in the proceedings and contrary to Rule 30(d) of the *Magistrates' Courts Rules*.

We find that the applicant has given a satisfactory explanation for the delay in taking proceedings in relation to the 1987

case and that the appeal has merit. Accordingly, the application for leave to appeal out of time is granted.

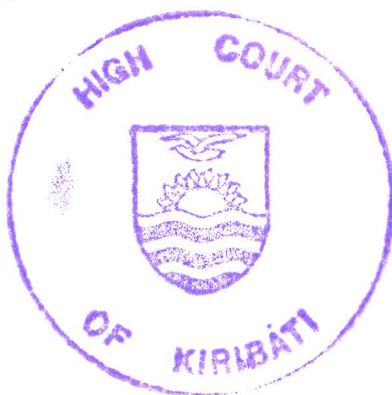
It follows from what we have already said that the proceedings in the lower court were unsatisfactory and resulted in an injustice to the applicant.

The appeal will therefore be allowed. The decision in case No. 69/87 is set aside and the case is remitted to the Kuria Magistrates' Court (Lands) for retrial.

The respondent is advised that he has a right to appeal to the Court of Appeal within 6 weeks.



THE HON R B LUSSICK
Chief Justice
(18/08/97)



BITIARE EKERA
Magistrate
(18/08/97)



TOOKI KAAKE
Magistrate
(18/08/97)