HIGH COURT OF KIRIBATI

*Civil Appeal Nº 22/2019*

**SIMON INANTAAKE** *Appellant*

***v***

**RUUTA TIIBIN** *Respondent*

*Kiata Kabure-Andrewartha for the appellant*
*Banuera Berina for the respondent*

*Date of hearing:* *18 October 2019*
*Date of judgment:* *22 October 2019*

# JUDGMENT

[1] In April 2018, the appellant entered into an oral agreement with the respondent to operate a bar from the respondent's building in Ronton village on Kiritimati. In addition to monthly rent of $250, the appellant would renovate the premises. While there was no end date agreed, counsel for the appellant concedes that there was an implied term that the agreement was terminable by the respondent on the giving of reasonable notice to the appellant.

[2] Sometime in December 2018, the respondent informed the appellant that she wished to end the arrangement. He had already paid the rent for that month. On 15 January 2019 the respondent changed the lock on the building, effectively excluding the appellant. At about the same time she returned the December rent to the appellant.

[3] On 4 May 2019 the appellant and respondent appeared before a Single Magistrate in the Kiritimati Magistrates' Court. Both parties were legally represented, although the appellant's lawyer in the court below was not the same lawyer who argued the appeal. The appellant sought an order that would enable him to reopen his bar. His lawyer explained to the Single Magistrate that he had been locked out of the premises without notice, and that his property was locked inside. Counsel for the respondent explained that there was no formal or written agreement between the parties, and that the respondent was the person with the legal right to possession of the

premises. He explained that the respondent opposed the claim for the reopening of the bar, but she was prepared to allow the appellant to retrieve his property from the building.

[4] According to the minutes of the hearing, counsel for the appellant then referred the Single Magistrate to a letter from an officer of the government's Land Management Division. Unfortunately the minutes are incomplete. It seems that more was said by counsel for the appellant that was not recorded.

[5] The next entry in the minutes records the Single Magistrate as allowing the appellant's claim, but it is clear from the rest of the decision that this was not the claim that had been stated at the outset. The appellant was given 2 weeks to retrieve his belongings from the respondent's building. A written judgment was issued by the Single Magistrate on 7 May, confirming the decision given 3 days earlier.

[6] The appellant filed an appeal against the Single Magistrate's decision on 22 May. On the first day of this Kiritimati High Court sitting, counsel for the appellant filed an amended notice of appeal. Counsel for the respondent did not oppose the amended notice, and I granted leave to proceed on the revised grounds.

[7] The first ground asserts that the Single Magistrate erred by deciding the case without first hearing evidence. While it is true that no evidence was called by either party, this does not automatically invalidate the proceedings. In a civil case, if there are no disputed facts, then it is perfectly acceptable for the court to proceed on the basis of the agreed facts. Counsel for the appellant attempted to argue that the facts were not agreed, and that evidence should have been called to resolve certain matters. However, despite being given several opportunities in the course of the hearing of this appeal, counsel could not identify any matter of fact that was actually in dispute between the parties.

[8] Respondent's counsel, who was present at the hearing of the application in the Magistrates' Court, was able to shed some light on how the matter had proceeded before the Single Magistrate. He said that the hearing began with the statement of the appellant's claim to be allowed to reopen the bar. The Single Magistrate was told that the respondent opposed the application. Counsel for the appellant then asked the Single Magistrate if her client could at least be given an opportunity to retrieve his property from the building. Counsel for the respondent conveyed his client's willingness to allow this to happen. This is consistent with the description of the proceedings given in paragraph 4 of the Single Magistrate's written judgment.

[9] If the appellant's position had changed to one of simply seeking assistance in recovering his property, it would seem that he had abandoned his original claim for the reopening of the bar. On the face of the record, it appears that the decision of the Single Magistrate was essentially a consent order. As such, there was really no need to call evidence. Furthermore, appellant's counsel in the court below appeared content to proceed without calling evidence. It is therefore difficult to see how the Single Magistrate fell into error. I consider the appellant's first ground to be without merit.

[10] By the second ground, the appellant claims that the Single Magistrate was wrong to allow the respondent to take the law into her own hands. By that, I understand the appellant to be claiming that the respondent should not have been able to change the lock on the building without first having sought a court order. This claim is without foundation. Counsel for the appellant concedes that the respondent is the lessee of the land on which the building stands. There is no issue as to ownership of the building. A landlord is not required by law to get an order of the court to exclude a tenant. Whether the respondent was in breach of her agreement with the appellant by locking him out is a completely different matter. The second ground has no merit.

[11] The third ground, which raises an issue of *locus standi*, was not argued before me. Nor was the fourth ground, which asserts that the Single Magistrate's decision was "unfair and a breach of natural justice". Frankly, I have no idea what is intended by these grounds, and I will treat them as having been abandoned.

[12] As none of the grounds have been made out, the appeal must fail.

[13] This case began as an attempt by the appellant to seek specific performance of his agreement with the respondent. Such a remedy is rarely available in a dispute of this kind. Where damages will be a sufficient remedy, a court is unlikely to order specific performance. I cannot see how such a claim could ever have succeeded. The tenancy agreement was not to continue in perpetuity. That much is conceded by counsel for the appellant. If the appellant believes that the notice to terminate given by the respondent was not reasonable, his remedy lies in damages for breach of contract. If the appellant claims that he has suffered loss by the action of the respondent in locking up his property, then his remedy lies in damages.

[14] The appeal is dismissed.

[15] The appellant is to pay the respondent's costs, to be assessed if not agreed.


**Lambourne J**
Judge of the High Court