

IN THE HIGH COURT OF KIRIBATI 2020

MISCELLANEOUS APPLICATION NO 99 OF 2019
(ARISING FROM HIGH COURT LAND APPEAL NO. 32 OF 2019)

	[TERETIA NAMWAKEI	APPLICANT
	[
BETWEEN	[AND	
	[
	[DAISY NAMAKIN	RESPONDENT

Before: The Hon Chief Justice Sir John Muria

19 May 2020

Ms Taaira Timeon for Applicant

Ms Taoing Taoaba for Respondent

JUDGMENT

Muria, CJ: By her Notice of Appeal dated 3 July 2019, the applicant/appellant intends to appeal against the decision of the Magistrates' Court dated 13 May 2019 in Case No. Betlan 86/19. The applicant has now applied in this Miscellaneous Application for stay of execution of the decision of the Magistrates' Court in Betlan CN 86/19.

2. The case Betlan 86/19 was an eviction proceedings brought by the respondent against the applicant in the Magistrates' Court. In that case the respondent sought to evict the applicant from the land Tetabo 815u/3 in Betio. The basis for the Magistrates' Court's decision to evict the applicant was Case No. Betlan 603/17.

3. The Case No. Betlan 603/17 was a boundary determination case between the respondent and the Director of Lands. The boundary of the respondent's land

Tetabo 815u/3 was established in CN 23/2006 between the respondent and Director of Lands and confirmed in Case Betlan 603/17. Armed with those decisions, the respondent brought the case Betlan 86/19 to remove the applicant from the land Tetabo 815u/3.

4. I feel it needs to be made clear that the case 23/06 was brought by the respondent to have her name registered over the land Tetabo 815u/3 Betio East. The other parties to that case were the issues of Atanimoa Tekee and Tenna Tekee. Assistance from the Lands Office was sought to ascertain the boundary of the land Tetabo 815u/3 to ensure that it did not extend over to the adjoining land leased by the Government. That was done and the respondent was registered over the land Tetabo 815u/3.

5. In case Betlan 603/17, the parties were the respondent and the Director of Lands. That case was to confirm the boundary of the respondent's land 815u/3 as determined in CN 23/06 to ensure that it did not fall into the land leased by the Government. That was done.

6. In neither of those cases was the applicant made a party. That was the reason why the applicant could not appeal against either of the cases CN 23/06 and Betlan 603/17. But that does not mean that the applicant has no recourse to challenge the decisions of the Magistrates' Court in the two cases. While she may not have *locus standi* to appeal against the Magistrates' Court's decisions in the two cases, judicial review processes are still open to the applicant.

7. At the eviction proceedings in Case Betlan 86/19, the respondent sought to evict the applicant from the land Tetabo 815u/3 based on the decisions of the Magistrates' Court in CN 23/06 and Betlan 603/17. The applicant was not bound by those two decisions. Only the parties to those two cases are bound by the decisions of the Court in CN 23/06 and Betlan 603/17. Since the applicant was

not a party to these two cases, the respondent could not rely on them to evict her from the land Tetabo 815u/3. In Kiribati, land cases brought under the *Native Lands Ordinance* are between parties and rarely involve third parties. As such judgments in land cases under the *Native Lands Ordinance* are judgments *inter partes*.

8. At the hearing of the case Betlan 86/19, the applicant, not being a party to the two cases CN 23/06 and Betlan 603/17, sought to put her case before the Court to justify her occupation of the land. She was not allowed to do so, as shown in paragraph 7 of her affidavit. I set out paragraphs 4 to 7 of the applicant's affidavit:

- "4. I and my family have been staying on the land, the subject of the eviction proceedings, for about 15 years and this is our land from our father, Namwakei. The Respondent is residing on the adjoining land and we know her boundary marks did not extend to our land.**
- 5. We did not know of any hearing on the boundary determination between the Respondent and the Lands Department that encroached to our land.**
- 6. This is the reason that the proceedings held in case number Betlan 86/19 that we would vacate the land was a surprise to me.**
- 7. During that proceeding, I was present, and our Lawyer did not even present. We raised any objections and I requested to the Court to bring up our documents to justify why we should not leave the land. The Magistrates did not accept the documents and did not even allow the adjournment but proceed to hear the Respondent and gave judgment accordingly."**

9. The Single Magistrate hearing the eviction case ought to have known that the applicant was not a party to the two cases CN 23/06 and Betlan 603/17 and as such he could not rely on those two cases to order the eviction of the applicant from the land Tetabo 815u/3. The applicant's right to establish her claim over the land in question remains unaffected by Cases 23/06 and Betlan 603/17. The

proper course to take would be to permit the applicant to justify her occupation of the land or adjourned the eviction proceedings and advise the applicant to consider bringing new proceedings against the respondent in order to establish her claim over the land.

10. On the basis of what I have stated so far, it must be clear that the applicant has a strong ground to justify a stay of execution of the eviction order made against her on 13 May 2019 in Betlan 86/19. The principles discussed in *Kiribati Insurance Corporation –v- ANZ Bank (Kiribati) Ltd* [2011] KIHc 17; Civil Case 135 of 2010 (6 May 2011) are apt in the present case. As to the other grounds raised by the applicant, I feel it is unnecessary to go into them, since the reasons I set out above are more than sufficient to justify granting a stay of execution pending appeal in this case.

11. The applicant's application for stay of execution of the eviction order of the Magistrates' Court dated 13 May 2019 must succeed and it is hereby granted. The applicant is also entitled to costs of this application.

12. **ORDER:**
1. Application to stay execution of Eviction Order dated 13 May 2019 pending appeal is granted.
 2. Costs to applicant, to be taxed if not agreed.

Dated the 26th day of May 2020

