IN THE HIGH COURT OF KIRIBATI 2020

MISCELLANEOUS APPLICATION NO 13 OF 2020
(ARISING FROM HIGH COURT CIVIL REVIEW NO. 5 OF 2020)

	[TAAKIA BUREAUA WITH BROTHERS AND	
	[SISTERS	APPLICANTS
	[	
BETWEEN	[AND	
	[	
	[ARIBO MWEA WITH BROTHERS AND SISTERS	
	[FOR ISSUES OF MWEA TARETI	
	[	
	[AND	
	[	
	[TAARAI KAINO	1ST RESPONDENT
	[KAOKATEKAI KAINO	2ND RESPONDENT

Before: The Hon Chief Justice Sir John Muria

20 August 2020

Ms Taaira Timeon for Applicants
Ms Eveata Maata for 2nd Respondent
1st Respondent not present

JUDGMENT

Muria, CJ: A preliminary objection taken by the second respondent based on the principle of *res judicata* which Ms Maata of Counsel suggests applies in this case. Ms Timeon of Counsel for the applicants contends the contra position.

Brief background

2. The dispute between the parties arose out of the registration of the second respondents over the land Banraeaba 758-a/2 which was said to have

been transferred to them by the first respondent. The transaction was done under Case Number A8/98. No challenge had been taken against the second respondents arising out of CN A8/98 until 2014.

3. In HCCC 15 of 2014, one of the applicants' siblings brought a case against the second respondents and others, claiming exclusive ownership of the land Banraeaba 758a/2. That case was withdrawn and an Order to that effect was issued by the High Court on 30 August 2016.

4. The applicants in the present case are seeking leave to bring certiorari proceedings to quash the decision of the Magistrates' Court in CN A8/98. Since the applicants are out of time, they are first seeking extension of time to bring their leave application. The respondents have now raised the issue of *res judicata* and asked the Court to determine that issue first before the application for extension of time can be dealt with. Both parties agreed to this course being taken and the Court will now deal with the issue of *res judicata* first.

Res judicata

5. The principle of *res judicata* has been applied by the Courts in Kiribati, including the widening application of the doctrine, following the English cases. In *Kwong –v- Attorney-General in respect of Ministry of Lands* [2017] KIHC 28; Civil Case 138 of 2011 (29 September 2017) this Court explained the principles of *res judicata* as follows:

> **"The principles of *res judicata* have been developed by the common law to ensure that there is finality in litigation between disputing parties.**

The doctrine of *res judicata* was once restricted to only decisions of Courts of record. The widening application of the doctrine has now led to the doctrine to be more described as *"issue estoppel"* applying it to decisions other than those of Courts of record. See *Carl-Zeiss-Stiftung –v- Rayner and Keeler Ltd and Others* (1966) 2 All ER 536 at 565G where Lord Guest stated:

"The requirements of issue estoppel will remain

(i) that the same question has been decided;

(ii) that the judicial decision which is said to create the estoppel was final; and

(iii) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies".

6. The doctrine of *res judicata* was also explained in the case of *Attorney-General –v- Tirikai* [2011] KICA 3; Civil Appeal 05 of 2011 (31 August 2011) where the Court of Appeal reiterated what was stated in *Henderson –v- Henderson* [1860] ER 378 on the application of the doctrine of *res judicata*. The Court in *Henderson –v- Henderson* stated:

"Where a given matter becomes the subject matter of the litigation in, and adjudication by a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not except under special circumstances permit the same parties to open the same subject of litigation in respect of the matter.... but which was not brought forward only because they

have negligently, inadvertence, or even accidentally omitted part of their case.

***Res judicata* ..... applies ... .not only to points on which the Court was actually required ..... to form an opinion and pronounce judgment, but too every point which properly belonged to the subject matter of the litigation, and which the parties, exercising reasonable diligence, might have brought forward at that time.**

7. Ms Timeon of Counsel for the applicants relied on the case of *Teannaki –v- Attorney-General* [2000] KIHC 5, Civil Case 29 of 2000 (29 December 2000) where Millhouse QC CJ held that as His Honour did not adjudicate on the merits of the claim but only on the fairness in procedures, the doctrine did not apply. The Court of Appeal in *Teannaki –v- Attorney-General* [2001] KICA 8; Civil Appeal 11 of 2000 (5 April 2001) affirmed the Chief Justice's decision on the point.

8. The case law authorities have shown that for the doctrine of *res judicata*, including the widening application of the doctrine, to apply,

(i) the same issue raised has been decided;

(ii) the decision on the issue in dispute was final;

(iii) the parties to the decision or their privies were the same as the parties to the proceedings in which the estoppel (is raised or their privies);

(iv) under the *Henderson –v- Henderson* principle that "**every point which properly belonged to the subject matter of the litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time**".

Parties' Arguments

9. Having set out the considerations to be taken into account when determining whether *res judicata* applies or not, I shall briefly turn to the evidence and arguments raised by Counsel for the parties. The first is the argument raised by Ms Maata of Counsel for the second respondent, that the matter between the parties over the same subject land had been brought before the Court and dealt with in Civil Case No. 15/2014. That case was between *Mikaere Raimon mt –v- Rosemary Tekitanga mtmm, Taarai Kaino and Kaokatekai Kaino*. The plaintiffs withdrew the case on 30 August 2016 and the formal Order of withdrawal was issued by the Court on the same day.

10. Ms Maata contended that the applicants are now estopped from raising the case against the respondents. Counsel submitted that the issue is the same and the parties are the same and as such the doctrine of *res judicata* applies to prevent the applicants from bringing the same dispute to the Court.

11. Ms Timeon, relying on *Teannaki –v- Attorney-General* (above) argued that the parties in Civil Case 15/14 and the present case are not the same. The evidence shows that the applicants in the present case are Taakia Bureaua with Brothers and sisters and the defendants are Aribo Mwea with Brothes and Sisters for issues of Mwea Tareti as first respondent and Taarai Kaino and Kaokatekai as second respondents. As such Counsel argued that the doctrine of *res judicata* does not apply.

12. Secondly, Counsel for the applicants argued that Civil Case 15/14 had not been determined on its merits. It was withdrawn. Thus Counsel submitted that *res judicata* cannot apply.

Decision

13. I will first deal with the question of whether the parties are the same or not in the present case as in case Civil Case 15/14. The applicants in the present case present no evidence to show that they are not connected to the plaintiffs (Mikaere Raimon mt) who brought the case in Civil Case 15/14. They raised the argument that they are not the same party or have any connection with the plaintiffs in Civil Case 15/14. They must support that argument by evidence.

14. The second respondent, on the other hand, stated in their affidavit that the present applicants are the siblings of the plaintiffs who brought the case in Civil Case 15/14. Ms Timeon countered that suggestion by arguing that "**siblings**" and "**parties**" are different, so that while they may be siblings, they are not the same parties. Lands, other than Government owned lands, in Kiribati are family lands, inherited through families. I do not think that one can claim convincingly that a dispute over land taken up in his or her name is to the exclusion of his or her siblings. On the evidence before the Court, I am satisfied that the claim by the second respondent that the present applicants and the plaintiffs in Civil Case 15/14 are related or connected by way of siblings rings true. Effectively they are the same party as those as applicants in the present case.

15. The applicants could have easily set out their Family Trees as is usually done in these land related cases to show (as they claimed) that they have no connection with the parties, especially the plaintiffs in Civil Case 15/14. Without such evidence, the Court will accept that Civil Case 15/14 was brought by the applicants' siblings or members of the family who closely connected or privies to the present applicants. They are one and the same and having the same interest in the matter in dispute.

16. There is a further fault-line in the case for the applicant that the land sold by the first respondent to the second respondent in the present case is that same land displayed in the title exhibited in the applicants' affidavit. The Plot of land registered in the name of Raimon Bureaua exhibited in the Certificate of Title was over Banraeaba Plot No. 758a/2e, as per HCLA 57/87. There is no evidence at all before the Court that in Case No. A8/98, the first respondent sold the same Plot of land, Plot 758a/2e, to the second respondent. In Case A8/98, the first respondent sold the land Banraeaba Plot 758a/2i/2 and not Plot 758a/2e. The plotting numbers used by the Lands Office on different plots of land during survey were done to differentiate the plots of land on the ground. It is little wonder that the plaintiffs withdrew their case Civil Case 15/14. I find the applicants' claim that the first respondent sold the applicants' plot 758a/2e to the second respondent in Case A8/98 unsustainable.

17. Then the claim by the applicants that in Civil Case 15/14, the merit of the case had not been determined. That may be so. However, on the evidence before the court, I am satisfied that the plaintiffs in Civil Case 15/14 were the same or closely connected to the applicants in the present case. They filed case against the respondents in Civil Case 15/14 challenging the decision of the Court in CN A8/98, the same case that they are now challenging, and withdrew it. There was nothing left for the court to consider. There was no other points or issue which could have been brought further by the plaintiffs at the time. If there was any they ought to have done so: *Henderson –v- Henderson*. The Civil Case 15/14 case was closed. The case A8/98 remains binding on the parties.

18. In reality, the present applicants are properly met with the doctrine of *res judicata*. The underlining principle in the rule on *res judicata* is there must be finality in litigation. A party who is already bound by a judicial decision cannot

come back to the Court through his or her privies and stage another re-match based on unmeritorious assertion, such as being unaware of the Court's decision for almost 20 years when all along they knew and were a party to such case.

19. The second respondent's plea of *res judicata* succeeds in the present case. It must follow that the applicants' case seeking extension of time to apply for leave to challenge the Magistrates' Court's decision in CN A8/98 cannot proceed and must be dismissed. Consequently, the applicants' leave application itself, now in the file, cannot proceed and must be struck out.

Dated the 25th day of August 2020

HIGH COURT OF KIRIBATI
TE BOMI AE E RIETATA I KIRIBATI

SIR JOHN MURIA
Chief Justice