IN THE HIGH COURT OF KIRIBATI 2020

CIVIL REVIEW NO. 30 OF 2019

	[RIBANTAAI TARAA for Issues of	
	[NARANG TEKAANU	
	[BWEBWENTEBUAKA TEEM for Issues of	
	[UENRENGA TETAEKA	
	[ISSUES OF NABUKA IEKERUA	**APPLICANTS**
	[	
BETWEEN	**[AND**	
	[	
	[REGISTRAR OF BIRTHS, DEATHS AND	
	[MARRIAGES	**RESPONDENT**

Before: The Hon Chief Justice Sir John Muria

11 June 2020

Ms Taaira Timeon for Applicants
Ms Bitarana Yeeting for Respondent

JUDGMENT

Muria, CJ: This is an application for leave to issue writ of prohibition against the respondent under O.61 r2 *High Court (Civil) Procedure Rules 1964*. The application is opposed by the respondent.

2. Briefly, by way of background, the respondent, Registrar of Births, Deaths and Marriages, issued a death certificate in respect of the death of the deceased, Kaitia Kimaere. That Certificate was issued and entered on the Record Book Volume No. 01b/118 in 1952. It shows that the deceased, Kaitia, died on Saturday, May 17, 1952, at Eita, South Tarawa. See attachment to Bwebwentebuaka Teem's affidavit of 13 December 2019.

3. The Death Certificate shows that the deceased died with no issues or at least no issues were mentioned in the Death Certificate. Other information such as the details of the Informant, the date and place of burial, and place of birth in Kiribati, were also not recorded in the Death Certificate.

4. In the absence of those information, the applicants contended that the respondent was wrong to issue the Death Certificate. It is now claimed by the applicants that the respondent had unlawfully issued the Death Certificate of the deceased Nei Kaitia Kimaere.

5. As it is shown by the affidavit of Bwebwentebuaka Teem, the main dispute by the applicants is that the respondent was wrong not to include the issues of the deceased on the Death Certificate. However, as stated earlier, that Death Certificate was issued in 1952.

6. As the name suggests, a *writ of prohibition* is an order directed at an inferior Court or body exercising quasi-judicial functions to prevent such court or body from exercising or continuing to do what it is doing on the ground that the said court or body lacks or is in excess of its jurisdiction, contrary to law. See *McKonochie –v- Lord Penzance* [1881] ACT 424; *Turner –v- Kingsbury Collieries Ltd* [1921] 1 KB 167. See also Halsbury's Laws of England Vol. 2, 3rd Edition paragraph 1284 where it is stated that an order of prohibition to an inferior court would be granted if an order was made in a case in which the inferior court had no jurisdiction to make it. See also *Evans –v- Wills* (1876) 1 CPD 229.

7. Whether the Registrar of Births, Deaths and Marriages is amenable to the writ of prohibition is a point that has not been raised by the parties in this case. As the parties have not addressed the issue of the amenability of the Registrar to a *writ of prohibition*, it would not be proper for this Court to determine the issue, unless the Court invites the parties to make submissions on it. In this case, I feel

the matter can be adequately resolved under the question of whether the *writ of prohibition* ought to be issued or not, against the Registrar's decision. To answer that question, two considerations need to be borne in mind.

8. The first consideration is that a *writ of prohibition* is a command to prevent a subordinate court or tribunal from doing or continuing to do what is doing because it does not have jurisdiction to do what it is doing. *MacKonochie –v- Lord Penzance* (above); *Turner –v- Kingsbury Collieries Ltd* (above). The subject of complaint in the present case was a decision made by the Registrar in 1952, some 68 years ago. As such, there is nothing that anybody can do to prevent the Registrar from exercising his power in this case. He had already made his decision to issue the Death Certificate and issued it in 1952.

9. A *writ of prohibition* can do nothing to prevent an act that had already been done. Unlike a writ of certiorari which can be issued to review decisions which inferior courts have already made, a *writ of prohibition* is intended to prohibit acts that are yet to be done or completed. See *R –v- Electricity Commissioners* [1924] 1 KB 171.

10. Secondly, since the *writ of prohibition* would be of very little use to the applicants in the present case, the applicants would be best to seek other adequate alternative remedies in law. See *Johns –v- Chatalos* [1973] 1 WLR 1437; [1972] 3 All ER 410. See also *Standard –v- Vestry of St Giles, Camberwell* (1882) 20 Ch.D. 190. The Australian cases of *Pitfield –v- Franki* and *R –v- Cook*, ex parte *Twigg* (1980) 31 ALR 353 appear to suggest that the remedy of *certiorari* could be granted notwithstanding the application for *prohibition* failed.

11. Plainly in the circumstances of the present case, I do not see how the remedy of a *writ of prohibition* can be the answer to correct the mistake, if there

was such a mistake, alleged to have been done by the respondent 68 years ago. The applicant's remedy lies elsewhere.

12. The application by the applicants for *writ of prohibition* against the respondent is refused.

Dated the 15th day of October 2020

SIR JOHN MURIA
Chief Justice