

IN THE HIGH COURT OF KIRIBATI 2020

CIVIL CASE NO. 14 OF 2019

[TANIMAKIN TIAEKI WITH BROTHERS
[AND SISTERS PLAINTIFFS
[
BETWEEN [AND
[
[TRUSTEE(S) FOR THE SEVENTH DAY
[ADVENTIST DEFENDANT

Before: The Hon Chief Justice Sir John Muria

30 October and 19 November 2019

Ms Taaira Timeon for Plaintiffs

Ms Kiata Kabure for Defendant

JUDGMENT

Muria, CJ: The plaintiffs' claim is for unpaid rent and damages arising out of a lease agreement entered into between the plaintiffs and the defendants for the lease of the plaintiffs' land. The lease agreement was signed between the plaintiffs' grandfather (the plaintiffs are the successor in title) and the defendants are the Trustees for the Seventh Day Adventist Mission.

2. The lease agreement was endorsed by the Magistrates' Court in Case No. 71/64 on 19 November 1964 covering the plaintiffs' land Tengaruru 766(i), Banraeaba, South Tarawa of 1.56 acres for a term of 99

years. It is said that the lease will expire on 1 November 2063. The agreed rate payable by the defendants was \$4,000.00 per annum.

3. The defendants had been paying the agreed rental up to and including 2008. From 2009 to 2019 the defendants have refused to pay the lease rental. Hence, the plaintiffs commenced these present proceedings.

Facts not in dispute

4. The following facts are not in dispute:

- (a) The plaintiffs and defendants (or their predecessors) entered into a lease agreement over the land Tengaruru 766(i) in 1964 and confirmed in Case No. 71/64 on 19 November 1964.
- (b) The size of the land Tengaruru 766(i) under the lease agreement was 1.56 acres.
- (c) The agreed rental was \$4,000.00 per annum.
- (d) The defendants have not paid the agreed lease rental from 2009 until 2019 to the plaintiffs for the plot Tengaruru 766(i).

Facts as found

5. On the evidence, the Court finds the following facts established:

- (a) The land Tengaruru plot 766(e) owned by another family was also leased by the defendants since 1964.
- (b) The size of Tengaruru 766(e) was 0.26 acres.

- (c) By virtue of the Magistrates' Court's Case Number 504/97, the Court changed the plot numbers, so that plot 766(i) became plot 766(e) and plot 766(e) became plot 766(i).
- (d) The land Tengaruru plot 766(i) consisting of 1.56 acres registered in the plaintiffs' name in 1964 now becomes the other family's land and who are receiving the rental of \$4,000.00 per annum.
- (e) The land Tengaruru plot 766(e) consisting of 0.26 acres now becomes the plaintiffs' land and who are receiving \$850.00 per annum.
- (f) The plaintiffs are aggrieved by the altered position brought about by CN 504/97 and altering the lease agreement between the plaintiff and the defendant.

The consequence of CN 504/97

6. The upshot of CN 504/97 is that the changes in ownership and allocation of the land plots are sure to have drastic effects on the lease agreements entered into between the plaintiffs and the defendants. For the plaintiffs, the consequences of CN 504/97 on them include the loss of their rights in plot 766(i) since they are now given plot 766(e), loss of the size of their land and loss of rental payments under the 1964 lease agreement.

7. The evidence of Tarantekai Terieta not only confirmed that the plaintiffs' plot was changed to Tengaruru 766(e) but that the defendants have been paying them the lease rental at the "**Government rate**" of \$850.00 per annum. The decision to pay the plaintiffs the "**Government**

rate” of \$850.00 was made by the defendants following the decision of the Magistrates’ Court in CN 504/97.

8. Effectively the defendants have relied on CN 504/97 to unilaterally alter the lease agreement entered into between the plaintiffs and defendants in 1964 by refusing to pay the plaintiffs lease rental payments of \$4,000.00 for the plot Tengaruru 766(i) as provided for in the lease agreement. The defendants instead paid \$850.00 to the plaintiffs for the plot Tengaruru 766(e). Not only that such an action on the part of the defendant is wrong, it is contrary to the express terms of the lease in which the plaintiffs’ predecessor and defendants agreed that the defendants should pay \$4,000.00 to the plaintiffs who were the registered owner of plot 766(i).

9. It will also be observed that the Court has no power to alter the terms of the lease expressly entered into between the plaintiffs’ predecessors and defendants in 1964. That lease is still valid and the parties to that lease are bound by the express terms of the contract which they set out in the lease contract. As such CN 504/97 cannot be used by either party unilaterally to change the express terms of the lease entered into by the parties in 1964. To do so, as the defendants have done in this case, would amount to a breach of the lease agreement.

10. In any case, I do not think the purpose of CN 504/97 was to alter the lease agreement between the parties in this case. The Court in that case was concerned with the correction of the plots numberings. The defendants were not a party to CN 504/97 and as such they cannot unilaterally take it upon themselves to ignore the terms of the lease

agreement which they entered into with the plaintiffs. To do so, would be a breach of the terms of the lease agreement.

11. This present case is about a breach of the lease agreement between the plaintiffs and defendants. It is not about re-allocation of the plot numbers. If the defendants want to amend or change the 1964 lease agreement in view of CN 504/97, they have better sought legal advice and would have to do the right thing and not simply act unilaterally in breach of the lease agreement by simply relying on CN 504/97.

12. It will also be noted that there was no appeal against the decision of the Magistrates' Court in CN 71/64 approving the lease agreement between the plaintiffs' predecessors and the defendants. That case confirmed that the landowner who leased the plot Tengaruru 766(i) to the defendants was the plaintiffs' predecessor and that the area of that land was 1.56 acres. The lease was registered and remains unchallenged to this day.

13. I find the defendants' conduct in this case in refusing to pay lease rentals to the plaintiffs a breach of the lease agreement entered into between the plaintiffs' predecessors and the defendants on 19 November 1964. The plaintiffs must succeed in their claim against the defendants.

14. There is a claim for general damages in the sum of \$2,500.00. A claim for general damages is usually to compensate the claimant for inconvenience, emotional or mental distress or anxiety suffered. I feel that the plaintiffs have suffered some inconvenience as a result of the

defendants' refusal to honour the lease agreement. The sum of \$2,500.00, in my view, would be sufficient in this regard.

15. The plaintiffs are also entitled, as of right, to interest on the judgment in this case at the rate of 5% per annum. They have sought for pre-judgment interest at 5% per annum from 2009 to 2019. There is no argument against the question of 5% interest pre-judgment. It is granted.

Conclusion

16. I am satisfied on the evidence that the plaintiffs have established their claim. Judgment is therefore given to the plaintiffs in the sum of \$40,000.00 together with general damages in the sum of \$2,500.00 and interest at 5% per annum from 2009 to 2019 in the sum of \$20,000. The plaintiffs are also entitled to costs to be taxed if not agreed. The total damages awarded to the plaintiff is therefore \$62,500.00 plus costs, which costs is to be taxed if not agreed.

17. ORDER:

1. Judgment for the plaintiffs in the sum of \$62,500.00.
2. Costs to the plaintiffs to be taxed, if not agreed.

Dated the 23rd day of October 2020

