

# IN THE HIGH COURT OF KIRIBATI 2020

CIVIL REVIEW NO. 4 OF 2019

	[TINGANGA TATABU FOR	
	[ISSUES OF TATABU TINGANGA	APPLICANTS
	[	
BETWEEN	[AND	
	[	
	[IETE TATABU	1 <sup>ST</sup> RESPONDENT
	[LATE REGISTRATION ASSESSORS	2 <sup>ND</sup> RESPONDENT

Before: The Hon Chief Justice Sir John Muria

24 June 2019

*Ms Taaira Timeon* for Applicants  
*Mr Reiati Temaua* for 1<sup>st</sup> Respondent  
*No Appearance* for 2<sup>nd</sup> Respondent

## JUDGMENT

**Muria, CJ:** The applicants are seeking extension of time to issue application for leave to bring certiorari proceedings. The application is supported by the affidavits of Taruru Tinganga and Ruina Beia. The respondent opposes the application and rely on his affidavit and that of Tireana Karebou.

### Brief background

2. By case No. 72 of 2004, the respondent was registered as one of the issues of the late Tatabu Tinganga. That was a late registration

process done, pursuant to section 16 of the *Births Deaths and Marriages Ordinance* (Cap 5). The respondent was included as one of the issues of the late Tatabu Tinganga. There was no challenge to CN 72/04.

3. In CN 1296/12, the late Beia Tatabu tried to enforce the Will of Tatabu Tinganga (deceased) in the Magistrates' Court but he was unsuccessful. The Court refused to enforce the Will. In CN 466/17, the applicants tried to do a re-run of the case brought in CN 1296/12. The applicants brought CN 466/17 ex parte. A different Single Magistrate confirmed the Will. On appeal to the High Court in High Court Land Review 5/17, by the respondent, the Magistrates' Court's decision in CN 466/17 was quashed. The effect of the High Court Land Review 5/17 is that the deceased's Will was invalid as found by the Magistrates' Court in CN 1296/12 and now confirmed by High Court Land Review 5/17.

4. In CN 01/2005, the first respondent and his brother Beia Tatabu (now deceased) applied to have the name of their late father, Tatabu Tinganga, removed from the register, and to have the respondent and his two brothers, Beia Tatabu (now deceased) and Tinganga Tatabu to be registered after their late father. There was no problem presented by that application in CN 01/05 nor was there any appeal against that decision. There was no complaint then that the first respondent was registered together with his two brothers after their late father.

#### **Present Complaint**

5. The present complaint is over the decision of the Late Registration Assessor to include the respondent as one of the issues of the late Tatabu

Tinganga in 2004 and confirmed on 29 January 2004 by CN 72/2004. However, as already noted above, no challenge, by way of appeal or otherwise, have been brought by the applicants against the Magistrates' Court's decision in CN 72/2004.

6. There has never been any argument that sections 16 and 17 of the *Births, Deaths and Marriages Ordinance* did not confer power on the Late Registration Assessor to register the respondent's name in the Birth Register as one of the issues of the deceased Tatabu Tinganga. The only reason advanced by the applicants in support of their application is that the second respondent was wrong not to enquire whether there were qualified informants available, instead of relying on the first respondent's information only.

7. Sections 16 and 17 provide as follows:

**16. Where after the expiration of 12 months from the date of the birth of any child or from the date when any living new-born child is found exposed, the birth of the child has not been registered, the birth shall not be registered except upon an order of a late registration assessor made in accordance with section 17 and in such manner as may be prescribed.**

**17. (1) Subject to the provisions of subsection (2) an application for an order under section 16 shall be made to a late registration assessor by a qualified informant and shall be accompanied by an affidavit setting out to the best of such qualified informant's information and belief the particulars required to be registered.**

**(2) Notwithstanding the provisions of subsection (1), where any person of full age desires the registration of his own birth but in respect of which no qualified informant able to give the particulars required to be registered is available, he may himself make application to a late registration assessor**

for an order under section 16 and any such application shall be accompanied by an affidavit setting out to the best of the applicant's information and belief the particulars of his birth required to be registered and the reasons why no qualified informant is available to give such particulars.

8. Section 16 of the Ordinance gives power to a late registration assessor to order registration of the birth of a child after 12 months from date of birth. Section 17(1) then provides that an application for an order under section 16 must be made to a late registration assessor by a 'qualified informant' supported by an affidavit containing information and particulars required for registration.

9. It makes a lot of common sense that when making an application to the late registration assessor under section 17(1) for an order for registration under section 16 in respect of a "child", the application has to be made by a "qualified informant" who knows of the particulars required to be registered. A child is not expected to know the particulars required to be registered in respect of himself nor able to make the application himself or herself. Thus a "qualified informant" must make the application in respect of late registration of a child.

10. The phrase "qualified informant" in section 17 is a term of art, specifically defined in section 2, as follows:

***"qualified informant" in relation to any birth or death means a person who is by this Ordinance or in the case of a birth or death occurring before the commencement of this Ordinance, by any enactment then in force required or stated to be qualified to give information concerning that birth or death".***

11. Pursuant to section 17(2), the respondent, as a person of full age, was qualified to give the information required to the late Registration assessor, to have his birth registered. The fact that his parents were still alive at the time did not preclude him from applying for late registration of his birth. What was needed of the respondent to do under section 17 was to support his application by affidavit, with copies of his application to Registrar-General (subsection (3)), appear before the late assessor (if required) within 42 days (subsection (4)), may call witnesses or give names of any person who the assessor may wish to examine and who may be able to give material evidence relating to the respondent's application (subsection (5)). The assessor has the discretion to require any of the considerations in subsection (5) to be done.

12. The evidence disclosed in this case clearly shows that the respondent did not hide the fact that his parents were still alive at the time he made his application. He lodged his application on 27 January 2004 in a pre-prepared format head "APPLICATION FOR AN ORDER OF A LATE REGISTRATION ASSESSOR" addressed to the Late Registration Assessor in Bairiki and copied to the Registrar, civil Registration Office in Bairiki. He lodged an affidavit with his application. In his affidavit he disclosed the names of his father and mother and that they were still alive. A further Form containing details of an interview conducted between an Interviewer Officer and the Respondent on 27 January 2004 was also filed accompanying the respondent's application. All that section 17 required was complied with by the respondent.

13. The respondent had complied with all the requirements of sections 16 and 17 of the Ordinance. The second respondent had all the

required information before him when he considered the first respondent's application and exercised his discretion under section 17.

14. In my judgment, the actions taken by the first respondent and the second respondent to register the first respondent's birth on 29 January 2004 were done in compliance with the requirements of law. The complaint by the applicants cannot be sustained.

### **Delay**

15. There is no dispute that the applicants are 14 years out of time. The rules, O.61 r3 of *the High Court (Civil Procedure) Rules* requires leave to apply for order of certiorari to be made within six (6) months from the date of the decision complained of. The Court has power under O.64 r5 to extend time.

16. The six (6) months from 29 January 2004 had come and gone with no application for leave brought by the applicant, neither was there any application for extension of time made. Now 14 years later the applicants have decided to challenge the second respondent's decision in respect of the registration of the first respondent's birth in the Births, Deaths and Marriages Register. The applicants bear the burden of justifying the delay of 14 years in this case.

17. As this Court said in *Eritane –v- Rubeia* [2011] KIHc 18; Civil Case 118 of 2010 (20 May 2011), **“the burden of showing good reasons to justify extension of time after more than 10 years' lapse, rests on the applicant”**. That statement of principle applies in the present case also.

18. Like in *Eritane –v- Rubeia*, the applicants in the present case also pleaded ignorance of the decision of the second respondent given on 29 January 2004. They said that they did not know about the second respondent's decision to register the first respondent's birth and to include him as one of the issues of the deceased until 2018 when the deceased's Will was challenged. I do not believe and I do not accept the suggestion by the applicants that they did not know about the second respondent's decision of 29 January 2004 until 2018. It does not have any ring of truth in it.

19. It is obviously obvious that the present application is again another attempt to remove the first respondent from the books as one of the issues of the deceased, Tatabu Tinganga. The applicants are now coming in a round-about way by challenging the authenticity of the second respondent's decision on the basis of ignorance of that decision until 2017 or 2018. As I have already indicated, a plea of ignorance of the second respondent's decision cannot succeed as a basis for disturbing the second respondent's decision made 14 years ago.

20. In CN 01/05, the first respondent brought the case before the Magistrates' Court to register his name and those of his two brothers, Tinganga Tatabu and Beia Tatabu, in place of their deceased father, Tatabu Tinganga's name. The Court minutes show that all the three brothers were present at the hearing and that the two brothers, Tinganga and Beia, agreed to the application. The first respondent is the eldest of the three and clearly he was taking steps to secure his and his two brothers' interest in their deceased father's land. He was not doing it for himself only.

21. The following extract from the Court Minutes (translated) of CN 01/05 brings home the message that the three brothers were together in securing their interest over their deceased father's lands. There was not a speck of suggestion that the two brothers, Tinganga and Beia, had disowned the first respondent as their brothers:

**"All parties present.**

**Court: Are there others that must be here?**

**leete: Just the 3 of us, the children of Tatabu.**

**leete DSOB: My name is leete Tatabu age 31. I came here today to register our name after our father Tatabu who has passed away.**

**Court A: Who is the spouse of Tatabu?**

**leete: Taorerei Tearei.**

**Q: Who is the eldest among you guys?**

**A: leete.**

**Q: Then?**

**A: Tinganga.**

**Q: After that?**

**A: Beia.**

**Court: How do you want your De-registration?**

**leete: All of Tatabu's land that are leased that we want to have our own shares, the 3 of us, the non leased land should be owned by the three of us such as leete Tatabu with brothers.**

**Court: Do you have Tatabu's Certificate of Ownership?**

**leete: Here.**

**Court: These lands are they leased or not?**

**leete: They are all leased.**

**Court: And those that are not?**

**leete: We have not yet got the document.**

**Court: What do you think Tinganga and Beia?**

**Tinganga: I agree.**



**Beia: Me too, I agree”.**

22. Having heard all three brothers the Court in CN 01/05 made the order as follows:

**“Order:**

- 1. For the lands that the Government leased like Bwebwe 593 0/2 and Tabontemaneaba 826 m/ie the lease is to be distributed into 3 equal shares**

**The first share is for leete Tatabu.**

**The second share is for Tinganga Tatabu.**

**The third share is for Beia Tatabu.**

- 2. For the lands that belong to Tatabu Tinganga that are not leased will be registered as leete Tatabu mt (with brothers)”.**

23. The suggestion contained in the submission on behalf of the applicants is that the first respondent concealed from the members of the applicants’ families all his dealings with the deceased’s lands including registering his name in the land of the deceased. This is the crux of the applicants’ case which they sought to pursue by challenging the second respondent’s decision made on 29 January 2004. The applicants said that they only knew about all that in 2018 when the first respondent objected to the deceased’s Will. The evidence clearly does not support what the applicants are saying. There was no secrecy about the first respondent’s dealing with his deceased father’s land. His two brothers were with him and they knew that he had registered his name along with them over their deceased father’s lands. Why did his two brothers not challenge his right to their deceased father’s land in CN 01/05? Why did they challenge his right to the deceased’s land only in

2019? There are no answers to those questions on the evidence before the Court.

24. Tinganga Tatabu remains silent. He did not swear any affidavit to support the applicants' claim. He is one of the three brothers who, together with Beia Tatabu (now deceased), were present in CN 01/05. Why did he not challenge the first respondent's right to their father's land then? Why did he not file any affidavit to support his issues case? I have read the affidavits of Taruru Tinganga and Ruina Beia both of which are largely hearsay. I have also read the affidavit of the first respondent. The contents of his affidavit are unchallenged.

25. In the light of the evidence before the Court, I find that there is no justification for the magnitude of delay of 14 years in this case. That must count against the applicants.

### **Conclusion**

26. As this Court stated in *Tatabu –v- Tatabu* (2018) HCLR 5/17 (14 December 2018), this is a re-run of the previous failed attempts by the applicants to disentitle the first respondent of his entitlements in his late father's lands. It failed then and it must also fail in this case.

27. Delay is a factor which affects the exercise of the Court's discretion in a case such as this. For the reasons stated in this judgment, the applicants' application for extension of time to apply for leave to issue *certiorari* proceedings cannot succeed. It is therefore dismissed.

28. The leave application itself was also filed and awaiting to be dealt with should the extension of time be granted. The extension of time having been refused and dismissed, the fate of the leave application has also been determined. It is also dismissed.

29. The respondents shall have their costs of these proceedings, to be taxed, if not agreed.

Order accordingly.

Dated the 23<sup>rd</sup> day of October 2020

