

# IN THE HIGH COURT OF KIRIBATI 2020

LAND REVIEW NO. 12 OF 2019

	[WILFRED MULLER	APPLICANT
	[	
BETWEEN	[AND	
	[	
	[WALTER MULLER	
	[WILFRED MULLER (JR)	
	[MARETA MULLER	RESPONDENTS

17 March 2020

*Ms Elsie Karakaua* for Applicant  
*Ms Botika Maitinnara* for Respondents

## RULING

**Muria, CJ:** The applicant has brought this application seeking to the High Court to review the decision of the Magistrates' Court given on 25 October 2019 in Case No. Betlan 705/19.

2. When the case was called yesterday, the Court raised the issue of whether the Land Review should be dealt with under the High Court's lands jurisdiction or under its civil jurisdiction. Ms Karakaua of Counsel for the applicant submitted that I can deal with the matter sitting alone. Ms Maitinnara, on the other hand, argued that the matter should properly be dealt with by myself sitting with the two Land Appeal Magistrates.

3. The case is obviously a High Court Land Review brought pursuant to section 81 of the *Magistrates' Court Ordinance* (Cap 52). Ms Karakaua submitted that section 77 of the *Magistrates' Court Ordinance* would empower a judge of

the High Court sitting alone to deal with the present application without the need to have it dealt with by a Judge sitting with two Land Appeal Magistrates. In my view, section 77 does not apply in the present case because the present case is clearly a land matter that should not be dealt with by a Judge sitting alone.

4. Section 77 of the *Magistrates' Court Ordinance* cannot confer jurisdiction to a Judge sitting alone to hear and determine land appeals or land review cases which are matters for the High Court Land Appeal Panel to deal with. Section 77 is only an enabling provision empowering the Judge to deal with matters which the Land Appeal Panel should do but could be conveniently dealt with by the Judge sitting alone. For example, matters on directions raised in a Miscellaneous Application arising out of the substantive Land Appeal or Land Review case. It is not the purpose of section 77 to usurp the jurisdiction of the High Court Land Appeal Panel.

5. The Magistrates' Court's decision was given on 25 October 2019 and the application for judicial review was filed on 2 March 2020. That was still well within the 12 month time limit fixed by section 81(4) of the *Magistrates' Court Ordinance*. As such the proper tribunal to hear the present Land Review case is the High court Judge sitting with two Land Appeal Magistrates which is the body with the jurisdiction to hear and determine appeals and reviews against decisions of the Magistrates' Court in land matters.

6. Had the application for judicial review been brought outside of the 12 month time limit under section 81(4) of the *Magistrates' Court Ordinance*, the applicant would not be able to invoke the Court's jurisdiction under section 81. Resort would therefore have to be made to the prerogative power of the Court invoking the section 89 of the *Constitution* jurisdiction. Application for judicial review under O.61 of the *High Court (Civil Procedure) Rules 1964* is civil in nature and presided over by a Judge sitting alone. This is not the case here in the present case.

7. The cases of *Toaea –v- Toaea* [1999] KHC 25; *Akoi –v- Kakiaman* [2002] High Court Land Review 5 of 2002; *Atanta –v- Tabaua* are Land Review cases brought under section 81 of the *Magistrates' Court Ordinance* and were heard by a Judge and two Land Appeal Magistrates.

8. The applicant's present Land Review case is to be listed before the High Court Land Appeal panel at the next sitting of the Panel.

Dated the 18<sup>th</sup> day of March 2020

