



HIGH COURT OF KIRIBATI

Criminal Appeal N° 8/2017

TEBUKE RAEBWATI and IRATA TIBWERE
(for the members of the Kiribati
Protestant Church, Nanomatoa)

Appellants

v

REPUBLIC

Respondent

Banuera Berina for the appellants

Taburuea Rubetaake for the respondent

Batitea Tekanito for members of the Kiribati Uniting Church (intervening)

Date of judgment: 23 November 2018

Date of publication: 17 June 2021

JUDGMENT


- [1] On 23 November 2018 I allowed this appeal. At the time I advised the parties that I would publish my reasons later. These are those reasons.¹
- [2] This is an appeal against an order of Single Magistrate Tiotaake, sitting as the South Tarawa Magistrates' Court on 12 September 2017. The case is styled as Miscellaneous Application 38/17, arising in case BetCrim 838/17. I have no information as to the identity of the accused, or the charges, in the underlying proceedings. What is clear from the material before the Court is that a police officer, claiming to represent the Kiribati Uniting Church, asked the Court for an order that members of the Kiribati Protestant Church, represented by the appellants, be restrained from coming within 15 metres of the Nanomatoa *mwaneaba* in Betio. According to the minutes, 3 Uniting Church members were present for the application.

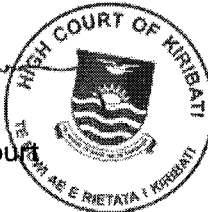
¹ I offer a sincere apology to the parties for the unacceptable delay in publishing these reasons. While this is due, in part, to my prolonged absence from Kiribati due to the Covid-19 pandemic, this is a case that had 'fallen through the cracks'. That should not have happened.

- [3] This matter arises out of a split that arose in 2016 among the members of what had previously been known as the Kiribati Protestant Church, or KPC. Several members disagreed with a resolution taken at the General Assembly in 2014 to change the name of the church to the Kiribati Uniting Church. That change took effect from the time of the next General Assembly, in September 2016. A legal challenge to the change of name was unsuccessful.² Those who opposed the name change then left the KUC and set themselves up as a new church, reviving the name 'Kiribati Protestant Church'.
- [4] The split led to disputes in many parts of the country. Often the disagreement concerned the desire of the members of the new KPC to retain possession of the assets of the KUC, such as the Nanomatoa *mwaneaba*. This was based on their mistaken belief that the KUC was a new church, and the assets of the old KPC should be vested in the new KPC.
- [5] The proceedings that are the subject of this appeal took place less than a month after the Court of Appeal handed down the decision that ended the litigation between the KPC and the KUC. It would appear that feelings were still running high between the 2 groups. The police sought a restraining order from the Single Magistrate in the apparent hope that it would keep the peace in circumstances where both groups claimed the right to use the Nanomatoa *mwaneaba*. After hearing briefly from the 2 appellants, the order was made. The order warned those to whom it was directed that contravention would result in a penalty of 2 months' imprisonment for contempt of court.
- [6] The appellants sought legal advice, and an appeal was filed on their behalf the following day. The making of the order was challenged on 2 grounds: that the order sought was supposed to be directed to members of both the KPC and the KUC; and that no evidence was adduced as to the identity of the true owners of the Nanomatoa *mwaneaba*.
- [7] Despite the grounds raised, there is a more fundamental issue at play here, namely whether the Magistrates' Court had the power to make the order that it made. The Single Magistrate cited no authority or legislative provision that would authorise the making of the order. These were criminal proceedings, and the application was made by a police officer. As a subordinate court, the Magistrates' Court only has the powers conferred upon it by law. I can find no provision that would support the making of this order in these circumstances.

² *Motiti Koaie & ors v Ariti Tiira & ors* [2017] KICA 12.

- [8] Had the individuals concerned been facing criminal charges connected to the *mwaneaba*, it might have been appropriate to impose bail conditions that required them to stay away from the building, but that is not the case here. There are provisions, found in Part 3 of the *Criminal Procedure Code*,³ under which a Magistrates' Court can order that a person enter into a recognisance for keeping the peace, but the Single Magistrate in this case did not appear to be relying on this power. In any event, such an order can only be made against named individuals, not against a group, and only after each person concerned had been given an opportunity to show cause why such an order should not be made.
- [9] While he was probably well-intentioned, the Single Magistrate was wrong to make the order he did, and it cannot stand.
- [10] Even though this appeal could be disposed of in a relatively straightforward manner, I wanted to ensure that, in so doing, I did not inadvertently reignite tensions between the members of the respective churches. I therefore deferred making final orders in this case until the KUC members who had attended the original hearing in the court below had been given an opportunity to appear before me, so that the situation could be explained to them. I am grateful to their counsel for her assistance.
- [11] In all the circumstances, this appeal is allowed. The order made by the South Tarawa Magistrates' Court in Miscellaneous Application 38/17 (arising in case BetCrim 838/17) on 12 September 2017 is quashed. No further orders.


Lambourne J
Judge of the High Court

The seal of the High Court of Kiribati is circular. It features a central shield with a sun, a wave, and a palm tree. The text "HIGH COURT OF KIRIBATI" is written around the top inner edge of the circle, and "TE KIRIBATI E RHE TATA I KIRIBATI" is written around the bottom inner edge.

³ Cap.17, sections 30 to 48.