

IN THE KIRIBATI COURT OF APPEAL
CIVIL JURISDICTION
HELD AT BETIO
REPUBLIC OF KIRIBATI

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Civil Appeal No. 12 of 2011

BETWEEN **KIRIBATI SHIPPING SERVICES LTD** **APPELLANT**

AND **WAYSANG KUM KEE**
 TENETI KUM KEE **RESPONDENTS**

Before: Paterson JA
 Williams JA
 Barker JA

Counsel: *Taoing Taoaba* for appellant
 Batitea Tekanito for respondents

Date of Hearing: 27 August 2011
Date of Judgment: 31 August 2011

JUDGMENT OF THE COURT

1. The respondents sued the appellant in the High Court for the balance of purchase price of a vessel. The High Court on 17 March 2009 awarded them \$403,000. A subsequent appeal failed.
2. On 14 January 2011, the Chief Justice awarded the respondents \$15,131.25 being interest at 5% from 17 March 2009 to date of

had bought the lease and because after 20 years the principle of certainty applies.

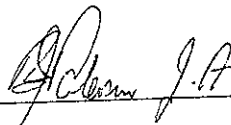
APPLICATION TO ADDUCE FURTHER EVIDENCE

3. In an application dated 19 August 2011, Mr Waysang sought leave to introduce an affidavit from the appellant's father on the grounds of fairness and equity, because the appellant had not been given an opportunity to be heard on the issues of acquiescence or promissory estoppels and ownership.
4. Rule 22(2) of the Court of Appeal Rules states:


The Court of Appeal shall have full discretionary power to receive further evidence upon questions of fact, either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner:

Provided that in the case of an appeal from a judgment after trial or hearing of any cause or matter upon the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds.
5. The appellant is required to show "special grounds" before this Court can allow the application. There are two reasons for this Court's view that the application should not be allowed.
6. First, the application before the Single Magistrate was heard in May 2009 and the decision given on 12 June 2009. Both the appellant, who was present at the hearing, and his father were well

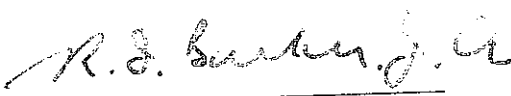
8. The only other point is that counsel for the appellant claimed that payment had taken place a week before 15 December 2010. However, the Chief Justice was at pains to record that the actual calculation was agreed upon by both counsel on the basis that the end date was 15 December 2010. The appellant cannot now resile from that agreement.
9. The appeal is dismissed. Costs to the respondent \$500 plus disbursements as fixed by the Registrar.



Paterson JA



Williams JA



Barker JA