

**IN THE HIGH COURT OF KIRIBATI
(BEFORE B SUTTILL C.)**

HCLA No: 131/1991

Between	ATANIMAKIN TETUNA FOR ISSUES OF N. TEAMA, N. TEAETO AND N. ABAUA TEROBUNG	Appellants
And	N. TIKOI TAUTEBU WITH BROTHERS AND SISTERS	Respondent

J U D G M E N T

On 13 November 1991 the parties named as appellants herein filed a notice of motion in the High Court.

The relief sought there under was the setting aside a consent order made on 5th September 1990 in HCLA 136/90, 149/90 and 150/90. Only the second appellant was a party to that consent order.

The grounds for the relief sought are that the second appellant in the course of the above mentioned legislation consented to the registration of two babai pits on land Tekaurama in the name of the respondents. In so doing she ignored the first appellants interest in that land.

The respondents no doubt in return for her consent to the registration of their names for Tekaurama, consented to the second appellants have being registered for two babai pits on Temwinnako 501-4.

The second appellant is not happy with this aspect of the consent order either as she is to be registered with her brothers and sisters.

There is no indication that the notice of motion was even served on the respondents by the appellants (or anyone for that matter) as it should have been.

In any event the second appellant has acted in a manner causing damage to the first appellant, and it is clear that the latter has a cause of action against the former.

That has nothing to do with the respondents and the appellants have no good reason to involve them in litigation which they no doubt considered ended to everyones satisfaction many years ago.

A consent order can only be varied by consent of all the parties to it. A cause of action arising between an outside party and one party to the consent order does not give the court a basis for interfering with the consent order.

The first appellant must sue the second appellant in a court of original jurisdiction, i.e. the magistrates court since the High Court has no original jurisdiction in land causes and matters. If the consent order has given rise to an indefeasible title then it will be a question of damages for the loss caused to the first appellant.


In any event an application of the nature before us today is incompetent and is dismissed.



B. SUTTILL
Commissioner
(8/2/1996)



Tekaie Tenanora
Magistrate
(8/2/96)



Betero Kaitangare
Magistrate
(8/2/96)