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

**HCLA 137/1990**

<b>BETWEEN:</b>	<b>TERAWEA TEEABA</b>	<b>Appellant</b>
<b>AND:</b>	<b>OSAWA TETOA TETOA UBAITOI</b>	<b>Respondents</b>

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**J U D G M E N T**

This is a very complex matter. On the face of it is an appeal against C/N 213/90 heard on 4 June 1990 in which the magistrates declared the house on Tebunia to be jointly owned by the appellant and the second respondent. They also declared the owner of that land to be N. Rubenteiti.

To say that the ownership of this house has been the subject of previous litigation is putting the matter lightly. It has been a matter of contention for over 10 years.

It started in 1983 when the house was among items for which a distribution was asked of the magistrates. This was C/N 113/83 in which the magistrates did not deliver judgment until 29 May 1985.

In this intervening period the parties went back to the magistrates court in C/N 13/85. The judgment of the magistrates in this case was in, HCLA 87/85, declared a complete nullity and set aside on 13 May 1995.

Shortly after this, as can be seen, the magistrates delivered their judgment in C/N 113/83 on 29 May 1985.

This second judgment of the magistrates was also subject to appeal in HCLA 132/83. The anomaly in the dates is explained by the fact that in 1983 the magistrates had declined to distribute the estate until the property owners returned. It was an appeal against this refusal that gave rise to HCLA 132/83 which appeal was stayed until the property was distributed on 29 May 1985. HCLA 132/83 was heard on 16 July 1986.

It is quite clear from the judgment in HCLA 132/83 that that appeal is part heard. It is specifically adjourned until certain evidence that the High Court had directed to be taken, was received. The particulars required are set out in page 2 of the judgment and we will revert to them later.

These directions gave rise to C/N 213/90 from which this appeal lies. In that case the magistrates compiled the evidence required and then gave judgment based upon their assessment of that evidence. This is the basis for one of the grounds of appeal - it was not for them to deliver judgment. The High Court had reserved that to itself in the adjourned HCLA 132/83.

After much anxious consideration we feel that that contention must be correct.


Accordingly we allow the appeal and set aside the decision made in C/N 213/90. HCLA 132/83 has not been concluded and that must be done as the correct forum for determining the issues between the parties. Counsel in the case appear to be quite satisfied that, at least in so far as taking the required evidence was concerned, the magistrates in C/N 213/90 complied with the direction in HCLA 132/83 and we can begin from there.

It is obvious that HCLA 132/83 will have to be commenced de novo. We do not have the High Court file in that matter as it has been destroyed by fire. C/N 113/83 was the magistrates court number of the case appealed from and that should be in the archives. So we will have the lower court record and the High Court reasons for the adjournment.

We now require counsel in the case to draw up a schedule if agreed evidence based on the evidence taken in C/N 213/90 under the four heads approximating those required by the High Court in HCLA 132/83, namely:-

1. Family tree of the estate owner that is the landowner.
2. The properties sought to be distributed e.g. land and houses.
3. The owners of the land and houses not in dispute.
4. Names of claimants.

When that information is available, which must be not later than 31 August 1996, a date for the resumed hearing of HCLA 132/83 will be set.

  
**Tekaie Tenanora**  
Magistrate  
(8/7/96)



  
**Betero Kaitangare**  
Magistrate  
(8/7/96)