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

HCLA 116/1990
" 82/1991

BETWEEN: KAUMAKIN TIBA **Appellant**

AND: TERABWENA TAKABWEBWE AND OTHERS **Respondents**

JUDGMENT

Mr. Berina for the respondents submits that they have been occupying Terereua 819i since 1972. They occupied the place by mistake believing it to be their own namely Terereua 819a. After the boundary determination it became clear the place they have been settling on is ....the appellants land.

The appellant sought to evict them from the property but the magistrates refused to do so since, by 2 May 1990, the date of case 186/90 from which this appeal is made, the respondents had been living on the land for a long time. The magistrates granted the respondents the status of a houseplot owner and then ordered compliance with Section 17 of the Lands Code saying that the parties should, in due course, have the court confirm the agreement that they reach.

Section 17 of the Lands Code reads as follows:-

House plots 17. (i) A householder is free to remain in occupancy of his house site provided that he will do one of the things shown below. The landowner may not refuse to allow this and he may only claim to evict the householder from his house site if the householder refuses to do the things prescribed. The landowners and the householders should signify their mutual agreement before the court. If they have not made any such agreement then the court shall decide on what should be done. The court may also decide the amount of rent or the price of the land or the amount of anything that should be exchanged with the house site in the event of there being no agreement.

(ii) Things that may be done-

(a) The householder may lease a house site from the landowner and in so doing will pay rent for such land monthly or yearly.

(b) The householder may allow the use of his land, pit or pond by the landowner who agrees to him living on his site by way of an exchange for the mutual use of their property during the time the householder uses the landowner's site.

(c) The householder may agree to a permanent exchange where by he receives a house site, the latter to be regarded as his own property, in exchange for one of his lands, pits or ponds.

(d) The householder may buy a house site from the landowner.

The words of Section 17 clearly assume that there is an occupancy of a houseplot prior to agreement between the householder and the landowner which agreement will permit the householder to remain in occupancy of his house. In the normal course of events one would expect an agreement being reached prior to occupation.

The history of Section 17 is interestingly described by Jones CJ in Nei Tantan Taraia & Tebwetua Tekaiti and others HCLA 221/83.

According to Jones CJ, prior to enactment of the Lands Code in 1963 the government (of, we presume the Gilbert & Ellice Islands Colony) or old Administration took it upon itself illegally to create and allocate housing settlements on land belonging to private landowners and create houseplots without any authority to do so. When the Lands Code became law in 1963 Section 17 thereof regularised the position of houseplot owners. Thus these householders illegally placed by the government were free to remain in occupancy of they did one of the things listed in Section 17 (ii). He goes on, there is no authority there given for the creation of new houseplots (except of course, by the landowners themselves). There is no other legal provision in respect of houseplots.

We take it as quite clear that after 1963 the legal relationship between householder and landowner in respect of a houseplot can only be created by agreement between them. It cannot be imposed on a landowner as it apparently could before 1963. Specifically it cannot be imposed by a court as a consequence of long occupancy or, in our view, for any other reason.

Jones CJ appeared to be of a different view from us in Nei Maata Ereatu -v- Nei Taumake Anton HCCivA 140/84 basing his decision on custom by reference to the right of plotholders provided in the Lands Code. With the greatest of respect to the learned C.J. that decision is at complete variance with his other decision that we have cited which clearly gives the impression that Section 17 had little or nothing to do with custom. We decline to follow HCCivA 140/84.

On the basis that a householder cannot be forced upon an unwilling landowner by virtue of Section 17 of the Lands Code the appellant in this appeal is entitled to evict the respondents despite the latters long occupancy.

This would not be so, of course, if the respondents had aquired a prescriptive right by application of Section 4 (3) of the Limitation Act 1939 of the UK which reads, in so far as is relevant, as follows:-

> "No action shall be brought by any .....person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him....."

As this was not argued before us it is a matter upon which we do not need to decide. However we can observe that it is the appellant's case that he has been attempting to exercise his rights as against the respondents since at least 1979. If this is so then occupancy since 1972 would not benefit the respondents in terms of Section 4 (3) of the Limitation Act 1939.

It follows that the appeal is allowed. The respondents must vacate the appellant's property at Terereua within 90 days.

B. SUTTILL
Commissioner
(11/4/1996)

Tekaie Tenanora
Magistrate
(11/4/96)

HIGH COU... OF KIRIBATI

Betero Kaitangare
Magistrate
(11/4/96)