

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

**HCLA 27/1991**

<b>BETWEEN:</b>	<b>TERAKU KABOTAU</b>	<b>Appellant</b>
<b>AND:</b>	<b>BAORO BEEN</b>	<b>Respondent</b>

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

On 19 November 1990 in C/N NT 5/90 the magistrates made a boundary determination between Kamwemwenang 543e owned by the appellant and 543a owned by the respondents.

The court received submissions from the respondent and from the appellant. They also visited the site.

Consequent upon their deliberations they drew a plan and in accordance with that plan gave their decision.

The magistrates ignored two boundary stones pointed out to them by the appellant. They were wrong to do this, he says, because those two stones were placed there by the Land Commission. Suffice to say we only have his word for that, no document to that effect having been produced to the court below or to us.

The respondent was not present when the stones were placed there, the appellant says. Well, who was there? He does not descend to particulars and no determination would have been valid without the presence of the respondent or his predecessor in title or a representative thereof.

The magistrates accepted one boundary stone, but as we say, ignored the other two. The stone they accepted is S1, between points D and C on the sketch.

Crucial in their determination was the ownership of the water tank Y between points A and B. The appellant claimed it and the respondent claimed it. The magistrates heard evidence from both and ruled in favour of the respondent. That being the case the boundary, they concluded must be a direct line between S1 and Y. Thus the 2 stones on the left of that line must be ignored, which they did.

The second ground of appeal was that the magistrates boundary made the appellant's land smaller. Smaller than what? Smaller than he thought it was, can be the only answer. How can that be a ground of appeal? A boundary determination that does not live up to a landowner's expectations cannot, for that reason alone, be subject to an appeal. We refused to allow that ground to be pursued.

A new, 3rd, ground was, with leave, allowed. The magistrates boundary went diagonally across the two plots whereas if the 2 ignored stones had been followed it would have been at right angles to line D - C. There is nothing legally wrong with a diagonal boundary, even if a scale plan would show it to be so.

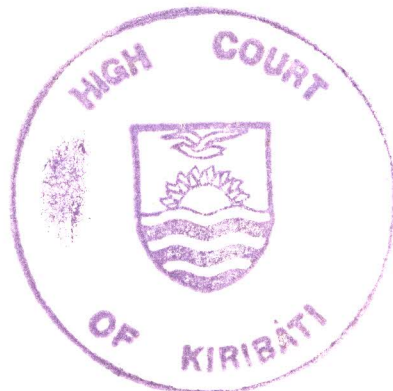
The magistrates sketch, whilst helpful, is not to scale, but giving it the same credence as the appellant, the magistrates boundary runs parallel to his own S4 to B, which is pleasingly asymmetrical. We see no merit in this ground.

A boundary determination is a finding of fact based on the reception of evidence by the magistrates. The procedure they followed was correct. No evidence was included that should have been excluded and vice versa. An appeal court will not interfere with a finding of fact in a lower court unless there was no basis for that finding. This is not such a case and we decline to interfere.

The appeal is dismissed.

  
**B. SUTTILL**  
Commissioner  
(24/5/1996)

  
**Tekaie Tenanora**  
Magistrate  
(24/5/96)



  
**Betero Kaitangare**  
Magistrate  
(24/5/96)