

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

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HIGH COURT CIVIL REVIEW 2 OF 2011

BETWEEN: ATTORNEY GENERAL IRO
MINISTRY OF EDUCATION APPLICANT

AND: TAAKE BURENNEITA RESPONDENT

BEFORE: THE HON. SIR JOHN MURIA CJ

MR BANUERA BERINA FOR THE APPLICANT
MS TAAIRA TIMEON FOR THE RESPONDENT

DATE OF HEARING: 16 FEBRUARY 2012

JUDGMENT

Muria CJ: On 23 November 2010 the Magistrates' Court made an order appointing the respondent as the administratrix of the estate of the deceased Mareko Ikauea. The order was made following an application in the Magistrates' Court by the respondent to administer the estate of her deceased's husband. The Attorney General (applicant) in the present proceedings now seeks to set aside the order of the Magistrates' Court.

The ground in support of the application is premised on Rule 2 of the Magistrates' Courts (Administration of Native Estates) Rules. Ms Timeon of Counsel for the applicant contended that the Magistrates' Court was wrong in law to appoint the respondent's widow to administer her late husband's estate. Counsel submitted that under Rule 2, the Director of

Lands who is the Chief Lands Officer is the proper person to be appointed to administer the estate of the deceased.

Rule 2 of the Magistrates' Court (Administration of Native Estates) Rules provides as follows:

"2. Where on the death of any native ordinarily resident in the Gilbert Islands it is found that he died intestate or his will is held by a competent court to be invalid, the Chief Lands Officer, on notice being given to him by a competent court or by or on behalf of the next of kin of the deceased person, shall assume in respect of the estate of the deceased person the powers conferred and the duties imposed on the administrator by these Rules".

Ms Timeon submitted that the provision must be interpreted to ensure that the Chief Lands Officer is the only person to whom notice must be given to administer the estate of the deceased in a case such as the present one. On the other hand, Mr Berina of Counsel for the respondent urged that the provision must be given an interpretation that enables a person, such as the applicant widow in this case to apply to be granted authority to administer a deceased estate where the Chief Lands Officer is not able to do so.

Does the Chief Lands Officer have to be appointed to administer the deceased's estate under Rule 2 (above)? On the interpretation urged upon the Court by Counsel for the applicant the court would have to appoint the Chief Lands Officer on all occasions when an I-Kiribati dies intestate to administer the deceased's estate. I do not think Rule 2 (above) is intended to have such a restricted interpretation. If it were so, I have no doubt the drafters of the rule would say so.

The power to administer the estate of a native who dies intestate is conferred on an administrator. Where notice that a native dies intestate or whose will has been declared invalid, has been given to the Director of Lands, he will then assume the powers and duties of an administrator to administer the deceased's estate. In such a case, he would be the administrator of the deceased's estate. In other cases he may exercise such powers and duties jointly with another person who is appointed administrator of the estate, as envisages in Rule 2 (2) of Rules. Is it therefore correct, as submitted by Mr Berina that the court was entitled to appoint the respondent as administratrix of her late husband's estate, and neither the court nor the next of kin had given notice to the Director of Lands under Rule 2 (1)?

The Court may for very good reasons give notice to the Director of Lands as soon as it finds that an I-Kiribati had died intestate or whose will has been found invalid. Such reasons may include the fact that the estate is large or complicated to administer or that a next of Kin would not properly administer the estate. In such a case it would be appropriate to notify the Director of Lands to assume the powers and duties of the administrator to administer the deceased's estate. But the Rule does not and cannot be interpreted so as to fetter the Court's power to appoint an administrator other than the Director of Lands to administer the deceased's estate under Rule 2 (1) of the Rules. The interpretation contended for by Mr Berina should be preferred.

Other matters raised by Counsel in their arguments. I do not think I need to deal with those arguments since what I have stated above disposes of this application.

The application is rejected and the order of the Magistrates' Court appointing the respondent as administratrix of the deceased's estate is confirmed.

Dated the 6th day of March 2012



SIR JOHN MURIA
Chief Justice

CIVIL REVIEW NO. 2 OF 2011

[ATTORNEY GENERAL *in* **MINISTRY OF**
[EDUCATION **APPLICANT**
]
BETWEEN [AND
]
[TAAKE BURENNEITA **RESPONDENT**

Before: Hon Chief Justice Sir John Muria

16 February 2012

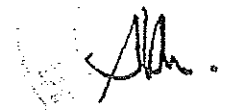
Mr Banuera Berina for Applicant
Ms Taaira Timeon for Defendant

ORDER AFTER TRIAL
(O. 38, r.12)

Dated the 7th day of March 2012

This action having on the 16th day of February 2012, been tried before the Honourable Chief Justice Sir John Muria in the High Court of Kiribati, and the said Honourable Chief Justice Sir John Muria on the 6th day of March 2012, having ordered that judgment be entered for the applicant.

It is this day ordered that the application is rejected and the order of the Magistrates' Court appointing the respondent as administratrix of the deceased's estate is confirmed.


(Sir John Muria)
Chief Justice