

IN THE HIGH COURT OF KIRIBATI 2015

LAND APPEAL NO. 114 OF 2012

[ATTORNEY GENERAL
[
BETWEEN [AND
[
[DOROTHY HIGHLAND MTMM
APPELLANT
RESPONDENTS

25 June 2015

Ms Taaira Timeon for Appellant
Mr Banuera Berina for Respondents

JUDGMENT

The Court: This is an appeal by the Attorney General against the decision of the Magistrates' Court in Case No. 310/10 delivered on 5 December 2011. The appeal was originally filed as a Civil Appeal but it had been now treated as a land appeal under section 75 of the *Magistrates' Court Ordinance*.

The appellant relies on three grounds of appeal namely:

1. The learned Magistrate erred in law in deciding that the Appellant occupied land unlawfully because there was no signed and written agreement to entitle him to reside on land lawfully;
2. The learned Magistrate erred in law in ordering Appellant to deliver possession of land *Terawabono 820u* part of which is occupied by the Appellant to the Respondents when the nature of the relief the Magistrates' Court is empowered to order pursuant to section 17(1)(b) of the *Proceedings By and Against the Republic Ordinance*, is to make an order declaring that the Respondents were entitled to the possession of

the land in question but not empowered to make an order for the recovery or delivery of the land;

3. The Magistrates' Court (Lands) erred in law in hearing and adjudicating a matter in Betio Land case number 310/2010 in its land jurisdiction.

The respondents oppose the appeal.

BRIEF BACKGROUND

The brief background to the case is that in the Court below, the Single Magistrate had to deal with the plaintiff's (respondents) claim for the removal of a portion of the building belonging to the Customs Office which the respondents claimed to be on their land. The respondents' case was that a portion of the building sits on that part of the respondents' land not leased by the Government.

The Court below found that a portion of the Customs building occupied that part of the respondents' land which was not leased by the Government. The Magistrates' Court therefore held that the appellant unlawfully occupied that part of the respondents' land and ordered the appellant's building which occupied the unleased part of the respondents' land be removed.

THE ISSUES

The central issue in this appeal is whether the appellant has right to occupy that part of the respondents' land where the Customs building now stands in Betio. The other issue relied on by the appellant is that whether the respondents are estopped from claiming the right to remove the appellant's Customs building because they have accepted rental payments for the part of the land in dispute.

ARGUMENTS AND CONSIDERATION

There is no dispute that the Customs Office building in Betio is sitting on Terawabono 820u land belonging to the appellant. It is also not disputed that the Government leased part of Terawabono 820u and paid rentals to the respondents. It is also further not disputed that the present Customs Office building in Betio occupies part of Terawabono 820u that was not the subject of the lease between the appellant and respondents.

The Government realizing the fact that the Customs Office building sits partly on the unleased part of the same land, increased the rentals of the land. The respondents agreed that there was an increase in the land rentals but were not sure of the reasons for the increase in the rental sum.

The respondents came to know that the increase in the rental was to cover that part of their land which was not leased to the Government but on which part of the Customs building now stands. They took proceedings in the Magistrates' Court to remove the building or part of it which occupies the unleased portion of their land.

I think it is also worth noting that the evidence in the Court below shows that the respondents had been receiving the land rentals with extra amounts over and above those due under the lease agreement. The Court record also shows that in 2010 the land rental paid to the respondents included a sum for the rent of that part of the respondents' land occupied by the Customs building but which was not included in the original lease agreement. There is no evidence to suggest that the respondents rejected the payment made by the Government in respect of the disputed portion of the land.

Ms Timeon of Counsel for the plaintiff did not dispute the fact that the Customs building in Betio sits in part, on the respondents' land, not leased by the

Government. So that part of the building sits on the unleased and part on the respondents' leased land. It is therefore not surprising that the Government had to pay extra amount of the rentals to cover the whole part of land on which the Customs Office building stands. The respondents, as I have said earlier, accepted the extra rental payments.

The respondents' case is that part of the Customs Office building sits on the unleased portion of their land Terawabono 820u in Betio. As no lease agreement covers that part of their land, the Customs Office building should be removed. On the face of it, such argument sounds attractive. However, attractive though it may be, I am not convinced that it should succeed. There are two reasons why the respondents' argument cannot succeed.

First, at some time later, subsequent to receiving the extra amount of money as rental for their land, the respondents came to know that the additional sums were to cover that part of their land not included in the original lease but on which part of the Customs Office building is sitting. This Court was not told nor the Court below, that the respondents returned the money to the Government. The respondents in fact kept the additional rental payments.

Again, the evidence on the record discloses that the Government, through the Chief Lands Officer, was ready to enter into a formal arrangement to include the unleased part of the land on which part of the Customs had been prepared by the Chief Lands Officer and paid the land rental to the respondents, but they (respondents) refused to sign the agreement.

In my view and despite the strong arguments by Mr Berina of Counsel for the respondents, the principles of proprietary estoppel apply in this case creating rights in the said land in favour of the appellant. The facts as revealed in the case show that negotiation had been done between the Government and the respondents to have a lease agreement made between the parties, since the Customs Office building was found to occupy in part the respondents' land, not

covered in the original lease. A lease was prepared but not signed due to the respondents' reluctance to sign. However, the respondents had accepted rental payments for the said portion of land. The respondents cannot now deny the appellant's rights in the land which the respondents accepted rental payments for. The Government was led to expect that by accepting rental payments for the disputed land, the Government be allowed to continue to have the right to use the said and, hence sought to formally resolve the matter through a collateral agreement in the form of a lease.

An opportunity had arisen in this case to create a contractual relationship between the parties when the appellant made payment and accepted by the respondents, followed by the preparation of the lease agreement.

Each case is determined on its own circumstances. In the present case, the circumstances as shown in the affidavits and Court minutes in the proceedings below, brings the case within the application of the equitable doctrine of propriety estoppel in favour of the appellant.

For those reasons, we allow the appeal and set aside the decision of the Single Magistrate given on 5 December 2011.

Dated the 4th day of September 2015



[Signature]

RITETI MANINRAKA
Magistrate

[Signature]

TERAMWEAI ITINRAOI
Magistrate