

IN THE HIGH COURT OF KIRIBATI 2019

CIVIL CASE NO. 8 OF 2017

	[BURAIETA ROAIA MTMM	APPLICANTS
	[
BETWEEN	[AND	
	[
	[KAURE TIIKAN	1 ST RESPONDENT
	[DIRECTOR OF LANDS	2 ND RESPONDENT

Before: The Hon Chief Justice Sir John Muria

1 October 2019

Ms Taoing Taoaba for Applicant
Ms Taaira Timeon for 1st Respondent
Mr Monoo Mweretaka for 2nd Respondent

JUDGMENT

Muria, CJ: The applicants are aggrieved by the decision of the Single Magistrate made on 1 February 2017 in Case BikLan 193/16. They now seek leave to issue certiorari proceedings to quash the decision of the Single Magistrate.

2. The second respondent has conceded to the applicant's application. The first respondent, however, opposed the application, arguing that the Magistrates' Court was correct in its decision to order rectification of the title to the land Teitibong 658e in Case BikLan 193/16.

3. The dispute between the parties in this case is over the land Teitibong 658e. The record shows that the applicants were the registered owner of the land Teitibong 658e since 1968. In CN 44/68, Tekimau (the applicant's mother)

obtained the land Teitibong 658e from Mareta Eketi. Then in CN 209/91, the applicant inherited the said land from her mother registered in her name. The applicants remained registered owner of the land Teitibong 658e since then.

4. Then in 2016, the first respondent issued proceedings in Case BikLan 193/16 claiming the return of their land. The parties to case BikLan 193/16 were the first respondent and the second respondent. The applicants who were the registered owners of the land Teitibong 658e were not made parties to the case.

5. The applicants were, however, served with the summons in January 2017 for the hearing of BikLan 193/16 which was fixed for 27 February 2017. While waiting for the hearing date 27 February 2017, the applicants received on 15 February 2017 a copy of the Judgment in BikLan 193/16. The Judgment was made on 1 February 2017. Naturally, the applicants somewhat felt bamboozled by the first respondent's action in obtaining a judgment against them without being present in Court to be heard.

6. The second respondent, in conceding this application, clearly accepted that the procedure followed in BikLan 193/16 was not right. The applicants who were registered as owners of the land were kept out of the hearing in BikLan 193/16. The first respondent knew that the applicants were registered as owners of the land Teitibong 658e. Plainly on the evidence before the Court, the proceedings in BikLan 193/16 was a sham.

7. The applicants in whose names the land was registered were clearly entitled to be heard, even if rectification of the title to the land was ultimately found to be the proper thing to do. They were deprived of that opportunity.

8. For the above reasons, leave to issue certiorari proceedings is granted. Normally, as leave is granted, the substantive certiorari proceedings should now

be issued and set down for hearing. In the present case, however, there is overwhelming evidence to justify making the order of certiorari sought by the applicants. It is pointless to traverse the same arguments again at the substantive hearing of the application.

9. In this case leave having been granted, the order of certiorari should also be issued. An order of certiorari shall issue bringing into this Court for the purpose of it being quashed the decision of the Magistrates' Court in BikLan 193/16 dated 1 February 2017.

10. Order accordingly with costs to the applicants to be taxed if not agreed.

Dated the 22nd day of October 2019

