

IN THE HIGH COURT OF KIRIBATI 2020

CIVIL CASE NO. 89 OF 2019

	[TIOROMAEA TAUNUN FOR	
	[ISSUES OF ARIUA BATAKA	
	[OKOBETA BWEBWENTAU FOR	
	[ISSUES OF NANOITITI BATAKA	
	[MERINA BAAKO FOR ISSUES OF	
	[KAMOKAMO BATAKA	APPLICANTS
	[
BETWEEN	[AND	
	[
	[TEKOA KIEURA, MWAURIN KIEURA	
	[AND IARETO KABUNARE	1 ST RESPONDENTS
	[REGISTRAR OF BIRTHS, DEATHS AND	
	[MARRIAGES	2 ND RESPONDENT

Before: The Hon Chief Justice Sir John Muria

11 June 2020

Ms Taaira Timeon for Applicants

Mr Raweita Beniata for 1st Respondents

JUDGMENT

Muria, CJ: The applicants are seeking leave to issue writ of prohibition to prevent the second respondent, the Registrar of Births, Deaths and Marriages, from altering the Death Register of Nei Karotu. In support of the application, the applicants rely on the affidavit of Tioromaea Taunun who is one of the applicants.

Background

2. The deceased, Nei Tekoa, died on 26 February 1900 at Rungata, Nikunau. The details of the deceased's Death Certificate were recorded as:

**"Nik vol. 1, Page No. 6.27, Date of Death: 26/02/1900
Death Place: Rungata Nikunau, Full Name: Tekoa
Home Island: Tarawa, Spouse (H/W): Bataka
Issues: 1. Kamokamo, 2. Ariua, 3. Namoititi".**

3. The Death Certificate shows that the deceased only had three issues who were named in the Death Register. They were: 1. Kamokamo, 2. Ariua, 3. Namoititi. Thus the Original Death Certificate shows that the deceased had only three issues.

4. A dispute has now arisen because a subsequent Death Certificate was issued showing that the deceased had four issues, by adding the name Koura as the first issue of the deceased. This change in the Death Register came about when the first respondents made a statutory declaration on 1 March 2016 naming Koura as the first born of the deceased. It is not surprising that the applicants, relying on the Original Death Certificate, were not happy about that recent inclusion of Koura as one of the issues of the deceased Nei Tekoa.

Proper Remedy

5. The applicants' case is in reality a challenge as to the legality of the action of the Registrar of Births, Deaths and Marriages in issuing a subsequent Death Certificate which actually altered the Original Death Certificate of the deceased as contained in the Death Register.

Unfortunately, the applicants have come to this Court seeking writ of prohibition to prevent the Registrar from doing that which he had already done.

6. This Court had pointed out in *Taraa and Others –v- Registrar of Births, Deaths and Marriages* [2020] KHC 27; Civil Review No. 30/19 (15 October 2020) that a writ of prohibition is a command to prevent a subordinate court or tribunal from doing or continuing to do what it is doing because it lacks jurisdiction to do what it is doing. A writ of prohibition can do nothing to prevent an act that had already been done.

7. As pointed out in *Taraa and Others –v- Registrar of Births, Deaths and Marriages*, since a writ of prohibition would be of little use to the applicants, it would be best to seek other adequate remedies. It is suggested in *Pitfield –v- Franki* and *R –v- Cook ex parte Twigg* (1980) 31 ALR 353 that *certiorari* could be granted where an application for a writ of prohibition failed. However, *certiorari* is not part of the applicants' remedy being sought in the present case.

8. Assuming, for argument's sake, that the later action taken by the Registrar to alter the Death Register regarding the details of the deceased Nei Tekoa is challengeable, and that the writ of prohibition is not the appropriate remedy in this case, the applicants may wish to bring proper proceedings seeking one of the appropriate prerogative remedies. Whether the Registrar had the power to do what he did, namely, altering the Death Register by adding the fourth issue, Koura, would have to be established. This question has not been raised in this case.

9. In the light of what I have said above, I hold that the remedy of writ of prohibition is not appropriate in this case. Leave to issue a writ of prohibition is declined.

10. Order accordingly.

No order as to costs.

Dated the 28th day of October 2020

