



HIGH COURT OF KIRIBATI

Civil Case N° 75/2016

**IORITANA BUREIETA KRONK
for BUREIETA KARAITI**

Applicant

v

TOKATAAKE KATAUEA mt

Respondent

Raweita Beniata for the applicant, ex parte

Date of ruling: 26 February 2020

RULING

- [1] This is an application for leave to commence *certiorari* proceedings to quash a decision of the North Tarawa Magistrates' Court in case 40/13, dated 25 April 2013. The application for leave is made *ex parte*, in accordance with Order 61, rule 2 of the *High Court (Civil Procedure) Rules 1964*.¹
- [2] Case 40/13 concerned an *ex parte* application from Tokataake Katauea for an interim injunction directed, it appears, to the Land Management Division of the Ministry of Environment, Lands and Agricultural Development. Tokataake was concerned that the government was paying rent to Bureieta Angaraoi (also known as Bureieta Karaiti) in respect of land Tengeangeana 537e in Abatao. Tokataake claimed that the extent of Bureieta's ownership of the land was in dispute. She wanted payment of the land rent to Bureieta stopped pending resolution of that dispute. The Magistrates' Court granted her application but, perhaps unwisely, did not fix a timetable for the hearing of the substantive matter. It appears that Tokataake has done nothing in the meantime to progress her challenge to Bureieta's title, and the injunction remains in place.


¹ See the comments of the Court of Appeal on the desirability of legislative reform in the area of judicial review in *Beiariti Kaotan & others v Junior Kum Kee & others* [2012] KICA 5, at [4]-[5].


- [3] Bureieta died in September 2014. The applicant in this case is his son. The proceedings were commenced on 23 September 2016,² more than 3 years after the injunction was granted. As such, the application for leave to commence the *certiorari* proceedings, having been filed outside the 6-month time limit prescribed by Order 61, rule 3, itself requires leave. The Court has discretion to extend the time for filing, under Order 64, rule 5.
- [4] It appears from the material filed by the applicant that, as his father was living on Kiritimati at the time, he only became aware of the injunction when the rent that would ordinarily have been paid to him in January 2014 was withheld. Due to the remoteness of Kiritimati, he was unable to seek legal advice on the matter before his death later that year. It was only in 2016 that the applicant was able to consult a lawyer who happened to be visiting Kiritimati. This application was filed shortly afterwards. In such circumstances, bolstered by the fact that there would be no prejudice to the respondent if the time for filing was extended, the applicant would ordinarily have little difficulty in satisfying the Court that leave should be granted.
- [5] I am however unwilling to grant leave to extend the time in this case. This is not because I lack sympathy for the applicant's situation – to the contrary, I am very concerned at the unfairness apparent here. The Magistrates' Court's decision to grant an open-ended injunction in the circumstances of this case was almost certainly the wrong thing to do. What was supposed to be a temporary order has remained in place for almost 7 years, with apparently no effort from Tokataake to litigate her challenge to Bureieta's title.
- [6] Despite this, there is little to be gained by pursuing the present application. If I were to grant leave to proceed with the *certiorari* application, it could not go ahead today. The respondent would need to be served with the papers and given time to find a lawyer. Even if that could be done relatively quickly, and even if the applicant is ultimately successful in his application, that will still take time. On the other hand, there is nothing stopping the applicant from going to the Magistrates' Court now and asking for the injunction to be lifted. The Court's decision to grant the injunction was clearly only ever intended to be temporary. The proceedings in that court remain on foot. The appropriate course of action is for the applicant to ask the Magistrates' Court to set aside

² It is unfortunate that, for reasons unclear, today is the first time that this application has been given a hearing. This is a regrettable failure on the part of the High Court Registry, but should also serve as a reminder to counsel of the importance of actively prosecuting the cases they file.

the injunction, on the ground that the claimant has failed to prosecute her case in a timely manner. Alternatively, the Court could simply hear and determine Tokataake's challenge to Bureieta's title without further delay.

- [7] Given that the applicant has failed to exhaust his available remedies, while I would ordinarily be minded to grant leave to extend the time within which to file his application for leave to commence *certiorari* proceedings, I refuse the present application.


Lambourne J
Judge of the High Court



The seal of the High Court of Kiribati is circular. It features the national coat of arms of Kiribati in the center, which includes a sun, a wave, and a palm tree. The text "HIGH COURT OF KIRIBATI" is written around the top inner edge of the seal, and the Kiribati motto "TE MOU AE E RIETATA I KIRIBATI" is written around the bottom inner edge.