

# IN THE HIGH COURT OF KIRIBATI 2019

MISCELLANEOUS APPLICATION NO 182 OF 2019  
(ARISING FROM HIGH COURT CIVIL REVIEW NO. 29 OF 2019)

	[ANGABEIA MONE FOR ISSUES OF [KAIA TAKETI	1 <sup>ST</sup> APPLICANT
BETWEEN	[ [AND [	
	[TIROI TONGOUN FOR ISSUES OF [TETERA TAKETI	2 <sup>ND</sup> APPLICANT
	[ [AND [	
	[BUREIMOA MOUTU FOR ISSUES OF [TEKABAIA TAKETI	RESPONDENTS

Before: The Hon Chief Justice Sir John Muria

28 February 2020

*Ms Taaira Timeon* for Applicants

*Mr Tabibiri Tentau* for Respondents

## JUDGMENT

**Muria, CJ:** This is an application for stay payment of lease over the land Teabannaine 810-e pending the determination of the applicant's application for *certiorari* against the Magistrates' Court's decision in Betlan 587/17. In support of the application, the applicants rely on the affidavit of Tiroi Tongoun.

### Brief background

2. The brief background of this case is that the land Teabannaine 810-e was leased by the Government. The parties to the Lease were the respondents and

the Government. The respondents are the registered owners of the land Teabannaine 810-e. The respondents have been receiving the lease payments over the land since the signing of the Lease with the Government.

3. Attempts have been made by the applicants to challenge the rights of the respondents over the land Teabannaine 810-e in cases Number Betlan 44/17, Betlan 587/17 and Biklan 871/17. The respondents had been successful in all those cases. No appeals have been brought against the respondents in respect of Betlan 587/17 and Biklan 817/17.

### **Consideration**

4. In Betlan 587/17, although the applicants were not summonsed to the hearing, they were aware of the proceedings shortly thereafter. No steps had been taken by the applicants to challenge that decision which was made on 27 July 2017 after they learned of it in the High Court by way of judicial review.

5. Instead, the applicants brought case Biklan 871/17 again seeking to establish their claim over the land Teabannaine 810-e. The Magistrates' Court again dismissed the case on the basis that the case was an attempt to have the Magistrates' Court re-consider its earlier decision in Betlan 587/17 over the same issue by the same Court. The Magistrates' Court was entitled to refuse to do so. The applicants were the plaintiffs in Biklan 817/17 and their rights of appeal was expressly accorded to them in Court by the Single Magistrate. Yet did not exercise their right of appeal against the decision of the Magistrates' Court given on 15 January 2018.

6. The above mentioned factors are very relevant for consideration when the application for certiorari itself comes to be considered. However, those factors do have bearings on the exercise of the Court's discretion in the present

application since they demonstrate the strength of the parties' claims over the land in question. The respondents' title to the land in question had been affirmed in the cases mentioned. Each party must succeed on the strength of his own case.

7. There is a further factor in this case. The Government is a party to the Lease Agreement signed with the respondents. The applicants' application is effectively to prevent the Government from paying the lease money over to the respondents. The order sought by the applicants is not directed at the respondents. It is directed to the Lessee (the Government) to "**stay payment**" of the lease money to the respondents. As the Government has not been made a party, at least in this application, any decision by this Court to stay payment of the lease money to the respondents would not be binding on the Government. The contractual rights of the parties under the Agreement cannot be taken away or altered by the Court in this manner.

8. The respondents are the registered owners of the land Teabannaine 810-e and had entered into a valid lease agreement with the Government. At the time of the execution of the lease agreement, there was no suggestion that the respondents were not the proper party to lease the land to the Government. As such this Court cannot prevent the parties to that lease agreement from enforcing their rights and obligations under the lease agreement.

9. The applicants in this case are not yet in the position to bring the certiorari proceedings. They are out of time. They need to apply for extension of time to apply for leave to issue certiorari proceedings. If extension of time is granted, then leave application is to be dealt with by the Court. If, and only if, leave is granted then the applicants would be in a position to issue certiorari proceedings. There is no guarantee that the applicants would get to the final stage of substantively applying for the order of certiorari itself.

10. In the circumstances of this case, it would not be proper to deprive the respondents from enjoying their rights and benefits under the lease agreement which they validly entered into with the Government. An order to stay payment of the lease money by the Government to the respondents must, therefore, be refused.

11. The applicants' application for stay of lease payment is dismissed with costs to the respondents, to be taxed if not agreed.

Dated the 13<sup>th</sup> day of March 2020

