

THE HIGH COURT OF KIRIBATI
KABOWI AE RIETATA I KIRIBATI

High Court Review 6 of 2020

BETWEEN
KAARO TEITI
Applicant
BWEBWE TEITI
Respondent

Hearing: 21 April 2022
Appearances: Ms Taaira Timeon for Appellant
No appearance for the Respondent
Judgment: 26 April 2022

JUDGMENT

The hearing of this review application was done without the appearance of the Respondent. During the call-over of the cases for the Tarawaieta High Court circuit, it was confirmed by the affidavits of service of the sheriff, Rurunteiti Utimawa and the Applicant that they served the notice of hearing as well as review documents to the Respondent personally. We accepted the personal services done to the Respondent and proceeded therefore to hear the case.

The Applicants in this case invoked the power given to this court by section 81(4) of the *Magistrates Court Ordinance* praying for this land appeal panel to review the decision of the Tarawaieta Magistrates Court in CN 20/2020 given on 2 June 2020. The Applicants filed their motion for review on 1 September 2020 within the 12 months mandatory timeframe.

The sole ground of review put forward by the Petitioner is that the Magistrates Court of Tarawaieta erred in law in failing to enquire for all issues of the deceased landowner, Noi Laura Teakireke, before deciding on registering the Respondent and the issues of her

brother on all the lands of Taara Teakireke. As an interested party, the Applicant was never given an opportunity to be heard in the court below.

- When the Respondent gave evidence in CN 20/2020, she submitted that there were only two issues of their deceased mother namely her brother Teakireke Teiti and herself. She never mentioned the Applicant in her evidence.
- On the other hand, the Magistrates never asked if the deceased landowner, Nei Taara Teakireke, had other issues thus the result of registering only the Respondent and the issues of her brother, Teakireke Teiti.

The other document tendered in evidence was the death certificate of Nei Taara Teakireke showing only two issues namely the Respondent and her brother Teakireke Teiti. The Applicant was not listed as an issue and the informant was the Respondent.

Ms Timeon, in her submission set out that the Applicant is also registered as the daughter of the deceased landowner, Nei Taara Teakireke with her husband, Teiti Ati. This is shown in 'Annexure A' of the Applicant's submission in which the birth certificate of Kaaro Teiti shows that she is also the registered daughter of Nei Taara Teakireke, or the Respondent's sister. Ms Timeon, added that the Applicant's was adopted however the birth certificate is enough evidence to ensure that the Applicant's was heard in the distribution of the estate of Nei Taara Teakireke. We accept that the Applicant was one of the issues of Nei Taara Teakireke.

- Ms Timeon, strongly submitted that the Magistrates Court of Tarawaieta has failed to comply with the principle of natural justice in failing to enquire and summon all issues of the deceased landowner, Nei Taara Teakireke. In failing to do so, the Applicant has not been given an opportunity to present her case with respect to the distribution of all the lands of Nei Taara Teakireke, the Applicant's mother.

The Court of Appeal case of *Tebanna v Tebanna* [2021] KICA 8 set out in paragraphs 29 and 30 that (quote),

"Before we consider whether service of the distribution application was validly effected, we explain why service is so fundamental to the proper workings of any court system. It is a basic principle of law that, before making orders that will affect others, a Court must ensure any potential opposing party has an appropriate opportunity to be heard.

This is known as the audi alteram partem principle. It is a fundamental rule of natural justice. Orders made without hearing from parties who might be affected adversely by them are made only in exceptional circumstances, and usually on an interim basis. Final orders made on an ex parte basis carry a substantial risk of causing a miscarriage of justice. Judges can only know what orders are appropriate if they have all relevant facts and legal arguments put before them for consideration, by all affected parties."

11. The Court of Appeal further set out that for the principle of natural justice to be considered, two issues should be looked at including, was service validly effected following an irregular judgment? If not, are there any grounds on which the residual discretion not to set aside the distribution order should be exercised?
12. In this review application, the judgment and submission by Ms Timeon clarify that service was not done to the Applicant after the judgment was obtained by the Respondent irregularly (without the presence of the Appellant). Although there remains a residual discretion for this court to allow the judgment in the court below to stand, the general rule is for the judgment to be quashed for the merits of the case to be presented and considered.
13. If we can safely conclude that there is no risk of miscarriage of justice, we can then reject this application however, prejudice will occur to the Applicant if we do that as she has not been heard in the court below when in fact, she is an interested party to the estate of her deceased mother Nei Taara Teakireke. We therefore decide that justice will be served if we accept this review application and for the court below to reconsider the distribution and to ensure that the Applicant is summoned to present her case.
14. In our opinion, the Magistrates' Court of Tarawaieta have erred in law in not enquiring and summoning (service) the Applicant who is an issue of the deceased landowner, Nei Taara Teakireke. We therefore allow the appeal and give the following orders.

14. Orders of this court:

- a) The appeal is allowed and the distribution order in CN 20/2020 is set aside;

- 2) The distribution application is remitted to the Magistrates' Court for reconsideration as soon as practicable in accordance with our decision;
- 3) Costs is awarded to the Applicant to be taxed if not agreed.



The Hon. Abuera Uruaaba,
Commissioner of the High Court

His worship Riteti Maninraka
Land Appeal Magistrate

His worship Manikaoti Timeon
Land Appeal Magistrate