

**IN THE HIGH COURT
OF KIRIBATI**

HIGH COURT CIVIL APPEAL NO. 13 OF 2019

BETWEEN TOOMA BOIA FOR ISSUES OF BWAAUA
TATAUA
Appellant

AND EWEATA MAATA
Respondent

Hearing: 26 May 2022

Appearances: Ms Timeon for the Appellant
Ms Kabure for the Respondent

Judgment: 26 May 2022

JUDGMENT OF HASTINGS CJ

[1] This is an appeal from a decision of the Magistrate's Court delivered on 3 July 2019.

[2] In 2018, the appellants say they paid the respondent for legal services. The appellants sought the assistance of the respondent to reinstate land they claimed was theirs in Bairiki. The appellants claim the respondent never commenced proceedings. They claim this breached the contract they had with the respondent and sued for reimbursement of the amounts paid to the respondent and general damages, in total, \$4,090.

[3] The defendant did not appear at the hearing, but having been satisfied the defendant had been given notice of the hearing, the Magistrate proceeded to hear the case anyway under r. 20(2) of the Magistrates' Courts Rules. In a short judgment, the Magistrate decided that the appellant failed to prove the "date, time and place where the agreement was made." She dismissed the appellant's claim. The Magistrate also decided that "the evidence is not sufficient along with documentary evidence in proving their case ...".

[4] Ms Timeon submitted there was a contract because promises were exchanged. The appellants agreed to pay the respondent for specified legal services, and the respondent agreed

to perform those services. Ms Timeon submitted that the Magistrate erred in law by requiring evidence of time, date and place of contract which are irrelevant to establishing the existence of a contract.

[5] Ms Kabure submitted that if the appellant's case was that the respondent breached the agreement, then the agreement had to be pleaded. She submitted it was not. She submitted that the appellants failed to produce any evidence of such an agreement, including when it purported to start and end. She submitted that in the absence of pleading an agreement, the Magistrate was correct to dismiss the appellant's claim. Ms Kabure also submitted that there needed to be better evidence that money was paid to the defendant. Simply attaching as Annexure A to the plaintiff's affidavit a list of amounts paid on unspecified dates was insufficient proof of payment.


[6] Ms Kabure also submitted that if the appellants were dissatisfied with the service provided by the respondent, they should have dealt with the matter using the provisions of Part III of the Kiribati Law Society Act 2006.

[7] I turn now to the merits of this appeal. The existence of a contract does not depend on where and when it was made. It could well be there was a contract here, and it could well be that it was breached, but there needs to be sufficient evidence to show both on a balance of probabilities. The plaintiff did not bring that evidence to the Magistrate's Court. Even if the defendant had appeared, there was little or no evidence to test. The Magistrate's reference to time, date and place is to my mind a red herring. What is important is the Magistrate's finding that the evidence was insufficient to show a contract existed, that payments had been made, and that loss resulted.

[8] Although the Magistrate was wrong to say the existence of a contract depends on proof of when and where it was made (as distinct from offer, acceptance and consideration for the promise sued upon), there is no reason to think that another magistrate would decide this case any differently if it were sent back to the Magistrates' Court given the paucity of evidence

adduced to support the claim. The Magistrate was correct to comment on the insufficiency of the evidence before her.¹

[9] For these reasons the appeal is dismissed. Costs follow the event, and if they cannot be agreed, I will decide the matter on the papers after receiving written submissions.



Hon William Kenneth Hastings
Chief Justice

¹If the plaintiff is able to find evidence of payments made for legal services not performed, then s 13 of the Kiribati Law Society Act 2006 seems to offer another avenue for redress.