IN THE KIRIBATI COURT OF APPEAL)
LAND JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

Land Appeal No 4 of 2005

BETWEEN	TAKORIRI TINOA	APPELLANT
AND	TUTU TIANUARE	RESPONDENT

Before: Hardie Boys JA
Tompkins JA
Fisher JA

Counsel: *Banuera Berina* for appellant
Botika Maitinnara for respondent

Date of Hearing: 4 August 2005

Date of Judgment: 8 August 2005

JUDGMENT OF THE COURT

Introduction

[1] The appellant on behalf of herself and her brothers and sisters ("the appellants") has appealed against the decision of the Land Court, the Chief Justice and Magistrates Betero Kaitangare and Raratu Ieita dismissing the appeal from the decision of the Magistrates' Court holding that the respondent is entitled to dispose of Marenaua 304/a ("the land")

Background

[2] The respondent was adopted by Nei Keke in 1963. She has died. The respondent became the owner of the land. The appellant and others are related to the respondent and claim to be his next of kin.

[3] The respondent wished to sell the land. The appellant objected to the sale. The issue came before the Magistrate's Court on 9 May 2003. The court ruled that as the respondent was the adopted child of Nei Keke, he had the right to sell the land. The appellant appealed. When the appeal came before the High Court on 3 December 2004, the Court issued a memorandum in which it recorded that the respondent inherited the land from Nei Keke and that he was issueless. It sought a translation of the direction of the adopting court. The High Court considered the matter further on 29 December 2004. It noted that no direction was given as required by s 9 (iii) of the Code. The respondent has the land by inheritance. The Court could see no bar to the respondent disposing of the land even though he is issueless.

Next of kin

[4] The central issue on this appeal is whether the appellants are the next-of-kin of the respondent. If they are, s 14 of the Native Land Code Cap 61 will apply:

> 14. An owner may sell a land, a pit or a fish pond if his next-of-kin agree and if the Court, having considered the matter, approve. Before reaching its decision the Court should first consider if the lands remaining to the owner after the sale are sufficient for him and his children.

[5] In evidence before the Magistrates' Court the appellant produced a family tree relating to the appellants and the respondent. This showed that they were fourth cousins. They have a common great great great grandfather. The only daughter Nei Keke is deceased. The only surviving child is the respondent, now aged 44, who has no children.

[6] *Stroud's Judicial Dictionary* 4th edition at 1767 defines next-of-kin:

> The primary and proper meaning of "next of kin" is the nearest in proximity of blood (whether of the whole or half blood . . .) living at the death of the person whose next of kin are spoken of"

[7] We adopt this definition. The appellants are all blood relatives of the respondent (subject only to the effect of the adoption). According to the family tree produced at the hearing in the Magistrates' Court, the appellants are the nearest in proximity of blood to the respondent.

[8] It remains to consider whether this conclusion is affected by the fact that the respondent is the adopted not the natural son of Nei Keke.

[9] We were informed that there is no statute governing adoptions of IKiribati. The only relevant provision is s 61 of the Magistrates' Courts Act Cap 52 which provides that the court shall adjudicate on all cases brought before it, concerning native adoptions. We were informed that, in accordance with this provision, adoptions are effected by an application to the Magistrates' Court, the Court then approving or declining the application, if appropriate after consulting the other children of the adoptive parents.

[10] Also relevant is s 9 (iii) of the Native Lands Act Cap 61 which provides that an adopted child will inherit from his adoptive parents just as though he were a real child of that person.

[11] Subject to any relevant express statutory provision, an adopted child is to be treated in law as if he had been born as a child of the adoptive parents. That means, in the context of the present case, that the respondent is to be treated as if he had been born to Nei Keke. It follows that he is, in law, a blood relative of the appellants, who therefore are the next-of-kin of the respondent.

Conclusion

[12] Section 14 of the Native Lands Code, which we have set out at [4], makes it clear that an owner may sell land only if the next-of-kin agree. It follows from our finding that appellants are the next-of-kin of the

respondent, that the respondent cannot sell the land without the agreement of the appellants.

Result

[13] The appeal is allowed. The decisions in the Magistrates' Court and the High Court are set aside. There will be an order that the respondent can sell any part of the land only with the agreement of the appellants.

[14] The appellants are entitled to costs to be agreed or taxed, plus disbursement.

Hardie Boys JA

Tompkins JA

Fisher JA