

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

Land Appeal No. 4 of 2014

BETWEEN **BUREN TOKINTEBUAKA** **APPELLANT**

AND **MIKAERE ARERETAAKE** **RESPONDENT**

Before: Paterson JA
 Blanchard JA
 Handley JA

Counsel: *Banuera Berina* for appellant
 Jessica McLaren for respondent

Date of Hearing: 13 August 2014

Date of Judgment: 15 August 2014

JUDGMENT OF THE COURT

Introduction

1. The appellant, Buren Tokintebuaka, seeks leave to appeal out of time against a decision of the High Court given on 27 November 2013 which dismissed an appeal against the Magistrates' Court's decision in BikLan 217/11.

2. In a decision given on 16 January 2012 the Magistrate determined that she had no jurisdiction to rectify the title to the land Maungatabu 726n because an indefeasible title had been issued for the land by a previous decision of the Magistrates' Court in case 192/85.
3. The Magistrate's decision was upheld by the High Court which held that she was correct in declining jurisdiction because of the indefeasible title issued as a result of case 192/85.

Leave Application

4. The delay is not great and has not prevented the case being heard in this session of the Court. There is no apparent prejudice to the respondent. The delay in itself is not sufficient to refuse leave.
5. The Court has however determined that it will not grant leave. In the Court's view there are not sufficient prospects of success to allow the appeal to proceed. The thrust of the appellant's case is that several Magistrates' Court decisions subsequent to the decision in 192/85 have modified that decision. If the decision in 192/85 conferred an indefeasible title, then subsequent decisions of the Magistrates' Court cannot modify the indefeasible title.
6. The appellant is challenging the decision in 192/85. This Court does not discount the possibility that the appellant may have a remedy. However, this Court does not have before it the findings that

would be needed to consider other possible remedies, which would require a full examination by the High Court of the facts leading to the decision in 192/85 and possibly the earlier Magistrates' Court's case 98/84.

Decision

7. The application for leave to bring this appeal out of time is dismissed.

8. The respondent is represented by the People's Lawyer's Office which does not seek costs for itself. It is entitled to disbursements which are to be taxed if not agreed. The amount due for disbursements will be paid from the security held by this Court and the balance is to be refunded to the appellant.



Paterson JA



Blanchard JA



Handley JA