

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

Land Appeal No. 6 of 2014

BETWEEN **NEI IOTEBINA ATUNIBEIA FOR**
 THE ISSUES OF KATABA & TITAAKE **APPELLANTS**

AND **TAIMAN TERARA FOR ISSUES OF**
 OROKAI AND OTHERS **RESPONDENTS**

Before: Paterson JA
 Blanchard JA
 Handley JA

Counsel: *Botika Maitinnara* for appellants
 Taoing Taoaba for respondents

Date of Hearing: 13 August 2014
Date of Judgment: 15 August 2014

JUDGMENT OF THE COURT

Introduction

1. The appellants seek leave to appeal from a judgment of the High Court given on 1 September 2010 in which the Court dismissed an

appeal from a judgment of the Butaritari Magistrates' Court in BT 01/2010 given on 8 April 2010.

2. The Magistrates' Court's decision determined that certain land was owned by four owners and not six. The High Court dismissed the appeal finding that the grounds raised by the appellants in the Magistrates' Court were all matters of fact and there was no question of law to be considered by the High Court.

The Leave Application

3. The delay in bringing this appeal is almost three years. This delay is partially explained by the fact that the appellants initially instituted review proceedings to challenge the Magistrate's decision, but at a later stage decided that the appropriate course was to appeal. They did not sleep on their right to challenge the High Court judgment.
4. This Court is of the view that the High Court erred when it determined that there was no question of law to be considered by the High Court.
5. An issue before the Magistrate was whether an earlier order of the Magistrates' Court vested in the appellants an indefeasible title which effectively prevented the Magistrate in the later case BT 01/2010 from making the decision he did. This is a matter of law.

6. In these circumstances leave is given to the appellants to extend the time to bring this appeal.

Disposition of Case

7. This Court does not have before it the evidence necessary to consider and determine the substantive issues. That evidence will include the Court files in the earlier cases in the Magistrates' Court.
8. The High Court under the provisions of section 81 of the *Magistrates' Court Ordinance* has the power to call for the records of a case before a magistrate's court. Subject to the provisions of section 81(4) of the *Ordinance* it would have been appropriate to seek orders under this provision.
9. The appropriate course is to remit this matter back to the High Court to hear and determine the appeal it had before it in 2010.

Orders

10. The following orders are made:
 - (a) The appeal is allowed;
 - (b) The case is remitted to the High Court to rehear the appeal from BT 01/2010;

- (c) The appellants are entitled to costs of \$500 to be paid by the respondents.



Paterson JA



Blanchard JA



Handley JA