IN THE KIRIBATI COURT OF APPEAL **Civil Appeal No. 4 of 2020**
CIVIL JURISDICTION
HELD AT BETIO
REPUBLIC OF KIRIBATI

BETWEEN	**TRUSTEE(S) FOR SEVENTH DAY ADVENTIST MISSION**	**APPELLANT**
AND	**TANIMAKIN TIAEKI WITH BROTHERS & SISTERS**	**RESPONDENTS**

Hearing: 22 November 2021

Before: Blanchard JA
Hansen JA
Heath JA

Counsel: Ms K Kabure for Appellant
Ms T Timeon for Respondents

Judgment: 25 November 2021

JUDGMENT OF THE COURT

[1] The trustees for the Seventh Day Adventist Mission are the lessees under a registered lease for a term of 99 years. The agreed annual rental is $4,000 per annum. The lease, originally from the grandfather of the respondents as lessor, was approved by the Magistrates' Court in Case No. 71/64 on 19 November 1964. The subject land was an area of 1.56 acres in Banraeaba, South Tarawa known as Tengaruru 766(i).

[2] Because of the uncertainty that we will shortly describe, in 2009 the trustees stopped paying the respondents the full agreed rent for the subject land. The respondents, as successors to their grandfather, have brought proceedings in the High Court seeking judgment for 10 years of rent arrears, general damages of $2,500.00 and interest at 5% per annum on the rent arrears. They were successful in the High Court and were awarded a total of $62,500.00 ($40,000.00 rent, $20,000.00 interest and general damages of $2,500.00 plus their costs). The trustees appeal.

[3] The reason given for the refusal of the trustees to pay was that they had come to believe that the respondents were no longer the owners of Tengaruru 766(i). The trustees had also leased on similar terms from a different owner or owners an area of 0.26 acres known as Tengaruru 766(e) for which they agreed to pay a rental of $850.00 per annum. The trustees

believed that, in fact, as a result of a decision of the Magistrate's Court in Case No. 504/97 there had been a change (effectively a swap) of ownership as between the two blocks of land so that the respondents were no longer the owners of the block of land originally the subject of the lease agreement from their grandfather. The trustees believed that the respondents were the owners of the other (smaller) block of land and were only entitled to a rental of $850.00 per annum which we are told they have actually been paying. (The High Court judgment, even if correct in other respects, failed to make allowance for this and also failed to allow for the fact that interest, if payable, would have been accruing on unpaid annual rental payments only as they fell due each year).

[4] Muria CJ found that the effect of the decision in Case No. 504/97 changed (or swapped over) the respective plot numbers and also changed the ownerships, as the trustees contended. He said:

> 6. The upshot of CN 504/97 is that the changes in ownership and allocation of the land plots are sure to have drastic effects on the lease agreements entered into between the plaintiffs and the defendants. For the plaintiffs, the consequences of CN 504/97 on them include the loss of their rights in plot 766(i) since they are now given plot 766(e), loss of the size of their land and loss of rental payments under the 1964 lease agreement.

[5] But nonetheless the Judge concluded that the trustees were wrong not to pay the full $4,000.00 per annum as prescribed by the lease contract because "the Court has no power to alter the terms of the Lease expressly entered into between the [respondents'] predecessor and [the trustees] in 1964". He continued:

> 9. ... That lease is still valid and the parties to that lease are bound by the express terms of the contract which they set out in the lease contract. As such CN 504/97 cannot be used by either party unilaterally to change the express terms of the lease entered into by the parties in 1964. To do so, as the defendants have done in this case, would amount to a breach of the lease agreement.

[6] The Judge also said that if the trustees wanted to amend the 1964 lease agreement in view of CN 504/97 they could not do so unilaterally. The lease was registered "and remains unchallenged to this day".

[7] It is very important to understand the context in which the respondents made their High Court claim for unpaid rent. When that is understood it can be appreciated that the claim was misconceived and that the High Court has fallen into error.

[8] To begin with, Case 504/97 was a claim for rectification of the ownership of the two blocks of land. The parties were the respective owners. The trustees were, it appears, not involved at all. There was an appeal by the parties now represented by the respondents against the decision in Case 504/97.

[9] In HCLA 112/1997 the High Court allowed their appeal and remitted the matter back to the Magistrates' Court for rehearing. Instead, fresh proceedings were brought but the Magistrates' Court made the same decision as had been reached in 1997 and reinstated the order then made: Case 263/05. The respondents were again unsuccessful in appealing from Case 263/2005. In HCLA 41/2010, the High Court confirmed the decision in Case 504/97.

[10] In 2011, the Trustees went to the Magistrates Court to have the two lease agreements relating to Tengaruru 766(l) and Tengaruru 766(e) made compliant with the decision in Case 504/97. On 13 November 2011, in case Betlan 466/11 the Magistrates Court directed that there should be what it termed "an exchange of the Lease Agreement", and that the other owners "will have the area that is 1.56 acres" and the present respondents "will have the area that is 0.26 acres". Once again, the respondents appealed to the High Court. That appeal is still waiting to be heard after 10 years. It appears to be the proper vehicle for determining questions of ownership and resolving the trustees' doubts over to whom they should be paying the rentals under the two leases. But no doubt feeling understandably frustrated by the delay in that appeal, the respondents chose in 2019 to bring the present proceedings claiming the unpaid (higher) rent.

[11] Although the Chief Justice expressed the view that there had been changes in ownership and allocation of the two blocks of land, that issue was not actually before him in the case and could not be when the other owners (now apparently the owners of the larger block) were not parties to the present proceedings. The issue of the ownership of the two blocks could not fairly be decided in their absence. What the Chief Justice was called upon to determine was only whether in the current state of affairs the respondents could claim the higher rental of $4,000 per annum from the trustees.

[12] We have no doubt that the Chief Justice fell into error in holding that they could. The Magistrates' Court had, rightly or wrongly, found that the larger leased area (1.56 acres) belonged to the other family. The consequence of that reallocation is that until and unless it is set aside and the ownership of the larger area restored to the respondents, they are unable to fully perform their obligation under their lease contract with the trustees, namely, to supply 1.56 acres of land. It is therefore presently the respondents who have defaulted in the

obligations under the lease, not the trustees who, as we were told from the Bar, have been paying the higher rental to the other owners and the lower rental to the respondents. The respondents' claim must therefore fail, and the trustees' appeal must succeed.

[13] It is most unsatisfactory that resolution of this uncertainty has been so long delayed because the High Court has not heard and decided the appeal from Betlan 466/11. We make no comment on and have formed no view of the merits of that appeal but ,if it succeeds and the respondents are held to be the owners of the larger area of 1.56 acres, there will need to be an accounting as between the trustees and the two sets of owners because the other owners would have received more and the respondents less rental since 2009 than, on that assumption, they should have received.

[14] The appeal is allowed, and the orders of the High Court are set aside. The matter is remitted to the High Court to await the decision in the appeal from Betlan 466/11. The respondents must pay the trustees' costs on this appeal, to be fixed by the Registrar if not agreed. The respondents must also pay the trustees' costs in the High Court in this case regardless of the outcome of the Betlan 466/11 appeal, such costs to be taxed if not agreed.

Blanchard JA

Hansen JA

Heath JA

KIRIBATI COURT OF APPEAL
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