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

LAND APPEAL NO. 2024-03631

BETWEEN

TAMUERA KARARAUA, KN IBEATU
TENEBO UTIRE MTMM, KN MARIA,
KN TEWANIMONE

Appellant

AND

BAURO TONGAAI

Respondents

Before: Nelson, JA
Khan, JA
Amten, JA

Date of Hearing: 2 July 2025
Date of Judgement: 7 July 2025

APPEARANCES:

Counsel for the Appellant: B Tekanito
Counsel for the Respondent: B Berina

JUDGMENT BY THE COURT

INTRODUCTION

1. This is an appeal against the decision of Semolita CJ dated 7 March 2024 in which an appeal by the appellant against the decision of the Single Magistrate in Bailan 8 of 2021 relating to the lands Tekokona 576a, Tabonterikiai 585m, Teamanoia 647o, and Etanmakin 662i belonging to the estate of Tjemau Teuraki who died without any issues (deceased) was dismissed.

2. The appeal in this court is on the following issues:

a) Violation of Res Judicata;
b) Inadequate consideration of Civil Review 12/2018;
c) Failure to recognize the doctrine of estoppel;
d) Insufficient analysis of party consent in CN88/05.

THE MAIN ISSUE

3. The main issue in the appeal before this court is whether in CN 88/05 the estate of the deceased was registered and/or whether it was both registered and distributed.

4. The appellant contends that the estate of the deceased was distributed in CN88/05 whereas the respondent's contention is that case only related to the registration of the beneficiaries; and that the distribution of the estate of the deceased took place in Case No. 820 of 2021 which is the subject of this appeal.

5. For the sake of clarity, we shall outline the proceedings that took place following the death of the deceased:

a) Case No. 88 of 2005
b) Case No. Bailan 280/08[1].

Mr Berina in his written submissions filed on 25 June 2025 at paragraph 13 has outlined as to what transpired in the proceedings in Case No. 280/08 and where it is stated as follows:

[13] In this case some of the Appellants were not happy with the registration of Tenebo's name on the land. They wanted to be registered separately on their shares. The Respondent was not a party to those proceedings. After hearing the parties, the Single Magistrate delivered his judgment. The judgment starts from page 106 of the appeal book. At page 107 of the appeal book we find the last pages in the judgment of the Single Magistrate –

"Therefore, the application for nullifying Tenebo's name as the head of the estate is not allowed. The applicants' opinion on sharing the land that leased by the Government will be shared equally to:

1) Nei Teango Ibeatu mt
2) Taomati Utirre mtmm from the first and second spouse
3) Bwebwenibeia Kararaua mtmm
4) Teaki Robuti mtmm
5) Matou Tewanimone
6) Baura Tongaai

The Court understanding that the named parties land was leased by the government in Etanimakin 622-i (if there's any other land leased by the government and registered under Tenebo that will be shared too as above)."

[1] The decision is on page 101 of the booklet

c) The respondent as stated earlier was not a party to the proceedings in CN 280/08 and upon finding out about it filed an application for certiorari in the High Court in Civil Case No. 12 of 2018 which was heard by Muria CJ and he granted the application and quashed the orders made in CN 280/08.

d) In CN 80 of 2021 the distribution of the estate took place which is the subject of this appeal.

6. CJ Semolita in considering the two opposing positions of the parties in relation to CN 88/05 rejected the appellant's submission and accepted the respondent's version and made a finding at paragraph 7 of her judgment that whilst the proceedings was for determining the estate of the deceased it changed to the registration of the interest of Tenebo Utire mtmm, Kn Ibeatu, and Kn Maria, Kn Tewanimone and Bauro Tongaai.

CONSIDERATION

RES JUDICATA

7. We shall refer to the minutes of CN 88/05 to ascertain as to what transpired in the proceedings. In the translated version of the minutes[2] the two counsels representing the appellants and respondent stated as follows:

Appellants' counsel:

"Council for the applicants would like to alter the application to a registration of Ekemau Tourakai. Tenebo mtmm will be registered with, mk Ibeatu, mk Mara, mk Teaeki, mk Tewanimone and Bauro Tongaai."

Respondent's counsel stated as follows:

"Council for the applicants have no objection but stated that there would be no working would be done on those lands until the registration for the land completed. There will be no sale of land, buildings or construction until an individual will have a right on his/her piece of land."

8. The court upon hearing the counsels for the parties made its finding[3] and stated as follows:

"The court grants the alteration of the application from a land distribution after the issueless Ekemau Tourakai to a registration after the issueless Ekemau Touaraki. *(Emphasis added)*

9. After having considered the minutes in CN88/05 we are convinced that the estate of the deceased was only registered and that the distribution took place in CN Bailan 820 of 2021 and that the learned Chief Justice was correct in dismissing the appeal.

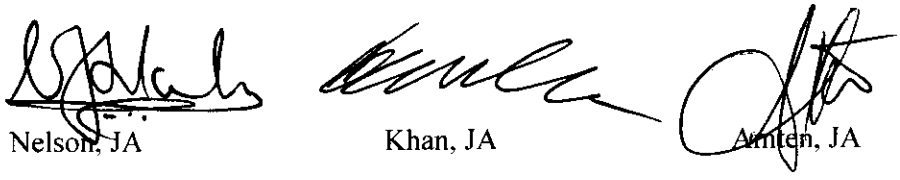
[2] Page 79 of the booklet
[3] Page 98 of the booklet

10. Having found against the appellant on the issue of res judicata we are of the view that it is not necessary for us to consider the other grounds of appeal as they lack merit and relevance and are dismissed.

CONCLUSION

11. The appeal is dismissed and the appellant is ordered to pay the respondents costs to be taxed if not agreed.

DATED this 7 day of July 2025



Nelson, JA Khan, JA Ainley, JA