BERU HIGH COURT SESSION
(BEFORE HON V.O. MAXWELL C.J.)

HCLA7/88

BETWEEN:	TEBOE TEBATITIRI	Appellant
AND:	NEI RIUAKI TOBEN	Respondent

Heard on 1st and
3rd March 1989

JUDGMENT

This is an appeal from the Lands Court Magistrates' decision in case No 35/87 delivered on 29th June 1987.

The appellant in case No 35/87 sued the respondent for compensation for improvement made on the land which the respondent received in a distribution case No 27/83 in 1983.

The appellant was let into possession of the land by the predecessor of the rewpondent in 1981.

The respondent got possession of the land after evicting the appellant in March 1986.

The question now is can the appellant sue the respondent for compensation for the improvements made on the land?

The magistrates held that the appellant is not entitled to compensation. It is this decision that the appellant is appealing against.

The grounds of appeal filed by the appellant reads as follows:

> "I am not satisfied when they did not allow my claim in claiming for compensation against the defendant when I think I am entitled for it and the court said I should not get it."

Mr Koaru counsel for the appellant contended that the improvement carried out was an encumbrance on the property. Therefore the respondent is liable to compensate the appellant.

We reject this contention, in that there is no evidence before the court that the improvements were carried out with the consent of the respondent's predecessor in title.

Even if it was done with the consent of the predecessor in title such consent cannot in our view be imputed to the respondent, who acquired the property in 1983.

In view of this fact we are of the opinion that the appellant cannot sue the respondent for compensation and we confirm the magistrates' decision that the appellant cannot claim compensation against the respondent.

We therefore dismiss the appeal without costs.

ORDER

1. Appeal dismissed.
2. The magistrates' decision is affirmed.

The Hon Justice V O Maxwell
CHIEF JUSTICE

TOKA TIRAU

BETERO KA