

# IN THE HIGH COURT OF KIRIBATI 2015

LAND APPEAL NO. 55 OF 2014

	[THE PROVIDENT FUND BOARD	APPELLANT
	[	
BETWEEN	[AND	
	[	
	[TETIRIA KAUONGO & BEIA TEKEU	RESPONDENTS

23 July 2015

*Ms Taaira Timeon* for Appellant  
*Mr Banuera Berina* for Respondents

## JUDGMENT

**The Court:** This is an appeal by the Kiribati Provident Fund against the decision of the Magistrates' Court in case No. BD 86/2014. There are two grounds of appeal, namely that:

1. The Magistrates' Court erred in law in deciding that it has jurisdiction to adjudicate a land boundary determination over the land 'Abauareke 790a' when this boundary determination had been confirmed and decided by the same court in Case Number 4/99; and
2. The Magistrates' Court erred in law in deciding that the land boundary determination conducted in Case Number 4/99 did

not affect the land of the Respondents when there was no reasonable evidence to support its decision.

The respondents oppose the appeal.

#### BRIEF BACKGROUND

Very briefly, the appeal stems from the decision of the Magistrates' Court in Case No. BD 86/2014 in which the Magistrates' Court ruled that it had jurisdiction to hear and determine the boundary of the land Abauareke 790a at Teoraereke. The case for boundary determination was brought by the respondents for the Court to determine the boundary of their land Abauareke 790e which adjoins the appellant's land Abauareke 790a.

Objection was raised by the appellant relying on Case No. C4/99 and Case No. 8/86. It was argued by the appellant that the Magistrates' Court had already determined the boundary of the land Abauareke 790a and Abauareke 790e. As such it would be wrong for the Magistrates' Court in Case No. BD 86/2014 to hear and determine the boundary of the two adjoining lands again.

A preliminary hearing to determine whether the Magistrates' Court had the power to hear and determine the boundary between the two lands again. On 24 July 2014, the Magistrates' Court ruled that it had the power to hear and determine the matter in dispute. It is against that ruling that the appellant now appeals to this Court.

## ISSUE

There is only one issue for the Court to determine in this appeal. That issue is whether Case No. C4/99 and CN 56/86 preclude the Magistrates' Court in Case No. BD 86/2014 from determining the boundary of the two lands concerned, namely Abauareke 790a and Abauareke 790e.

## ARGUMENTS AND DETERMINATION

In support of the appeal, Ms Timeon submitted that Cases C4/99 and 58/86 had measured and determined the boundary of Abauareke 790a and 790e. The boundary of the two adjoining land had been surveyed and confirmed by the Magistrates' Court in the two cases. Ms Timeon therefore submitted that the Magistrates' Court in Case No. BD 86/2014 was estopped from re-determining the same boundary again. Counsel relied on the principles of *res judicata* to support the case for the appellant.

On the other hand, Mr Berina of Counsel for the respondents submitted that the principles of *res judicata* do not apply in this case. Counsel submitted that Case No. 58/86 was concerned with the transfer of title and registration of the one acre land Abauareke 790a in the appellant's name and not a boundary determination of the land Abauareke 790a. The case was for the Court to approve the registration of the appellant's title over the land Abauareke 790a. The parties to the case 58/86 were the appellant and one Robuti Kawaitu.

Counsel for the appellant pivoted the appellant's case on the doctrine of *res judicata* as an estoppel upon the Magistrates' Court to deal with the

dispute between the appellant and respondents in the present case under appeal. But as pointed out in the authorities cited by Counsel, "**where *res judicata* is pleaded by way of estoppel to an entire cause of action .... it amounts to an allegation that the whole legal rights and obligations of the parties are concluded by an earlier judgment, which may have involved the determination of questions of law as well as findings of fact**".

The appellant raised the issue of *res judicata* and pleaded it as an estoppel upon the Court to deal with the entire claim of the respondents. We are clearly of the firm view that the appellant's plea of *res judicata* cannot be sustained. The parties whose legal rights and obligations had been dealt with and concluded in Case No. 58/86 were the appellant and Robuti Kawaitu and the parties whose legal rights and obligations had been concluded in case No. C4/99 were the appellant and Nei Maon Tongore. The respondents were not a party to either case 58/86 or C4/99 and so it is wrong to say that the two cases were binding on them. The respondents' legal rights and obligations as against the appellant have never been adjudicated upon until they sought to invoke the jurisdiction of the Court in Case No. BD 86/2014. Having done so, the Magistrates' Court was correct to hold that it had jurisdiction to hear and determine the respondents' claim in Case No. BD 86/2014.

It is argued for the appellant that the respondents should have challenged the Magistrates' Court's decision in Case No. 58/86 before commencing proceedings in Case No. BD 86/2014. The point is so elementary that it needs no restating, that the respondents were not a party to Case No. 58/86 and they have no standing to challenge that case.

Much has been placed by Counsel for the appellant on the surveyor's reports which were done for the purposes of Cases Nos 58/86 and C4/99. To the parties in those two cases, the surveyor's reports were of substance. In so far as the respondents in the present case are concerned, the said surveyor's reports are of no consequence to them.

Further, in the present case, to suggest that the respondents should not have brought proceedings in Case No. BD 86/2014 because it would disturb the boundary determination already made in Case No. 58/86 and Case No. C4/99 smacks of legal illogicality. For the reasons already stated above, the point suggested is a bad one in law.

We are firmly of the view that the grounds relied upon by the appellant in this appeal cannot succeed. Accordingly, the appeal must be dismissed and it is so dismissed with costs to be taxed, if not agreed.

### **ORDER:**

1. Appeal is dismissed.
2. Costs to the respondents to be taxed if not agreed.

Dated the 7<sup>th</sup> day of August 2015

  
**SIR JOHN MURIA**  
Chief Justice

  
**TEBANO TAUATEA**  
Magistrate

  
**MARIA TERETIA KAIBOIA**  
Magistrate