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IN THE HIGH COURT OF KIRIBATI 2015

LAND APPEAL NO 60 OF 2010

	[TAUNTEANG BIIRA	
	[TAMUERA TIAEKE	APPELLANT
	[	
BETWEEN	[AND	
	[	
	[MAYOR OF ONOTOA ISLAND COUNCIL	RESPONDENT

Before: Tetiro Maate Semilota, Commissioner of the Court AND Magistrate Riteti Maninraka and Magistrate Tebano Tauatea

18 March 2016

Mr Teetua Tewera for Appellant
Mr Mono Mweretaka for Respondent

JUDGMENT

The appeal is against the decision of the magistrate court in Onotoa in Case Number 19 of 2010. At the beginning of the hearing, both Counsels agreed that the other case, Land Review 4 of 2011, is to be dealt with together with this case. Both cases deal with the same plot of land, Buraitan 143-8 and between the same parties. In Land Review 4 of 2011, there are six respondents but at the beginning of this hearing, the appellant expressed that they only wish to proceed against the Onotoa Island Council. Hence, the decision of this appeal will also be taken as a result of the land review.

The appellant based their appeal on two grounds, namely;

1. The Learned Magistrates erred in fact and in law in deciding that the respondent has a right to possession of the land ...because the respondent can only hold the land as lessee, and

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a) The only written lease agreement in respect of the land expired in 1981, such that no current written agreement between the appellants and their other family members and the respondent exist to entitle the respondent to possession of the land,

b) Alternatively, any oral lease that may have existed after the written lease expired was and remained at the time of the court hearing of 19 of 10, determinable at the will of the appellant, who, having expressed their will for any such oral lease to end, are entitled to exclusive possession of the land

2. The Learned Magistrates heard the case when a fair-minded person might reasonably have apprehend or suspected that their worships might not decide the case impartially considering their worships well known association with the respondent.

The dispute in the lower court was in regards to the ownership of the natural accretion to the seawall built by the lessee during the period of the lease and the status of the lease agreement itself. The lower court decided that the lease remains valid since the landowners (appellants) continued to receive the rent and the accretion should belong to the landowners as it was attached to their land but it also forms part of the lease agreement and therefore the right to use it remains with the Council (respondent).

Having heard submissions for this appeal from both Counsels, it is clear that the lease agreement for the land in dispute has long been expired since 1981. The copy of the lease agreement clearly stated that the lease was for 30 years only, starting from July 1951. What is also clear from the submission was the fact that the appellants continued to receive the rent after the expiration date in 1981.

The principle of estoppel was invoked by Counsel for the respondent; that the appellants, having continuously collected the rent after the expiration of the written lease agreement, are being estopped from denying the existence of the right of the respondent to use the land. The respondent further submitted that the accretion should belong to them as far as the lease remains in existence. I must note here that this argument was in line with the decision of the magistrate court below, which stated that the accretion is owned by the appellant as landowners but the right to use remains with the respondent as part of the lease. Counsel for the appellant, on the hand, argued that the fact that the appellant collected the rent does not mean that the lease remains valid; the lease expired in 1981.

We agree with the respondent on the application of the principle of estoppel, although this may have covered the period in which the rent was collected, it does not mean that the procedural requirement of the law in relation to the formation or renewal of a lease should be ignored. Some of these requirements are for the lease to be approved and registered, which then require the lease to be in writing. The lease of 1951 had already been expired in 1981. Should the parties want to extend or renew the lease, they must do so in accordance with the law, otherwise the land and the accretion must be returned to the lessor pursuant to section 18 or 20 of the Native Lands Ordinance, whichever is most relevant. The appellants have indicated their willingness to renew the lease. The respondent must make good use of this if they still intend to use the land.

For reasons stated above, we find that the decision of the magistrate court in CN 19 of 2010 should be quashed and set aside. Appeal allowed and cost to the appellant to be agreed or taxed.

Order accordingly.

Dated the 18th March 2016

TETIRO M SEMILOTA
Commissioner

TEBANO TAUATEA
Magistrate

RITETI MANINRAKA
Magistrate