

IN THE KIRIBATI COURT OF APPEAL]
CIVIL JURISDICTION]
HELD AT BETIO]
REPUBLIC OF KIRIBATI]

Civil Appeal No. 3 of 2011

BETWEEN

**ATTORNEY-GENERAL FOR
COMMISSIONER OF POLICE**

APPELLANT

AND

TAARIBABA KAKIAUEA

RESPONDENT

Before:

Paterson JA
Williams JA
Barker JA

Counsel:

Monoo Mweretaka for appellant
Banuera Berina for respondent

Date of Hearing: 25 August 2011

Date of Judgment: 31 August 2011

JUDGMENT OF THE COURT

1. The appellant appeals against the judgment of the Chief Justice given in the High Court on 5 July 2010 awarding \$5,750 to the respondent for workmen's compensation.
2. The respondent was employed as a special constable since 2000. At that time, the only law governing his employment was the Police

Ordinance 'Cap 73. This ordinance was repealed by the *Police Services Act 2008*.

3. In October 2009, the respondent sustained an injury whilst on duty. He was left with a permanent disability and sued the appellant as representing the Police for \$6,500 being the assessed worker's compensation for the injury. The Police refused to pay that sum but gave him \$500 ex gratia.
4. The appellant relied on certain statutory provisions to be discussed in support of the refusal to pay compensation. These were rejected by the Chief Justice who stated that he was glad to have come to the conclusion he had reached. He considered the position argued by the appellant would have been "anomalous and unfair".
5. The following are the relevant statutory and other provisions:
 - (a) Police Ordinance Cap. 73 Section 56(6)
 - (6) *A special constable shall not in respect of such appointment be regarded a workman for the purpose of the Workmen's Compensation Ordinance.*
 - (b) Police Service Act 2006 Section 19
 - (1) *The Commissioner, in writing, may appoint persons to be special constables.*
 - (2) *The number of special constables to be appointed is to be the number that the Berefitenti, acting in accordance with the advice of the Cabinet, tendered after consultation with the Commissioner, determines is necessary for the effectual administration of this Act, and the efficient and proper discharge of the Commissioner's duties.*

- (3) The Commissioner may appoint special constables on the terms and conditions that the Commissioner thinks appropriate.
 - (4) A special constable may perform paid employment while holding an appointment as a special constable, if the special constable has the written consent of the Commissioner.
 - (5) The Commissioner must not withhold consent unreasonably if the type of employment is compatible with the mission, responsibilities and values of the police service.
 - (6) While a person holds an appointment as a special constable –
 - (a) The person has the duties and powers of a police officer specified in the person's instrument of appointment as a special constable, and has no other duties or powers; and
 - (b) The provisions of this Act that apply to police officers, and that may be reasonably applied to special constables, also apply to the person as if they were a police officer.
 - (7) Notwithstanding section 105 of this Act, the Beretintenti, acting in accordance with the advice of the Cabinet, may make regulations for giving effect to any of the purposes or provisions of this section.
- (c) Commissioner's Terms and Conditions of Employment 2010 approved by Cabinet – Term 15

Workman Compensation

The nature and conditions for eligibility to workman compensation that is being applied to a police officer under the law is also applicable to a special constable.

- (d) Police Service Act Section 108

Continuation of appointments

- (1) *This section applies if, immediately before the commencement of this section, a person held an appointment as a member of the police service.*
 - (2) *The appointment continues in force and effect –*
 - (a) *Until the end of the term of the appointment, if any; and*
 - (b) *On those conditions of the appointment that are consistent with this Act.*
6. The Chief Justice held that Term 15 of the 2010 Terms of Employment for special constables is not consistent with section 56(6) of the Police Ordinance. The respondent's continued employment had to be governed by terms consistent with the 2008 Act because of section 108 (2)(b) of that Act. Under the former regime, the respondent was not entitled to Workmen's Compensation: under the new regime he was.
7. Counsel for the appellant submitted that the new Terms and Conditions for special constables were made in May 2010. The respondent had his accident in October 2009. That was the date when he might have become entitled to a lump sum compensation for his injury should he qualify. The Chief Justice did not address this point in his brief judgment. The new Terms and Conditions were stated "to be implemented w.e.f. 1 January 2010". The respondent's accident was some two months prior.
8. Counsel for the respondent acknowledged that his client's entitlement to compensation had to be assessed as at the date of

the accident. He conceded that the Chief Justice may have applied the wrong law in coming to his decision but asked that the lump sum award should stand because the respondent was entitled to be compensated under section 56(2) of the *Police Ordinance* (Cap. 73).

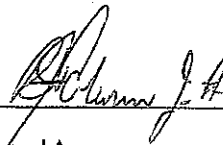
9. Section 56(2) provides as follows:

If any special constable receives any permanent disablement attributable to any wound or injury received or sickness contracted by him in the circumstances referred to in subsection (1), the Beretitenti, acting in accordance with the advice of the Public Service Commission may award to such special constable such gratuity or pension as to the Beretitenti, acting in accordance with the advice of the Public Service Commission, may seem just.

10. In the Court's view, the respondent's entitlement to compensation fell to be determined at the date of the accident, which was prior to the coming into force of new Terms and Conditions for special constables. The improved terms and conditions only could apply after the date in May 2010 when Cabinet approved them.
11. The Court therefore concludes that the Chief Justice was wrong to have overlooked this point and that the appeal will have to be allowed.
12. However, we note the provisions of section 56(2) quoted above. We should like to think that the Beretitenti, acting on the advice of the Public Service Commission, might award to the appellant under that subsection the amount of lump-sum compensation that he would have received had his accident occurred a few months later when the new Terms for special constables came into force. Apparently, he was given \$500 ex gratia by the Commissioner of

Police (as was stated in the Statement of Defence). There was nothing to suggest that this was specifically a payment made under section 56(2). The Court considers that justice would be done to the respondent if he were to receive a payment under that subsection of the amount he would have received as if he had been entitled to Workmen's Compensation. Contrary to the suggestion of counsel for the respondent, the Court cannot exercise the power to amend an ex gratia payment under the subsection but can only recommend what might happen.

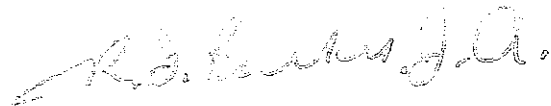
13. The appeal is allowed. The judgment entered in the High Court is vacated. No order as to costs in this Court.



Paterson JA



Williams JA



Barker JA