

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

Civil Appeal No. 11 of 2011

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**BETWEEN**                    **ATTORNEY GENERAL IRO MINISTRY  
OF COMMUNICATION, TRANSPORT  
AND TOURISM DEVELOPMENT**                    **APPELLANT**

**AND**                            **WAYSANG KUM KEE T/A  
WKK SHIPPING LINE**                            **RESPONDENT**

**Before:**                    Paterson JA  
                                 Williams JA  
                                 Barker JA

**Counsel:**                    *Erefa Bruce* for appellant  
                                 *Batitea Tekanito* for respondent

**Date of Hearing:**                    25 August 2011  
**Date of Judgment:**                    31 August 2011

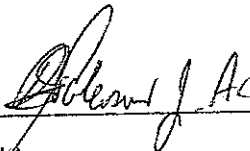
## **JUDGMENT OF THE COURT**


1. The respondent in this case had sued the appellant in the High Court claiming damages for the loss of a vessel.
2. After an appeal to this Court from a damages award in favour of the respondent in the High Court, this Court reduced the amount of damages to \$385,000 on 18 August 2010..

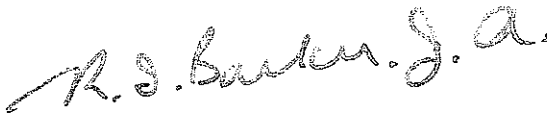
3. On 14 January 2011, the Chief Justice ordered the appellant to pay interest at 5% on the damages as assessed by this Court from the date of the original judgment in the High Court (2 August 2010) to the date of actual payment 10 December 2010. The calculation was agreed by counsel for both parties to be correct at \$6,697.98.
4. The sole issue in this appeal is whether a judgment creditor is entitled to claim interest on a judgment debt from the date of judgment until the date of payment. This is a different situation from a claim of interest for a period before judgment is entered. That question is resolved by the Court when it issues the judgment by virtue of section 3 of the *UK Law Reform (Miscellaneous Provisions) Act 1934*, in force in Kiribati.
5. The arguments for the appellant were difficult to follow and even more difficult to sustain. It was said that post-judgment interest is not payable because it had not been sought in the pleadings: that the principle of *res judicata* applies. Neither of these submissions have any substance and are plainly wrong. The Court did not rule on post-judgment interest in the principal judgment. Thus there can be no *res judicata*. Nor does the party who obtains the judgment have to plead for post-judgment interest. It is payable as of right under the statute referred to below.
6. The situation is covered by section 17 of the *Judgment Act 1838 (UK)* which continues in force pursuant to section 7 of the *Laws of Kiribati Act 1989*.
7. The section provides:

- (1) "Every judgment debt shall carry interest at the rate of four pounds per centum per annum from such time as shall be presented by rules of court until the same shall be satisfied and such interest may be levied under a writ of execution on such judgment".
- (2) Rules of court may provide for the court to disallow all or part of any interest otherwise payable under this section.
8. There are no Rules of Court of the kind referred to in subsection (2). The rate of awarded interest – 5% - whilst not currently stated in the statute seems to have been accepted as appropriate despite 4% being mentioned in the 1837 statute. The *White Book* at O.42 ri, reproduces the section and notes that, in England at any rate, the rate can be increased by Order-in-Council. Nobody suggested that the rate should be the one current in England, although an argument could be mounted for that result. The 5% rate seems to have its genesis in the reference in a model pleading at page 197 of the *Civil Procedure Rules* current in Kiribati. It is a small matter but it would make sense for Kiribati to have its own rules with a clear statement of the rate of interest payable on judgment debt instead of relying on a very venerable English statute. Such a provision is often found in *Civil Procedure Rules* in other Commonwealth jurisdictions.
9. The Chief Justice in the Court's view, had no option but to allow the claim for interest to cover the period between judgment and actual payment.

10. The appeal is dismissed. Cost to the respondent \$500 plus disbursements as fixed by the Registrar.

  
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Paterson JA

  
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Williams JA

  
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Barker JA