

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

Civil Appeal No. 5 of 2013

BETWEEN ATTORNEY-GENERAL IRO MINISTER
OF PUBLIC WORKS & UTILITIES APPELLANT

AND WAYMARS TRADING COMPANY LTD RESPONDENT

Before: Paterson JA
Blanchard JA
Handley JA

Counsel: *Taira Timeon* for appellant
Banuera Berina for respondent

Date of Hearing: 21 August 2013

Date of Judgment: 23 August 2013

JUDGMENT OF THE COURT

1. The Attorney-General in respect of the Minister of Public Works and Utilities sued Waymars Trading Co. Ltd in the High Court claiming damages for breach of contract. After a statement of defence had been filed by Waymars the Attorney-General sought leave to amend the statement of claim. Ord 30 r6 of the *High Court (Civil Procedure) Rules 1964* provides

that an amendment can be allowed "upon such terms as to costs or otherwise as may be just". Waymars indicated that it was opposed to the application unless costs were awarded to it.

2. Counsel for the Attorney-General contended, however, in reliance on s.8(2) of the *Government Liability Act 2010* that the Government was not liable for attorney fees and could not therefore be required to pay costs as a condition of obtaining leave to amend.

3. The Commissioner of the High Court gave leave provided the Attorney-General agreed to pay costs of \$150.

4. Now the Attorney-General appeals to this Court renewing the argument based on s.8(2). But that argument overlooks the context of s.8. To begin with, the *Government Liability Act 2010*, as its Long Title confirms, is an Act "to prescribe the limits of Government of Kiribati liability in contract and tort". It is about claims *against* the Government, as s.2(1) expressly confirms:

"All tort and contract claims against the Government of Kiribati shall be regulated by this Act".

5. Furthermore, s.8 appears in Part IV – Claims Against the Government.

6. It hardly needs stating that the claim in this case is by, not against, the Government. Section 8 therefore has no application.

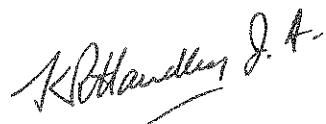
7. There being no challenge to the quantum of the costs award, the appeal is dismissed with costs of \$250 to the respondent and disbursements to be fixed by the Registrar.



Paterson JA



Blanchard JA



Handley JA