

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

CIVIL APPEAL NO. 13 OF 2024

BETWEEN

THE ATTORNEY GENERAL IN
RESPECT OF THE REPUBLIC
OF KIRIBATI

Appellant

AND

AIRATA TEMETA

Respondent

Before:

Sir Salika, JA

Nelson, JA

Khan JA

Date of Hearing:

5 December 2024

Date of Judgement:

13 December 2024

Case to be referred as: *The Republic v Airata Temeta*

APPEARANCES:

Counsel for the Appellant:

Ms. B Atanteora

Counsel for the Respondent:

Ms. K Arieria

JUDGEMENT OF THE COURT

Background

[1] By decision dated 24 April 2022, Chief Justice Hastings awarded judgment for the Plaintiff in the sum of AUD\$21,773.10. In an addendum to judgment dated 2 June 2022, he said:

“After hearing from counsel this morning, the interest rate is amended to 5 percent from the date of judgment to the date of payment. Costs are fixed at \$1,900.”

[2] It is not clear from the decision how the learned Chief Justice calculated costs but we were advised by counsel the amount was set after the court inspected the plaintiff's bill of costs of \$2,700 from his lawyers. Obviously that played a part in His Honour's calculation of quantum.

[3] The Attorney General whose office acted for the Ministry of External Affairs in the High Court has appealed the costs award contending that by virtue of s.8(2) of the Government Liability Act 2010, the Government is exempted from payment of costs. Section 8(2) provides that in actions for tort and contract against the Government: “The Government is not liable for punitive damages or attorney fees.”

The appellant cited *Attorney General iro Minister of Finance and Economic Development v Global Import and Export Ltd* [2012] KICA 2 in support of this proposition.

Discussion

[4] There are two difficulties with the Appellants contention: Firstly, it is clear the Government Liability Act only exempts the Government from payment of punitive damages and “attorney fees” not costs. If Parliament intended it to extend to costs awards, it could easily have so provided in s.8(2). While the plaintiff's bill of costs was obviously considered by the Chief Justice, it is not clear how it factored into his calculation. But what he awarded in the end was simply “costs” there being no reference to solicitor-client costs in his ruling.

[5] Secondly, there is no doubting the Court has a general discretion to award costs in favour of a successful litigant. This is preserved by Order 65 r.1 of the High Court Civil Procedure Rules 1964 which relevantly states:

"Subject to the provisions of these Rules, the costs of and incidental to all in the Court shall be in the discretion of the Court....."

[6] In relation to actions against the Government, s.18 of the Proceedings by and Against the Republic Ordinance 1979 expressly empowers the Court to award costs for and against the Republic by providing:

"In any civil proceedings or arbitration to which the Republic is a party the costs and incidental to the proceedings shall be awarded in the same manner and on the same principles as in cases between subjects and the court or arbitrator shall have power to make an order for the payment of costs by or to the Republic accordingly:

Provided that-

- (a) In the case of proceedings to which by reason of any written law or otherwise the Attorney General is authorized to be made a party the court or arbitrator shall have regard to the nature of the proceedings and the character and circumstances in which the Attorney General appears and may in the exercise of its or his discretion order any other party to the proceedings to pay the costs of the Attorney General whatever may be the result of the proceedings; and
- (b) Nothing in this section shall affect the power of the court or arbitrator to order, or any written law providing for, the payment of costs out of any particular fund or property or any written law expressly relieving any Government department or Government officer of the liability to pay costs."

[7] We agree with appellants counsel these legislative provisions should be read together, we disagree that in doing so there arises an apparent or perceived conflict. All these provisions are entirely consistent with each other and a power to award costs against the Government in appropriate cases. The common-law presumption of '*generalia specialibus*' has no application.

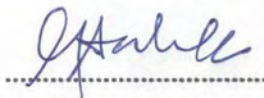
[8] The authority of *Attorney General iro Minister of Finance and Economic Development v Global Import and Export Ltd* does not assist the appellant. In fact the Court of Appeal there at paragraph 16 accepted an order for costs could be made against the appellant Government. The Commissioners costs order against the appellant was however set aside because the appellant was not a party to the proceedings.

Conclusion

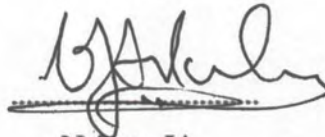
[9] There is no legal impediment to costs being awarded against the Government. The learned Chief Justice awarded \$1,900 in "costs", this is now due and payable with interest accruing at the rate of 5% per annum until payment.

[9] In this Court there will be costs awarded to the Respondent as agreed or as fixed by the Registrar.

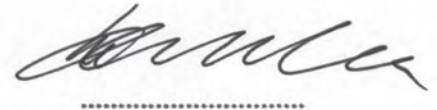
DATED this 13 day of December 2024



Sir Salika, JA



Nelson, JA



Khan, JA