

IN THE HIGH COURT OF KIRIBATI 2013

CIVIL CASE NO. 23 OF 2011

[KORINTA ANTEREA
[ANDREW TEBOUNABA
[TONIA TEBOUNABA
[RAATU TEBOUNABA
[TIARE TEBOUNABA
[
BETWEEN [AND
[
[ATTORNEY GENERAL IRO MINISTRY OF
[LINE & PHOENIX DEVELOPMENT
PLAINTIFFS
DEFENDANT

Before: Hon Chief Justice Sir John Muria

28 June 2013

Mr Banuera Berina for Plaintiffs
Ms Taaira Timeon for Defendant



JUDGMENT

MURIA CJ: Are proceedings against the Republic under *Workmen's Compensation Act* "civil proceedings"? This is the issue to be determined in this case.

BRIEF BACKGROUND

The plaintiffs are the dependants of the deceased Tebounaba Tirae. The deceased died on 12 January 2011 in a road accident at Kiritimati Island

when the truck he was travelling on to work had an accident. The deceased was at the time employed by the defendant in the Ministry of the Line and Phoenix Group Development. The plaintiffs are the dependants of the deceased. Korinta Anterea was the deceased's spouse and the other plaintiffs are the natural children of the deceased.

The plaintiffs have claimed Workmen's Compensation under the *Workmen's Compensation Ordinance* in respect of the death of the deceased. No compensation payment has been made and the plaintiffs have now issued a writ under the *High Court (Civil Procedure) Rules* claiming damages in the sum of \$25,000.00 under the *Workmen's Compensation Ordinance*.

DEFENDANT'S CONTENTION

The defendant has filed a defence to the plaintiffs' claim. Apart from denying the plaintiffs' eligibility to bring a civil suit on behalf of the estate of the deceased, the defendant also states that the plaintiffs can only bring a claim under the *Workmen's Compensation Ordinance* by way of a statutory claim and not as a civil proceeding under a writ. Hence they seek the Court to determine whether the claim under *Workmen's Compensation Ordinance* is a civil proceeding.

It is not disputed that civil proceedings can be brought against the Republic. These civil proceedings are instituted in the Magistrates' Courts or the High Court. In the present case Ms Timeon argued that the claims for

workmen's compensation are not civil proceedings and so they cannot be brought against the defendant.

THE PLAINTIFFS' CONTENTION

Simply put, Mr Berina of Counsel for the plaintiffs submitted that the plaintiffs are entitled to come to the High Court and bring their claims against the defendant under the *Workmen's Compensation Ordinance*. Like any other claim of a civil nature, the plaintiffs can bring their claim by way of writ of summons or by originating process.

In the present case, the plaintiffs have brought their claims under writ of summons. Counsel submitted that the claims are civil proceedings and the defendant is rightly made the defendant in the case.

PROCEEDINGS ARISING OUT OF WORKMEN'S COMPENSATION ORDINANCE

Section 13 of the *Proceedings by and Against the Republic Ordinance* (Cap 76A) makes it very plain that civil proceedings by or against the Republic are instituted by or against the Attorney General. Such proceedings are brought in the Magistrates' Court or the High Court.

The plaintiffs in the present case have brought their claim in the High Court under a writ of summons claiming their right to be paid their entitlements under the *Workmen's Compensation Ordinance* in respect of the death of their deceased husband and father, Tebounaba Tirae. The defendant stated in defence that the plaintiffs are not entitled to claim compensation

in this case. That raises a question in connection with the plaintiffs' right under the *Workmen's Compensation* in respect of the death of the deceased employee of the defendant.

The High Court has jurisdiction to deal with such matter under section 21 of the *Workmen's Compensation Ordinance* which provides:

"21(1) Save as is provided in this Ordinance and any rules made thereunder, the court shall, upon or in connection with any question to be investigated or determined thereunder, have all the powers and jurisdictions exercisable by the High Court in or in connection with civil actions in such court and the law, rules and practice relating to such civil actions and to the enforcement of judgments and orders of the court shall mutatis mutandis apply".

That provision clearly shows that any question or dispute under the *Workmen's Compensation Ordinance* is an action of civil nature and the High Court has jurisdiction to deal with such matter applying rules and practice relating to civil proceedings.

Then it is argued for the defendant that section 18 of the *Workmen's Compensation Ordinance* does not expressly state that a "**writ of summons**" is the prescribed form to be used for enforcing a claim for compensation under the *Ordinance*. As such Counsel suggested that the plaintiffs cannot use writ of summons to make their claim in this case.

That argument cannot stand. Section 21 of the *Ordinance* empowers the High Court to hear and determine claims under the *Ordinance*. The prescribed form and manner of bringing actions in the High Court is by writ of summons or other originating processes. The plaintiffs have utilized the "**prescribed form and manner**" of bringing their claim to the High Court.

The answer to the question: whether the claim under the *Workmen's Compensation Ordinance* is categorised as "civil proceedings" and therefore the Attorney General becomes a party to it, is clearly "yes".

Question determined accordingly.

Dated the 5th day of July 2013




SIR JOHN MURIA
Chief Justice