

IN THE HIGH COURT OF KIRIBATI)
CIVIL JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

High Court Civil Case 16 of 2000

BETWEEN: **ATTORNEY GENERAL**
 ON BEHALF OF THE MINISTER
 UNDER THE PRISON ORDINANCE APPLICANT

AND: **JOHNNY MOSI KUM KEE** RESPONDENT

FOR THE APPLICANT: MR DAVID JAMES
FOR THE RESPONDENT: MR NEIL ALLEN

DATE OF HEARING: 11 APRIL 2000

J U D G M E N T
(EX TEMPORE)

Counsel have now agreed that the Millennium Remission pursuant to the exercise by the Beretitenti of the Prerogative of Mercy, made on the 16th day of December 1999 must be calculated on the total head sentence fixed by the Court.

The original head sentence is reduced by one-third and thereafter all remissions are calculated as if the original head sentence less one-third were the head sentence.

In discussion the Solicitor General has pointed out that when making the calculation under section 59(A)(b) of the *Parole Act* because of the phrase "including any remission earned under section 56 of the Prisons Ordinance" the calculation must be made as if no remission had been given. [This excludes a remission pursuant to the Millennium Remission as this was not earned by a prisoner merely received as an act of mercy.] I accept that that may be so but it is a matter on which the Court need say no more in these proceedings: it may have to be decided on another day.

As it is I make the order sought in the amended application, the Solicitor General having assured the Court there is no intention of obliging the respondent to return to prison.

That Order is:

Declare that the Order of Release of the Respondent was illegal, having been issued by a mistake in interpretation of the Ordinance and on a miscalculation of the "remaining unexpired term of imprisonment" referred to in section 59A(b) of the Ordinance.



THE HON ROBIN MILLHOUSE QC
CHIEF JUSTICE