IN THE HIGH COURT OF KIRIBATI CIVIL JURISDICTION HELD AT BETIO REPUBLIC OF KIRIBATI	))))	HIGH COURT CIVIL CASE 70 OF 2007

BETWEEN:	DAVID PINE	PLAINTIFF
AND:	ATTORNEY GENERAL IRO COMMISSIONER OF POLICE	DEFENDANT

FOR THE PLAINTIFF: MR BANUERA BERINA
FOR THE DEFENDANT: MR BIRIMAKA TEKANENE

DATES OF HEARING: 6 & 7 FEBRUARY 2008

ASSESSMENT OF DAMAGES

Mr Berina produced a table shewing estimated income and expenses (Exhibit P7) for the three activities intended to be undertaken, shark finning, live fish project and shipping line services between Kiritimati, Tabuaeran and Teraina. The total claimed, $1,272,264. Mr Pine gave evidence to support the claim. There is no need to set out the detail of his evidence but in cross examination it became clear that the calculations needed to be modified. A full 12 months – January 2006 to December 2006 – had been used. That was unsustainable. No claim could be made before mid February when the vessel was seized. The claim should be only for 10½ months.

Mr Pine said that he had given minimum estimates both of sales and of expenses. I accept the estimates for sales. As for expenses Mr Pine conceded they could have been 20% higher. In the light of the concession expenses should be increased by 20%.

Overnight Mr Berina, in the light of the evidence and discussion with counsel, prepared a modified table taking account of the shorter time and the higher expenses. It is Exhibit P11. Mr Tekanene took no issue with the figures: they were guidelines for the Court. I shall use them.

I had let counsel know that I would make an allowance of about 1/3 for contingencies. In Exhibit P11 Mr Berina has made that allowance. The revised total claimed is $902,400.80. I had told counsel because all these calculations are estimates only I was likely to round up or down the final figure.

Mr Tekanene called one witness, Baitonga Tirikai, chief mate of "Wellbeing 3" on the voyage to Kiritimati and at the time (on or about 15 February 2006) the police seized the vessel. The thrust of Baitonga's evidence was that it would not be feasible for the three activities, shark finning, live fish and carriage of freight to Teraina and Tabuaeran to be carried on at the same time. All crew members would contribute to all activities. The evidence did not carry the defendant far at all. Having heard the plaintiff I am satisfied the three activities could be carried out at the same time and by separate crew members.

The defendant did not submit any figures in answer to the final figures of the plaintiff in Exhibit P11. However Mr Tekanene did make a number of general points. First when I released the vessel on 26 October 2006 I released the vessel and its contents. The contents included the items of which the plaintiff has claimed ownership. They were on board and are set out in a Schedule to the affidavit of David Pine sworn on 17 March 2006:

	Items	**Value**
1.	**2 dive compressors**	**(i) $7,000 (US)** **(ii) $12,000 (US)**
2.	**25 dive tanks @ $150 (US)**	**$1,250.00 (US)**
3.	**3 Yamaha 40 horse powered Outboard engine @ $4,500**	**$13,500.00**
4.	**1 Yamaha 15 horse powered Outboard engine @ $2,200**	**$2,200.00**
5.	**2 wooden boat (20 ft long) @ $4,000.00**	**$8,000.00**
6.	**Deep freezer (3 x 2 deep)**	**$700.00**
	TOTAL VALUE - US$20,250.00	**AUD$27,400.00**

Mr Tekanene did not challenge the list nor the values claimed. He did submit that the items had been released to Hee Joong Yoon, the owner of Wellbeing 3 pursuant to my order of 26 October. The defendant had no more responsibility for them. I accept Mr Tekanene's argument. It is for the plaintiff to pursue the owner for their return: he cannot succeed in claiming them in these proceedings.

In case I am wrong I should assess what I would have allowed if I had found otherwise. The values asserted by the plaintiff were not challenged but I should make a small deduction for contingencies – some one or more of the items might have been damaged or lost and so on. I would have allowed $25,000.

Secondly Mr Tekanene submitted that in Kiribati no one could make the big profit on any project the plaintiff claimed he would have made: it simply is not possible. The argument seems to me to be pessimistic: disparages the capacity of I-Kiribati entrepreneurs to venture and to succeed. As I mused in Court during argument I wondered aloud whether anyone may have said the same of Bill Gates before he started Microsoft. I reject this second argument.

Thirdly Mr Tekanene submitted that it would not have been possible for Wellbeing to have carried out three activities simultaneously. I should allow only for the shark finning or for the live fish or for the carriage of freight to and from Teraina and Tabuaeran. I suggested to Mr Tekanene that if I were to do that the plaintiff would opt for the carriage of freight, claimed to be by far the most profitable of the activities. Given the evidence of the plaintiff I can see no reason why the Wellbeing should not have engaged in the three activities. I reject Mr Tekanene's third argument.

The fourth argument was that after the release of the vessel on 26 October the plaintiff could have immediately gone on with the project for the two months left of the charter. The argument is quite unreasonable. It would have meant Mr Pine staying on Kiritimati for many months or at least being on Kiritimati on 26 October. He would have had nothing to do. He lives and has business interests on Tarawa. The release on 26 October was unexpected following the sudden entry by the prosecution of a nolle prosequi. In any case it would hardly have been worth starting again for only two months of the charter left. The seizure of Wellbeing in mid February was such a disruption to the project as to make it impracticable to begin again after 26 October.

Finally Mr Tekanene submitted that the vessel had been in lawful detention (once it had been seized): the defendant should not be held liable to the plaintiff. Certainly I refused on 24 March Mr Pine's application for release of his cargo but on 10 March I had made it clear to the Republic that unless charges were laid by 24 March I would not be sympathetic to the Republic. Once the charges were laid on 23 March I was not prepared to release the vessel or cargo until the case had been dealt with. As the vessel and two of the three defendants, Hee Joong Yoon and Sugun Yun were on Kiritimati, the case should be heard at the next sittings of the Court

on Kiritimati. The sittings did not begin until 26 October. The defendant did the damage to the plaintiff at the time the vessel was seized. After that the damage was irreparable. Mr Tekanene's final argument failed.

I assess the plaintiff's damages at $900,000.

Dated the 11th day of February 2008

Robin Millhouse

THE HON ROBIN MILLHOUSE QC
Chief Justice