

IN THE HIGH COURT OF KIRIBATI 2012

CIVIL APPEAL NO. 19 OF 2010

HELD AT TABITEUEA NORTH

[TABITEUEA NORTH ISLAND COUNCIL APPELLANT
[
BETWEEN [AND
[
[MOANIKUNA MOOTINA RESPONDENT

Before: Hon Chief Justice Sir John Muria

28 May 2012

Mr Monoo Mweretaka for Appellant

Ms Nancy Walker for Respondent



JUDGMENT

Muria CJ: This is an appeal against the decision of the Tabiteuea North Magistrates' Court in Civil Case 96/10, delivered on 9 June 2010 whereby the Magistrates' Court determined that the plaintiff/respondent was wrongfully terminated and therefore be awarded compensation in the sum of \$2,899.99.

Background

The respondent was employed by the Tabiteuea Meang Island Council, appellant, as a plumber. Some time in 2010, the appellant terminated the

respondent's employment on the basis that he had reached retirement age. He claimed that he had not yet reached retirement age and so he sued the appellant, claiming wrongful dismissal and claiming damages.

The Magistrates' Court found that the respondent had still not yet reached retirement age. He said that he was born on 13 March 1963, making him only 47 years when he was terminated. He produced a "Short Certificate of Birth" which was issued by the TabNorth Island Council office. The Magistrates' Court accepted his evidence and found for him and awarded him \$2,899.99.

The appellant raised two (2) grounds of appeal, namely:

(a)The Magistrates' Court erred in law in considering a document containing a statement about the Respondent's date of birth tendered by the Plaintiff and marked as 'exhibit A' admissible and therefore using it to support his decision without considering and taking into account the test of admissibility of documentary evidence as to facts in issue as provided for in section 26 of the Evidence Act 2003;

(b)The Magistrates' Court erred in law in awarding the sum of \$2,899.99 as compensation for termination of the Respondent's employment when there was no evidence presented to the Court as to the loss and damage sustained by the Respondent (if any was sustained by him).

The Birth Certificate produced by the respondent was issued by the TabNorth Island Council. It showed that the respondent was born on

13 March 1963. The respondent also produced his Kiribati Provident Fund ID Card which showed the same date of birth. During the hearing in the Magistrates' Court, Taitai Tarie testified on behalf of the Council and produced documents, Certified Copies of Entries in the Births, Deaths and Marriages Register, which showed that the respondent was born on 23 May 1952 at Taku TabSouth and his younger brother, Terereia Motina was born on 6 December 1958. The Magistrates' Court accepted the respondent's documents and not those of the Council, appellant.

Mr Mweretaka of Counsel for the appellant relied on S.26 of the Evidence Act 2003 to argue that the documentary evidence (Birth Certificate) produced by the respondent, should have been produced by the person who has personal knowledge of the information. In this case, the Birth Certificate produced by the respondent was a document, onto which the information was typed. I do not accept Ms Walker's submission that Section 26 of the *Evidence Act* is inapplicable in this case. Indeed, it does apply.

Section 26(1) of the Evidence Act provides as follows:

"26(1) In any proceeding where direct oral evidence of a fact would be admissible, a document containing a statement tending to establish that fact shall be admissible as evidence towards proof of that fact, if the document is, or forms part of a record relating to any business and made in the course of that business from information supplied, (whether directly or indirectly), by persons who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in the information they supplied, and the person

who supplied the information recorded in the statement in question is called as witness in the proceeding".

Subject to the qualifications mentioned in the other provisions of the section, the contention by Mr Mweretaka is correct. The respondent simply produced a copy of a document "Short Birth Certificate" which he obtained from the Office of the Tabiteuea North Island Council. The person who had personal knowledge of the document which contained the record or details of the birth of the respondent and made the document in the course of his business, should be the person called to put in the evidence to the Court. Unless that is done, the "Short Birth Certificate" is inadmissible.

There is, however, an important issue which the Magistrates' Court ought to have considered in this case in view of the conflicting documentary evidence on the respondent's date of birth. The 'Short Certificate of Birth' produced by the respondent was not a certified copy of the entries in the Birth Register, rather it was a document with the respondent's date of birth typed onto it and then signed by the officer in the TabNorth Island Council Office. The documents produced by the appellant, however, were 'Certified' Copies of Entries in the Birth Register kept in the office of the Registrar General and certified by the Registrar General. It is the official Record of Entries in the Births, Deaths and Marriages Register kept in the office of the Registrar General. They consisted of date of births, names of children, names of parents, places of births, gender and other information. The information was original. They were not recently manufactured birth certificates.

The fact that they were certified on 26 January 2010 did not make the documents recently made. The certification was simply to show when those original information were extracted from the Official Record.

In fact in this case, the 'Short Certificate of Birth' produced by the respondent was a recently made document. The entries in that Certificate were typed onto that document on 3 January 2002. The Magistrates' Court was wrong to simply brush aside the documents produced by the appellant in this case. Those documents were not manufactured. They were certified copies of the original official information contained in the Births, Deaths and Marriages Register.

It must also be noted that, had the Magistrates' Court given due consideration to the documents produced by the appellant, it would and should proceed to ascertain why the 'Short Certificate of Birth' issued by the TabNorth Island Council and KPF ID Card stated the respondent's date of birth to be 13 March 1963, whereas the original certified extract from the Birth, Deaths and Marriages Register showed that his date of birth was 23 May 1952. There are varying reasons why information such as that of a date of birth of a person differs from one document to another. The Magistrates' Court failed to properly consider this salient information.

The appellant's submission with regard to the award of damages in the sum of \$2,899.99 is a strong one. There is simply no evidence before the Magistrates' Court to justify the award of \$2,899.99. It appears that the Magistrates' Court simply arbitrarily fixed the quantum at that figure. The respondent may be entitled to more or less in damages. But the basis for it must be shown. It was not done in this case. That is an error of law.

The appellant succeeds on both grounds of appeal. The appeal is therefore allowed. The decision of the Magistrates' Court in CN 86/10 is set aside. The matter is remitted back to the Magistrates' Court at Tabiteuea Meang to properly hear and determine this case *de novo*.

Dated the 19th day of June 2012


SIR JOHN MURIA
Chief Justice

