

Lit: 90/10

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

HIGH COURT CIVIL CASE 113 OF 2010

BETWEEN: TIAON TEKANENE

PLAINTIFF

AND: THE HON. ATTORNEY GENERAL iro

MINISTRY OF PUBLIC WORKS AND UTILITIES

DEFENDANT

FOR PLAINTIFF: BOTIKA MAITINNARA

FOR DEFENDANT: ERETA BRUCE

Date of Hearing: 7 November 2012

ASSESSMENT OF DAMAGES

In my previous judgment I allow the parties time to try to reach an agreement on damages. This was not achieved hence this second hearing.

For damages the plaintiff, Tiaon Tekanene is seeking the following remedies:

- unpaid wages in the amount of \$285.00 per fortnight from 26th August 2008 until to date,
- other benefits like leave grant for the years 2009 and 2010,
- leave pay for the years 2009 and 2010,
- interest of 5% per annum from 26 August 2008 until the day of judgment and
- cost

- and general damages for shame, depression, anxiety and worry.

During this hearing the plaintiff gave evidence on oath about his shame, anxiety, worry and depression. He felt ashamed that he had been terminated. He worried that he might never be able to find a job again, and would not be able to provide for his family's needs. He was depressed and got angry most of the time because of his frustration of being jobless.

The defendant disagreed with the general damages as they were not pleaded. They further submitted that loss of reputation or damages for difficulty in finding alternative employment are generally not awarded. They relied on the principles set out in *Addis v Gramophone [1909] AC 488*.

What the defendant agrees to give are the following:

- One month's salary in lieu of notice, in the amount of \$580.00
- A 5% interest in the amount of \$120.00
- And cost in the amount of \$300.00

They relied on two cases, *Tewaaki Teinai v Kiribati Supplies Co Ltd HCCC 122/2008* and *Bakineti v AG iro SDGIL, MISA [2007] KIHC 71*.

Eventhough general damages were not pleaded the plaintiff relied on a most recent Court of Appeal case of *Tarawa Fisherman's Cooperative Society Ltd v Maneta Tekautu, 2012, Kiribati Court of Appeal Case No. 3/12*. It was also a case of unlawful dismissal in which the Court awarded general damages in the amount of \$2000.

It is most commonly known that general damages are damages which the claimant need not necessarily prove, as the law presumes they will flow. Since there is evidence before this Court for general damages, it is only fair that it is considered. Based on the *Tarawa Fisherman's Cooperatives Ltd v Maneta Tekautu*, I also award general damages in the amount of \$2000.

For the special damages, the plaintiff is awarded the following:

- One month's salary in the amount of \$580,
- 5% interest in the amount of \$120, and
- Cost in the amount of \$300

Unpaid wages is also pleaded and the plaintiff testified that he had tried to look for a job once or maybe twice but could not be accepted because of this dismissal. I find that this is not enough to prove that the manner of dismissal caused the plaintiff to be out of employment. This claim must fail.

Total amount of damages awarded is \$2900.

Order accordingly.

Dated 19th February 2013.



TETIRO M SEMILOTA

COMMISSIONER OF THE HIGH COURT

