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

HIGH COURT CIVIL CASE 96 OF 2012

BETWEEN: TEATURAO TOKARETI PLAINTIFF

AND: KIRIBATI SHIPPING SERVICES LTD DEFENDANT

FOR PLAINTIFF: BANUERA BERINA

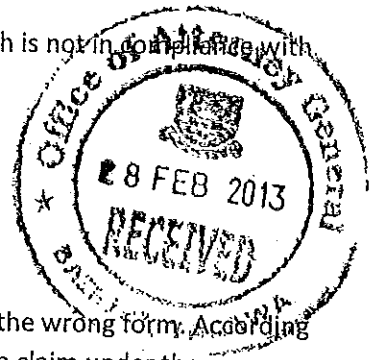
FOR DEFENDANT: BIRIMAKA TEKANENE

Date of Hearing: 26 October & 15 November 2012

**JUDGMENT**

By Notice of Motion, the defendant seeks the Court's Order to strike out the plaintiff's case on the following grounds;

- That the proceeding is misconceived as it is by writ of summons which is not in compliance with the provisions of the Workman Compensation, and
- That the plaintiff has no legal standing in initiating this proceeding.



**Misconceived Proceeding:**

It is submitted by the defendant that in pursuing this claim the plaintiff used the wrong form. According to them section 18 of the *Workman Compensation Ordinance* specifies that a claim under the Ordinance should be in a prescribed form and that the use of the writ of summons by the plaintiff is not in compliance with this Ordinance. Further, the defendant states that the writ of summon is not a proper form to use for this type of case as it is mainly for civil claims like tort and contract and that the right to make a claim under the Workman Compensation Ordinance is neither a tort nor a contract one. The defendant suggests the use of the originating summons under Order 58 of the *High Court Civil Procedure Rules* as maybe the proper form to use.

The plaintiff, on the other hand, argues that the Workman Compensation Ordinance has not prescribed any form to be used yet and therefore the use of the writ of summons is also proper as it gives the

chance to the defendant to admit or oppose the claims against it. The writ of summon also laid down the issues to be decided, that is, the liability of the defendant to pay compensation, and the quantum should the court found the defendant liable. It is also submitted by the plaintiff that even if the form used is incorrect, the current form used now has all the information needed for the Court to make its decision. The case of *Nei Kakaki Teenga v AG iro Minister for Home Affairs, 2000, High Court Civil Case 34 of 1999* is referred to this Court as supporting authority. Page 3 of the judgment of that case states as follows:

“ Besides, I felt, on the information I had, able to come to a decision, however the proceedings had been instituted: that being so the form of proceedings did not matter. The important thing is to hear and determine the cause, not the form in which it has been instituted.”

The defendant argues that Nei Kakai's case is not applicable to this instant case. In that case the applicable law speaks of the use of a 'summons' and the parties had to argue whether it should be an originating summons or a writ of summons, while in this instant case the legislation speaks of a prescribed form, not a summons.

After a careful consideration of both Counsels' submissions, I am more in favor of the plaintiff's argument. The Ordinance has failed to prescribe any form to be used and so the use of a writ of summons is also a proper form to use for the same reasons as explained by the plaintiff.

#### **Plaintiff's legal standing:**

The contention put forward by the defendant is that the plaintiff has no locus standi in this case as she has failed to state in her pleadings her right to sue the defendant for the workman's compensation.

The plaintiff, through her Counsel submitted otherwise, that the plaintiff has every right to initiate this proceeding as she is the widow of the deceased workman who is also one of the dependants. Counsel referred this Court to section 21(2) of the Workman Compensation Ordinance and states that the section recognises that claims can be made by dependants of a workman.

Considering the above section, it does not specifically states that a dependant can make a claim for compensation but talks about the jurisdiction of the Courts when dealing with compensational claims by dependants of the deceased workman. In my view, this provision recognises that a dependant can also claim for the workman's compensation.

Further paragraph 1 and 12 of the Statement of Claim establish the relationship of the plaintiff with the deceased workman, as a widow and dependant. In this instance, together with the plaintiff's argument under section 21(2) of the Ordinance, I find that the plaintiff has locus standi to pursue this case.

This Court therefore orders that:

- The plaintiff has a locus standi to initiate this proceeding, and

- The use of a writ of summons is also a proper form to use for this case.

The case should continue to proceed until final determination.

Dated the 22<sup>nd</sup> February 2013.



TETIRO M SEMILOTA

COMMISSIONER OF THE HIGH COURT



