

IN THE HIGH COURT OF KIRIBATI

CIVIL CASE NO. 94 OF 2013

	[KIRIBATI PROVIDENT FUND BOARD	APPLICANT
BETWEEN	[
	[AND	
	[
	[ANZ BANK (KIRIBATI) LTD	1 ST RESPONDENT
	[IENA MANAPA	2 ND RESPONDENT
	[MAGISTRATES' COURT OF SOUTH	
	[TARAWA	3 RD RESPONDENT

Before: The Hon Mr Justice Vincent Zehurikize

28 August 2014

Ms Taaira Timeon for Applicant
Ms Kiata Kabure for 1st Respondent
2nd Respondent in Court

ORDER

Since the application for leave to apply for Judicial Review is not opposed the same is allowed. The applicant can go ahead and make the intended application in accordance with the law.

Before I take leave of this matter I wish to make the following observations. The first one is that the Magistrates' Court which made the

decision the subject of the intended review was made a party to this application for leave to apply for Judicial Review.

I do not find any basis for this. The application of this nature is brought by virtue of the provision of s.81 of the *Magistrates' Court Ordinance*. There is nothing in that section to suggest that the trial Court be made a party. I do not understand how the practice of joining the Magistrates' Court as a party came about. All that is needed is for this Court to seek for the record of the trial Court for its scrutiny so as to more effectively carry out the review. There is no way this Court would require the lower court to appear as if it has an obligation to defend its decision against the review. In short this procedure ought to stop as it defeats the purpose of Court process especially in matters of appeals and reviews or revisions.

Secondly, I have noted that Counsel do not cite the law under which the applications are brought. For instance in the instant case, an application for leave to apply for Judicial Review is provided for under O.61r.2(1) and (2). Rule 2(1) provides that no application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule. And Rule 2(2) dictates that the application to apply for judicial review shall be made *ex parte* to the Court.

These rules were not cited in the application. If Counsel had cared to read the law under which this application was brought, it would have been clear that it was to be brought *ex parte* in which case the

respondents did not have to be served. It is only after the leave sought has been granted and the substantive application is filed that the respondents would be served to oppose the application if they so wish. But it was not necessary to serve them with the application which under O.61r.2(2) was supposed to be brought ex parte.

I trust that henceforth Counsel will do their homework and always cite the law under which an action is brought before the Court. Parties are not at liberty to bring all sorts of applications to Court as they like. The application must have a legal basis or it would be incompetent and not sustainable.

Lastly, applications are actions or causes as provided under O1 – the Interpretation. They are supposed to have appropriate serial numbers. They are supposed to be registered and the relevant fees paid.

But I have noted that all sorts of applications are simply pushed into the original case file. It is difficult to identify or even cite any application. This practice also ought to stop, so that actions, causes or matters brought to Court are easily identifiable by their serial numbers. There should be a clear register for miscellaneous applications or miscellaneous causes that are filed with the Court.

This practice does not need to be over emphasised. What applies to original suits equally applies to other causes, actions and matters like applications. They must be properly filed and registered.

I hope this ruling will be brought to the attention of all parties concerned.

Dated the 28th day of August 2014



THE HON MR JUSTICE VINCENT ZEHURIKIZE
Judge