

# IN THE HIGH COURT OF KIRIBATI

CIVIL CASE NO. 63 OF 2014

	[RUUTA AROBATI	PLAINTIFF
	[	
BETWEEN	[AND	
	[	
	[KIRIBATI SHIPPING SERVICES LTD	DEFENDANT

Before: The Hon Mr Justice Vincent Zehurikize

*Ms Botika Maitinnara* for Plaintiff  
*Ms Taaira Timeon* for the Defendant

## RULING

Zehurikize, J: The Plaintiff is employed by the Defendant as a tally clerk. In the course of this employment the Plaintiff was further assigned the duties of a warehouse cargo typist. According to her pleadings she has been demanding payment for this extra work in vain, and hence this case. The Plaintiff prays for the sum of A\$6,160.00 being the unpaid allowances from July 2008, when she was assigned this extra duty until July 2014.

The Defendant in its defence pleaded that the claim discloses no cause of action.

When the matter came up for hearing Ms Timeon, Counsel for the Defendant, contended that the Plaintiff's claim be struck out on the ground that it does not disclose any cause of action. She was of the view that since the claim is based on contract the Plaintiff had to plead the following, namely:

1. That there exists an agreement between the parties;
2. And plead the terms of the contract;
3. That there was breach of the terms of the contract;
4. That damage was caused and
5. The relief sought.

That since the above was not done the claim discloses no reasonable cause of action and it should be struck out.

Counsel cited a number of cases such as *Tikani v Motui* Civil Case No. 29 of 2001 of the High Court of Solomon Islands; *Auspacific Construction Co. Ltd v Attorney General* HCCC 5/95 of the High Court of Kiribati and an English case of *Dyson v Attorney General*, a Court of Appeal case reported in King's Bench Division (1911) at page 410.

In reply Ms Maitinnara, Counsel for the Plaintiff, contended that her client was employed as a tally clerk but later was assigned to do the job of a typist. That she is suing for allowance for this extra job she is doing. That she demanded payment from the Defendant to pay for the extra work in vain.

I have considered submissions by both Counsel and perused the authorities cited to me by Counsel for the Defendant. In *Auspacific Construction Co. Ltd* (supra) Court stated that "only if, on the face of the Statement of Claim the statements of facts show the Plaintiff cannot on any view of the facts establish a cause of action can the Statement of Claim be struck out. It must be plain or obvious that the action is one which cannot succeed or in some way unarguable".

The Court having found that the Plaintiff's claim is arguable, the motion to strike out the claim was dismissed. In *Tikani* (supra) Court explained that in an application of this nature no evidence is admissible and the Court can only look at the pleadings and particulars. The Court should only exercise its discretion to strike out in plain and obvious cases and where no reasonable amendment would cure the defect. That such an application is only appropriate where it is clear that the Statement of Claim as it stands is insufficient, even if proved, to entitle the Plaintiff what he asks.

Court went on to say that a reasonable cause of action means basically a cause of action with some chance of success or where a tenable case has been disclosed for the relief sought. So long as the Statement of Claim discloses some cause of action or raise some question fit to be decided by trial, the mere fact, it is weak or not likely to succeed is no ground for striking out. But Court went on to hold that if, however, it is found that the alleged cause of action is certain to fail, the Statement of Claim should be struck out.



From the above I can summarise the position of the law as follows. That in an application to strike a claim on ground that it discloses no cause of action Court will only look at the contents of the claim and will not go into the issues of evidence since that will be done at the trial.

The Plaintiff has to show that he or she has a right which has been violated and that the Defendant is liable for such violation. It is only because of this disclosure that Court can determine whether the Plaintiff's claim is arguable.

If the claim does not allege that the Plaintiff enjoyed a right which was violated by the Defendant, then such Statement of Claim will obviously be insufficient, even if proved, to entitle the Plaintiff what he asks, and it would have no possibility of success. It is certain to fail and in which case it should be struck out.

In the instant case the Plaintiff was employed by the Defendant as a tally clerk. Later when need arose she was assigned an extra responsibility of a warehouse cargo typist.

There is nothing to show that this was a second employment such that she was doing two jobs. It was mere an increased job description. It was not a second contract of employment.

It is not clear how she estimates the claim of A\$6,160.00 in absence of contractual arrangement to that effect. Whether extra duties entitled her to some allowance was a matter that could be negotiated between the

parties but it was not a right that automatically accrued to the Plaintiff and worse still she had no basis for determining the amount due to her. She cannot use Court to determine her intended new terms of employment. Court would not consider imposing new terms on the parties.

I find that even if she proves that she was assigned the extra work of a warehouse cargo typist she is not entitled to what she is asking for. Her claim is not arguable and raises no triable issues.

Consequently the claim as it stands raises no reasonable cause of action since it falls short of demonstrating that she enjoyed a right which has been violated by the Defendant for which they are liable. The Plaintiff is simply an employee of the Defendant who have a right to assign her duties from time to time. For the above reasons the claim is hereby struck out.

Given the circumstances of this case where the Plaintiff is still an employee of the Defendant I make no order as to costs.

Dated the 16<sup>th</sup> day of February 2015



*Vincent Zehurikize*

THE HON MR JUSTICE VINCENT ZEHURIKIZE  
Judge