



HIGH COURT OF KIRIBATI

Civil Appeal N° 10/2019

TABUAERAN ISLAND COUNCIL

Appellant

v

TIEIN KABANE

Respondent

*Ateti Tekawa for the appellant
Reiati Temaua for the respondent*

Date of order: 22 October 2019

ORDER

- [1] In 2017 the respondent wished to be considered for appointment as the nurse for Tereitannano village on Tabuaeran. She submitted an application to the Tabuaeran Island Council. It was the accepted practice that only residents of Tereitannano could be considered for appointment to the position. The village elders reported to the Council that the respondent was not a resident of the village. As she did not meet the selection criteria, her application was unsuccessful. She then sued for compensation, claiming \$7695. Her claim was brought against the Clerk to the Council, but that was clearly a procedural error. An island council is a body corporate, capable of suing and being sued in its own name (section 5 of the *Local Government Act 2006*). Furthermore, Council employees cannot be sued for matters arising in the course of their employment (section 104 of the *Local Government Act*). The claim should have been filed against the Tabuaeran Island Council. I have amended the title of these proceedings to reflect that fact.
- [2] The respondent's claim was resisted by the appellant. The trial proceeded on 12 September 2017 in the Tabuaeran Magistrates' Court as civil case 48/2017. The respondent and the Clerk to the Council both gave evidence. Judgment was given on 3 October 2017, with the Court finding in favour of the respondent and awarding her the sum of \$5000 in damages. The appellant filed an appeal with the Magistrates' Court the following day. For reasons that are unclear, the appeal papers were not received by the High Court until 27 June 2019. The appeal was listed for hearing during the October 2019 sitting of the High Court in Kiritimati.

- [3] When the matter was called on, counsel for the respondent informed the Court that the appeal was conceded. That was the proper course. The respondent had no legal claim for compensation from the Council (or the Clerk, for that matter). A person bringing a civil claim must demonstrate that they have an appropriate cause of action. Whether or not the respondent was actually a resident of Tereitannano is not really relevant. The simple fact is that she applied for a job and was unsuccessful. While she may have a justifiable grievance against the elders of the village, that does not give her a right to claim damages from the Council. The fact that an applicant for a vacant position is unsuccessful does not give rise to a legal claim against the employer. The respondent had no cause of action and her claim should have been dismissed by the Magistrates' Court.
- [4] The appeal is allowed. The decision of the Tabuaeran Magistrates' Court in civil case 48/2017 is set aside and, in lieu thereof, judgment is entered for the appellant. There will be no further orders.


Lambourne J
Judge of the High Court

