

IN THE HIGH COURT OF KIRIBATI

MISCELLANEOUS APPLICATION NO. 52 OF 2021
ARISING OUT OF CIVIL CASE NO. 16 OF 2021

	[ATTORNEY-GENERAL	
	[(FOR THE REPUBLIC)	APPLICANT
	[
BETWEEN	[AND	
	[
	[DAVID LAMBOURNE	RESPONDENT

Before: The Hon. Chief Justice William Kenneth Hastings

Date of Hearing: 9 November 2021
Date of Judgment: 11 November 2021

Counsel: Mr. Monoo Mweretaka for the Republic
Ms. Kiata Kabure for the Accused

JUDGMENT OF HASTINGS CJ

1. This judgment concerns two applications: an application to find the Attorney-General in contempt brought by Ms Kabure; and an application brought by Mr Mweretaka to stay the direction I made on 21 September 2021 pending the result of

an appeal of the direction to the Court of Appeal. I will deal with Mr Mweretaka's application first.

2. On 21 September 2021, I issued a direction that the status quo ante 30 June 2021 was to be preserved until the respondent's substantive application in civil case no. 16 was resolved. I directed that the respondent "will remain entitled to everything he is entitled to as a Puisne Judge of the High Court, including salary, allowances and quarantine costs without interruption."
3. The grounds of appeal are that no proper application for such a direction was made, and the present applicant was not given the chance to be heard in respect of this direction.
4. Ms Kabure opposed the application for a stay. She submitted it is not unusual in civil proceedings for an interlocutory order to be made that has the effect of preserving the status quo pending resolution of the case.
5. The Republic was represented at the hearing on 21 September 2021, but was silent during the discussion on this point when it was raised in Court by Ms Kabure who I took to be making an urgent oral application.
6. In his affidavit filed this morning, Toromon Metuera the Accountant General states that "it is not proper" that the respondent continue to receive payments "because he has no valid contract with the Government ...". That is precisely the point at issue in the originating application brought by the respondent.
7. On the grounds that (a) the respondent's claim had a reasonable chance of success, (b) the respondent would suffer prejudice if the direction preserving the status quo ante 30 June 2021 were not made, and (c) the Republic was represented, the Direction was made.
8. Nevertheless, I gave Mr Mweretaka the opportunity to be heard this morning in respect of the Direction. He submitted that the contract expired on 30 June 2021 and as a result there is no basis for the payments to continue. He also acknowledged

that having now heard from the Republic, it was open to me to rescind the Direction and issue a new one. Ms Kabure submitted that the respondent was paid allowances but not his salary from 13 August 2021 to 25 October 2021 as a result of my Direction, notwithstanding the government's position that there was no contract after 30 June 2021.

9. I decline the Republic's application for a stay of the Direction which I now rescind. Having heard from the Republic, and for the reasons above, I issue a new Direction on the same terms:

I direct that the status quo ante 30 June 2021 is to be preserved. The Respondent will remain entitled to everything he is entitled to as a Puisne Judge of the High Court, including salary, allowances and quarantine costs without interruption.

10. I turn now to consider Ms Kabure's application to hold the Attorney-General in contempt. She described it as a friendly application because she sought nothing more than a declaration.
11. Ms Kabure submitted that it does not matter if the Attorney-General disagrees with the content of the Direction. It is a Direction of the High Court that must be complied with until it has been successfully challenged in Court. No challenge was made until the undated Notice of Appeal was received by the Registry today, 9 November 2021. She submitted that an email directing that a Court Order be disobeyed is clearly contempt of Court. Mr Mweretaka submitted that it was not contempt because the Republic was not given an opportunity to be heard on 21 September 2021 and because the contract ended on 30 June 2021.
12. I agree with Ms Kabure. Non-compliance, or in this case, directing an official to disobey a Direction of the High Court is, on its face, contempt of court. If the Attorney-General disagreed with the content of the Direction or the procedure by which it was made, the proper course of action would have been to bring it back to

Court or launch an immediate appeal, not wait and then instruct that the Direction be disobeyed.

13. In light of the opportunity I give the applicant in the principal judgment to demonstrate good faith (including in complying with this judgment), and the perceived procedural defect in the original Direction which is now remedied with a new Direction, I consider my comments in the paragraph above are sufficient notice to the Attorney-General.

14. Ms Kabure's application is also declined.

Dated 11th day of November 2021

Hon William Kenneth Hastings
Chief Justice