

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

High Court Civil Case 26 of 2000

BETWEEN: **ABAMAKORO TRADING LTD**
MWEEIA TEBUBUA, TOKAATA NIATA,
MAKERAN KWONG & INATIO TEANAKO APPLICANTS

AND: **THE ATTORNEY-GENERAL**
ON BEHALF OF THE REGISTRAR OF
COMPANIES RESPONDENT

J U D G M E N T

On the 20th June the applicant took out an Originating Summons

“for the determination of the following questions –

1. Whether or not the registration of annual returns with the Registrar of Companies as required by section 62 of the Ordinance affects the validity of such annual returns.
2. Whether or not section 7(1) of the Ordinance applies to annual returns.

The declarations sought are:-

1. That the validity of annual returns are not affected by their registration with the Registrar of Companies.
2. That Section 7(1) of the Ordinance does not apply to annual returns and therefore the Registrar of Companies cannot claim late filing fees before accepting such documents for registration.

The Summons was supported by the affidavit of the Financial Controller of the applicant, to the effect that the respondent

required the directors personally to pay late filing fees for annual returns for 1998 and 1999 not filed in time.

On the 17th July the respondent filed a reply saying that the application should be dismissed. On the 24th July the respondent made interlocutory application "to join the applicant's directors as parties" on the grounds, inter alia, that:-

2. It would not be fair, and it would be contrary to the intent of the Ordinance that directors should have the benefit of seeking a Court determination touching on their personal liability, without facing the risk on the application's failure that they, rather than the company and its members, should suffer the costs consequences, if any.

By consent on the 4th August I granted the application.

It is admitted that the return for 1997/98, lodged with the Registrar, is incomplete: the return for 1998/99 has not been lodged at all.

Obviously the point of the questions asked is to try out whether the directors are personally liable to pay the late filing fees.

Order 58 of the *High Court (Civil Procedure) Rules* is the relevant order.

2. Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of any provision of a written law, may apply by originating summons for the determination of such question of construction, and for a declaration as to the right claimed.
5. The Court shall not be bound to determine any such question of construction if in its opinion it ought not to be determined on originating summons.

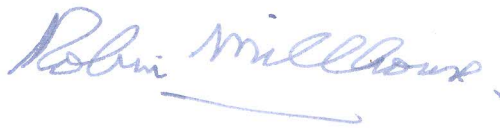
It is in the discretion of the Court whether or not declarations should be made.

The situation here is that the company is in default with its returns and the directors want the Court to tell them whether they are going to be personally liable to pay the late filing fees.

I am not inclined to give an answer.

The analogy I mentioned to Mr Banuera Berina, for the applicants, is with equity – those who seek equity must come with clean hands. The company is in default: the directors, without making good the default, want to know if they are going to pay the fees out of their own pockets. I suggest they should first remedy the default. Then if, or perhaps when, the Registrar pursues them personally for the fees or refuses to accept the returns for filing until the fees are paid the question of their liability may be answered.

I am of the opinion that these matters ought not to be determined on originating summons.

A handwritten signature in blue ink that reads "Robin Millhouse". The signature is written in a cursive style and is positioned above a horizontal line.

THE HON ROBIN MILLHOUSE QC
CHIEF JUSTICE
(28/08/00)