

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

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HIGH COURT CIVIL CASE 53 OF 2010

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BETWEEN:                    TAARIBABA KAKIAUEA                    PLAINTIFF

AND:                         ATTORNEY GENERAL IRO COMMISSIONER  
   OF POLICE    DEFENDANT

FOR THE PLAINTIFF:        MR BANUERA BERINA  
FOR THE DEFENDANT:        MR MONOO MWERETAKA

DATE OF HEARING:         1 JULY 2010

## **JUDGMENT**

The plaintiff has been a special constable since 2000. In October last year, whilst on duty, he sustained an injury. A vehicle ran into him, broke his leg and it is alleged (but denied by the defendant) he has been left with permanent disability "which incapacitation has been assessed at 25% or \$6,500" (paragraph 4 of the Statement of Claim).

The Commissioner of Police has refused workmen's compensation but the plaintiff has been given an ex gratia payment of \$500. He claims \$6,000 being the balance of the amount he alleges he would be entitled to receive as workmen's compensation.

At the time of his appointment in 2000 the Police Ordinance was the applicable law governing the plaintiff's employment as a special constable. Section 56(6):-

**A special constable shall not in respect of such appointment be regarded as a workman for the purpose of the Workmen's Compensation Ordinance.**

The Ordinance has been repealed by the Police Service Act 2008. The Act:-

**19. Appointing special constables**

- (1) The Commissioner, in writing, may appoint persons to be special constables.**
- (3) The Commissioner may appoint special constables on the terms and conditions that the Commissioner thinks appropriate.**

The Commissioner's terms and conditions of employment have been approved by Cabinet:-

**15. Workman Compensation**

**The nature and conditions for eligibility to workman compensation that is being applied to a police officer under the law is also applicable to a special constable.**

There is no doubt that under the Act the plaintiff would be entitled to workmen's compensation. Mr Mweretaka submitted that, nevertheless, the plaintiff has no entitlement because his employment continues to be governed by the Police Ordinance. He relies on section 108 of the Act:-

**108. Continuation of appointments**

- (1) This section applies if, immediately before the commencement of this section, a person held an appointment as a member of the police service.**
- (2) The appointment continues in force and effect –**
  - (a) Until the end of the term of the appointment, if any; and**
  - (b) On those conditions of the appointment that are consistent with this Act.**

The answer to Mr Mweretaka's argument lies in the final phrase in the section "that are consistent with this Act".

Reading together section 15 of the Act and the terms and conditions of employment it is clear that section 56(6) of the Police Ordinance is not consistent with the Act. Under the former no compensation: under the latter compensation. The plaintiff's employment since the Act came into force and so in October 2009 is governed, certainly with regard to workmen's compensation, by the Act.

The plaintiff is entitled to Workmen's Compensation.

I am glad to be able to come to this conclusion. Otherwise we would have the anomalous and unfair situation that no special constable appointed before 23 December 2008 (when the Police Service Act came into operation) would be entitled to workmen's compensation but a special constable appointed after 23 December 2008 would be.

Dated the 5<sup>th</sup> day of July 2010

*Robin Millhouse*



THE HON. ROBIN MILLHOUSE QC  
Chief Justice