

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

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HIGH COURT CIVIL CASE 90 OF 2010

BETWEEN: BURENNEITA KAROUA FOR BOUTOKAAN
KARIKIRAKEAN AROIA TAAN MWAKURI
(BKATM) PLAINTIFF

AND: PUBLIC UTILITIES BOARD DEFENDANT

FOR THE PLAINTIFF: MR MANTAIA KAONGOTAO
FOR THE DEFENDANT: MS TAAIRA TIMEON

DATE OF HEARING: 7 OCTOBER 2010

JUDGMENT

The plaintiff Union has taken proceedings against the defendant on behalf of a number of its members who allege the defendant has not paid them certain entitlements. In paragraph 1 of the Defence the defendant has pleaded that the Union is "an organization which does not have a legal capacity to sue and be sued in its own name". S.22(2) of the Trade Unions and Employment Organizations Act:

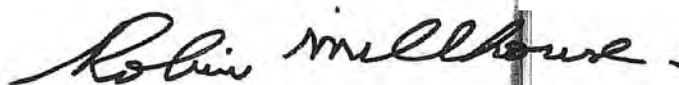
Nothing in this section shall affect the liability of a trade union or employer organization or any official thereof to be sued in any Court in a matter touching or concerning the property or rights of a trade union or employer organization other than in respect of any tortious act committed by or on behalf of the trade union or employer organization in contemplation or in the furtherance of a trade dispute.

In the light of that subsection the allegation in paragraph 1 of the Defence is too wide but I can see nothing in the Act which gives a union

the power to sue on behalf of its members as the plaintiff is attempting to do in this case. A specific power would be required to enable it to do so. In the absence of a specific power the Union may not sue on behalf of its members. Individual members, of course, may take proceedings but Mr Kaongotao has told me that individual members are afraid to sue because the employer has threatened them with punishment if they do. I have told Ms Timeon that she should warn her client against making any such threat. If it were proved to have been made the Court would regard the matter most seriously.

In the circumstances this action must be dismissed but that should not be taken as a discouragement from any individual member or members from taking fresh proceedings.

Dated the 7th day of October 2010



THE HON ROBIN MILLHOUSE QC
Chief Justice