

IN THE HIGH COURT OF KIRIBATI

MISCELLANEOUS APPLICATION NO. 39 OF 2015
(Arising from High Court Civil Case No. 54 of 2014)

	[KIRIBATI FAMILY HEALTH [ASSOCIATION	APPLICANT
BETWEEN	[[AND	
	[[PROVIDENT FUND BOARD	RESPONDENT

Before: The Hon Mr Justice Vincent Zehurikize, Judge

Mr Aomoro Amten for Applicant
Ms Taaira Timeon for Respondent

RULING

Zehurikize, J: The application is brought under O.57 r.13 of the *Civil Procedure Rules* for an order to stay execution of the writ of *feri facias* dated 25 February 2015. The grounds for this application, unfortunately, are not stated in the application.

The grounds of the application are found in the annexed affidavit sworn by one Tenanontaake Tenanoa, a Clerk of the applicant's lawyers.

I do not find it necessary to go into the merits of this application. It is incurably defective in that this is an application founded in evidence. This evidence would be provided by an affidavit in support of the application.

But the affidavit in support sworn by a clerk from the chambers of the applicant's lawyers is sheer hearsay evidence and cannot support the application of this nature. It is no affidavit to talk about. The application is naked as it lacks the prerequisite evidential clothing.

Further, the application having been brought under the wrong rule, it completely ignored the prerequisite requirements under O.49 r.19 and in particular subrule 3 as pointed out by Ms Timeon, Counsel for the respondent. Instead Mr Amten, Counsel for the applicant, sought to rely on the speculative possibility of a favourable decision by the defendant's Board. This Court cannot be persuaded by the probability of the Board waiving the interest which is the subject of execution sought to be stayed.

Since the applicant is capable of paying as stated by Mr Amten, I do not see the purpose of this application. It is just vexatious.

The application is devoid of any merit and it is hereby dismissed.

Dated the 7th day of May 2015

THE HON MR JUSTICE VINCENT ZEHURIKIZE

