

Lit: 57/16

# IN THE HIGH COURT OF KIRIBATI 2016

MISCELLANEOUS APPLICATION NO. 59 OF 2016  
(ARISING FROM HIGH COURT CIVIL CASE NO. 25 OF 2016)

	[PUBLIC UTILITIES BOARD	APPLICANT
	[	
BETWEEN	[AND	
	[	
	[KIRATA KAKARAWA	RESPONDENT

Before: The Hon Chief Justice Sir John Muria

28 November 2016

*Ms Batitea Tekanito* for Plaintiff/Respondent  
*Ms Taaira Timeon* for Defendant/Applicant

## JUDGMENT

**Muria, CJ:** Having heard arguments from both Counsel for the applicant and respondent, and having read the affidavits in support, I feel that this is one of those cases where the Court, clearly, will have to exercise its discretion in favour of setting aside the default judgment entered against the applicant/defendant on 22 June 2016. See *Waysang Kum Kee –v- Abamakoro Trading Ltd* (15 April 2001) KICA Civ. App. 10/2000; *Teretia Korieta –v- Broadcasting & Publications Authority* (29 October 2012) High Court Civil Case No. 8 of 2011; *Evans –v- Bartlam* [1937] AC 473.

There are two reasons for the exercise of the Court’s discretion in favour of the setting aside. First, the relationship between the respondent and applicant was contractual in nature with terms and conditions which both parties were governed by. The compliance or non-compliance of those contractual terms and conditions have to be established on evidence. These are matters of substantial defence. They cannot simply be absolved by judgment in default.

Secondly, the delay in this case is not outrageous. A delay of two months is not substantial.

Attorney General  
P.O. Box 60, Bairiki, Tarawa  
DATE

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I need only add that an institution like Public Utilities Board (applicant) is a Government statutory body. It has all the muscles and resources to have administrative machinery put in place to deal with matters such as legal proceedings against such body. Failure to file Appearance or seek instructions to take such steps when served with Court documents, does not tell well or give good excuses. Because of that failure, the present proceedings has to be brought. Be that as it may, on the authorities cited by Counsel and for the reasons already stated the default judgment must be set aside.

Costs of setting aside of \$150.00 to be paid by the applicant.

Dated the 28<sup>th</sup> day of November 2016



**SIR JOHN MURIA**  
Chief Justice