



## HIGH COURT OF KIRIBATI

*Civil Appeal N° 11/2018*

**RUBEE EROMANGA**

*Appellant*

**v**

**KIRIBATI OIL COMPANY LIMITED**

*Respondent*

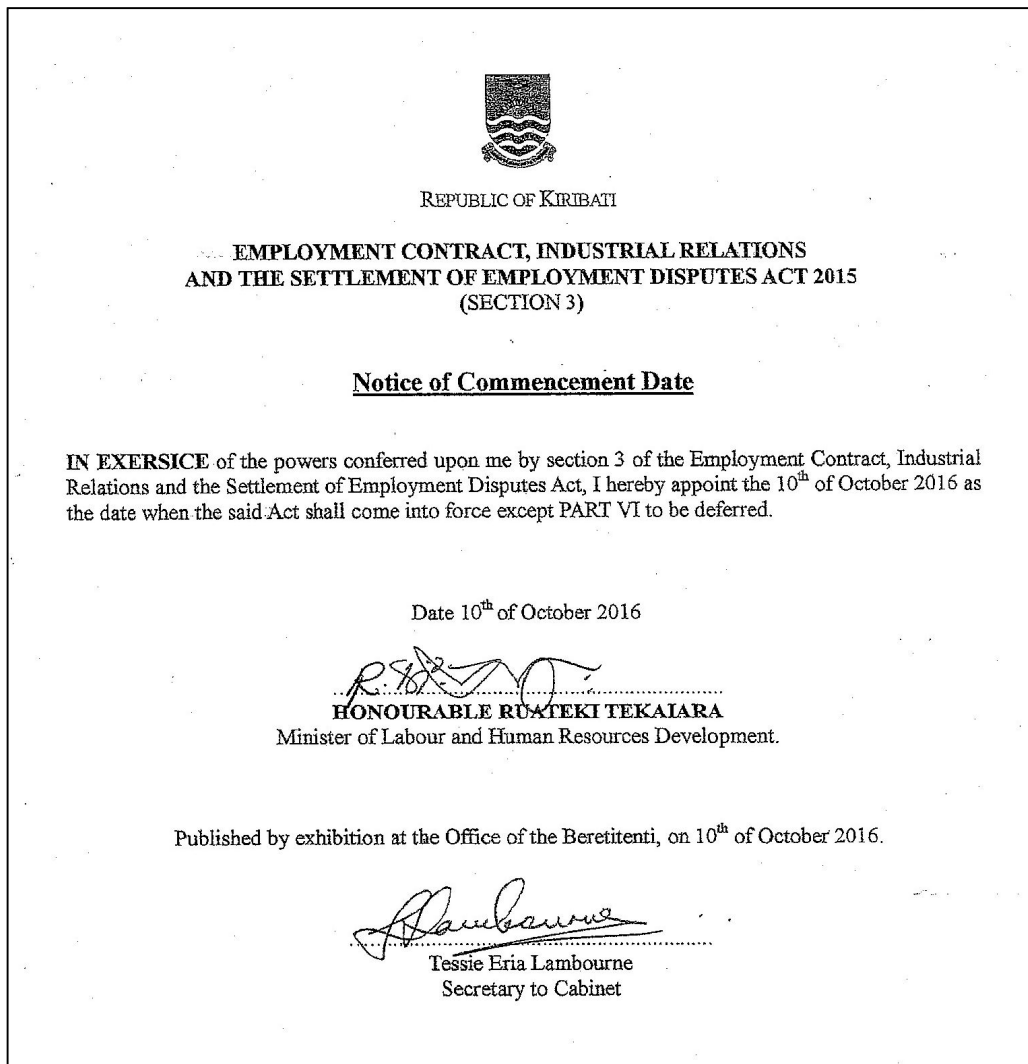
*Elsie Karakaua for the appellant  
Ruria Iteraera, Solicitor-General, for the respondent*

*Date of order: 24 June 2019*

### **ORDER**

- [1] The appellant seeks to challenge the findings of an arbitrator appointed to determine a dispute that arose regarding the termination in April 2017 of her appointment as the respondent's Chief Executive Officer.
- [2] The appellant has commenced this action pursuant to section 131 of the *Employment and Industrial Relations Code 2015*, under which a party to an employment dispute aggrieved by an arbitration award may appeal to the High Court. However, the insurmountable obstacle confronting the appellant is the fact that the *Employment and Industrial Relations Code 2015* has yet to enter into force.
- [3] The Maneaba ni Maungatabu passed the Code on 20 August 2015. It received presidential assent on 24 December 2015 and was published by exhibition at the Maneaba ni Maungatabu later that day. Ordinarily, under section 66(7) of the *Constitution*, the law would have commenced on that day. Section 66(7) provides as follows:
- An Act shall, unless it otherwise provides, come into operation on publication of assent by the Beretitenti.
- [4] However, the *Employment and Industrial Relations Code 2015* clearly provides otherwise. Section 3(1) of the Code is in the following terms:
- This Code commences on a date or dates appointed by the Minister by notice in the Gazette.

- [5] In response to my request for a copy of the relevant Gazette notice, I was provided with a document, the contents of which I set out below in full:



- [6] It is common ground that this notice has not been published in a Gazette. In fact, I understand that the Government has not published a Gazette in many years. Even if this notice had been published, it would be ineffective to bring the *Employment and Industrial Relations Code 2015* into force, as it refers instead to a law entitled the *Employment Contract, Industrial Relations and the Settlement of Employment Disputes Act 2015*.
- [7] Where an Act provides for the manner in which it is to enter into force, there must be strict compliance with the Maneaba's expressed intentions.<sup>1</sup> It is therefore clear that the *Employment and Industrial Relations Code 2015* has not yet commenced, and the right of appeal conferred by section 131 does not exist.

<sup>1</sup> *Flinn v James McEwan & Co. Pty Ltd* [1991] 2 VR 434, per Murphy J at 442.

- [8] At no time during the pendency of the dispute between the appellant and respondent did anyone realise that the *Employment and Industrial Relations Code 2015* was not in force. It is perhaps fortunate that (for different reasons) the arbitrator was instructed to proceed as if the dispute had been lodged under the *Industrial Relations Code 1998* (one of the laws the 2015 Code was intended to replace). However, the *Industrial Relations Code 1998* makes no provision for an appeal to the High Court against an arbitral award.
- [9] This appeal cannot succeed and is therefore dismissed. I make no order as to costs.

  
**Lambourne J**  
Judge of the High Court

