



On 30/11/05 Mr Pine received a letter from the Marine Division of the Ministry of Communications Transport and Tourism Development, signed by Moote Kabure.

Subject: WELL BEING NO. 1 NO.3.

"In replying to your letter dated on the 17<sup>th</sup> November 2005 concerning the notification of your two chartered vessel, the marine division hereby confirmed on the matter and is looking forward for the information of your vessels

According to our regulations all foreign ships flying the flag of their country will be surveyed, as they arrived in Kiribati. Therefore the marine division will also carry out the survey on your two vessels for the certificate of seaworthiness".

On 31 January 2006 Mr Pine wrote a memorandum to the Director of Fisheries, copied to the Secretary for Marine and Resource Element:-

Dear Sir,

"I make reference to our verbal communication (Terere/David) of yesterday, 30 January 2006.

To that respect, I wish to advise that the vessel purchased from Fiji a week ago is not intended for commercial purpose such as Shark fishing as you may be concerned of; Mauri Marine Export values the protection of the shark population. The vessel will be mainly used to help address the dilemma of cargoes shortage in the Line islands and therefore will be providing delivery services of cargoes to the islands concerned which include Fanning, Washington and Kiritimati island. The transportation of cargoes also provides an opportunity for our divers to dive for live fish using scuba gears for aquarium fish to be exported to Honolulu Hawaii. Our local fishermen will be using regular out-board boat for shark fishing in which the traditional method of 'te kabara' will be used.

I want to assure that we do not exercise the method of longlining or net fishing which will harm the shark population in the future. should anything further is required, please let the undersigned know".

The certificate of seaworthiness was issued on 03/02/06: valid also until 03/02/07. On the same day the Director of Marine issued a licence to trade; valid until 03/02/07:-

"MV Wellbeing No 3 .... is hereby licensed to engage in trade..... within Kiribati....."

With all the certificates, permissions and encouragements which the plaintiff thought he needed he sailed on Wellbeing to Kiritimati Island.

On or about 15 February 2006 the vessel was seized by the Police while lying at Ronton. Mr Pine was briefly arrested and released.

[Two other men, Hee Joon Yoon (the owner of Wellbeing) and Captain Sugun Yun (the Captain) remained under arrest until March when I granted them bail.]

The plaintiff in examination in chief:-

"a police officer told me the vessel was seized for fishing illegally in Kiribati waters. I showed him all my licences

"it is an order from Tarawa: ... can't do anything about it".

On the 23 March 2006 the three men were jointly charged with offences under the Fisheries Ordinance - Unlawful entry by Foreign fishing vessel within



fisheries limits, Unlawful fishing by Foreign fishing vessel within the fishing limits and Unlawful operation of a Fish processing establishment.

As the plaintiff was by then on South Tarawa and the other two men still on Kiritimati it was agreed I should hear the charges against Hee Joon Yoon and Sugun Yun on Kiritimati and later hear the same charges against Mr Pine on South Tarawa.

The hearing on Kiritimati was set for 26 October 2006. The Republic applied on the morning of the hearing to substitute for the original charges under the Fisheries Act a number of quite different charges (dated 22 October) under the Environment Act. I refused the application: Ms Ruria Iteraera for the Attorney General immediately entered a nolle prosequi on the original charges.

I gave reasons for my refusal of the application to substitute and by consent of counsel for the Republic and of counsel for Hee and for Yun I have made an order inter alia, that:-

"The vessel 'Wellbeing' be released forthwith to ...  
Hee Yoong Yoon".

It then remained for the plaintiff to face the original charges here on Tarawa.

The hearing was set for 29 January 2007. The same thing happened! Mr Birimaka Tekanene by then appearing for the Attorney General applied to substitute the identical charges under the Environment Act which I had refused to allow to be substituted on Kiritimati. I refused the application. Mr Tekanene immediately entered a nolle prosequi.

Again I gave reasons for my refusal of the Attorney General's application to substitute [ The two sets of reasons are in HCCC 9/2006.]

The Writ in this Civil action was issued on 3 April 2007. Originally the plaintiff claimed for the return of his property as well as damages for losses to his business operations. During the hearing on 10 and 11 September 2007 I pointed out to Mr Berina that I had on 26 October 2006 released the ship (and so everything in it) to Hee Yoong Yoon. It was too late to do anything about that. The hearing was adjourned to allow Mr Berina to consider his position.

On 2 October 2007 Mr Berina filed an amended Statement of Claim. On 26 October I made an order allowing the amendment on condition that the plaintiff pay into court \$500 on account of the defendant's costs. Last Monday, 14 January, the defendant having filed an amended defence, the hearing resumed.

The emphasis in the plaintiff's case had moved to a claim for damages for the wrongful seizure of the vessel. Counsel agreed that I should first decide whether the seizure was wrongful: if I decided it were then I should assess later damages.

The plaintiff resumed his evidence to the effect that he believed he had been assured by the authorities that he had all the permissions he needed for shark fishing operations in Kiribati waters. He had even discussed the matter with the then Minister, The Honorable Tetabo Nakara and the then Permanent Secretary for Fisheries, Mr David Yeeting.

On the voyage to Kiritimati the four regular outboard boats

(which I take to be small open boats customarily used for fishing) and the other equipment on board Wellbeing had been used for fishing in Kiribati waters. Mr Tekanene for the defendant called two witnesses who did not carry the defendant's case far. Baitonga Tirikai was ship's mate on Wellbeing. He said they did do a little fishing on the way: the boats and nets were used: diving equipment sometimes if the nets were caught. Mr David Yeeting agreed that Mr Pine had approached him many times about his various activities but he could not recall if he had for this specific operation.

There is before the court no evidence at all to justify the seizure of Wellbeing. Although charges were laid they did not proceed. The mere laying of charges does not amount to proof of the allegations in the charges: charges themselves prove nothing.

Instead of producing at this hearing evidence which might have proved justification Mr Tekanene clutched at a few unlikely straws. For example, that each of the outboard boats needed a licence, that Wellbeing was a foreign vessel ( even though under charter to an I-Kiribati ) and not permitted to fish in Kiribati waters. None of Mr Tekanene's arguments was persuasive. I reject them all.

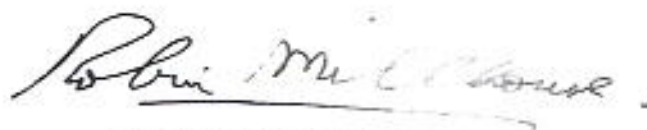
I have used the word "seizure" of Wellbeing. What the police did, in effect if not in form, was to arrest the vessel. The arrest of a vessel is like the arrest of a person.

"the defendant in an action of false imprisonment is entitled to succeed if he pleads and proves that the imprisonment was legally justifiable" ( 38 Halsbury (3<sup>rd</sup> edition) para.2280@770)

To escape liability to the plaintiff the defendant needed to prove that the seizure (or arrest) was legally justified. There is no evidence at all to prove any justification. To the contrary the evidence is that the plaintiff had all he required to carry out lawful shark fin fishing in Kiribati waters and that is all he did.

I accept the plaintiff's evidence. He has proved his case well beyond the mere balance of probabilities.

I find the seizure of Wellbeing unjustified. The plaintiff succeeds on liability.



ROBIN MILLHOUSE QC  
Chief Justice