

# IN THE HIGH COURT OF KIRIBATI 2018

MISCELLANEOUS APPLICATION NO. 81 OF 2018  
(ARISING OUT OF CIVIL CASE NO. 59 OF 2017)

	[KAIRAO ANGIRAOI	PLAINTIFF
	[	
BETWEEN:	[AND	
	[	
	[ATTORNEY GENERAL IN RESPECT OF	
	[MINISTRY OF HEALTH AND MEDICAL	
	[SERVICES	DEFENDANT

Before: The Hon Sir John Muria, Chief Justice

19 November 2018

*Ms Kiata Kabure* for Plaintiff

*Ms Taaira Timeon* for Defendant

## JUDGMENT

**Muria, CJ:** The plaintiff, suing as Administratrix of the estate of the deceased, Eldon Corry Ribauea, brought an action against the defendant, Attorney General in respect of Ministry of Health and Medical Services, claiming damages in respect of the death of the deceased while in the care and supervision of the defendant's Nawerewere Hospital in South Tarawa. This is an action in tort, claiming negligence on the part of the defendant. The plaintiff is the mother of the deceased.

### Background

2. The deceased was admitted at Nawerewere Hospital on 27 February 2014. The deceased experienced episodes of fever and shortness of breath. He was given Panadol and nebulizer.

3. On 1 March 2014 at about 5.00 pm the deceased again had another episode of breathlessness. He was treated and was given oxygen. A doctor was called (Dr Toaia) who administered digoxin drug to be given to the deceased. At about 7.00 pm or thereafter the deceased died.

4. The case against the defendant was first brought in 2015 in High Court Civil Case No. 23 of 2015 which was withdrawn formally on 22 November 2017. The reason for the withdrawal of HCCC 23/2015 was that the plaintiff could not bring the case on behalf of the deceased's estate since no Grant of Letters of Administration had been taken out to have her appointed Administratrix of the estate of the deceased. See *Matifa Raureniti –v- Attorney General* [2016] KIHC 12; Civil Case 69/2015 (2 September 2016).

#### **High Court Civil Case 59/17**

5. Following the withdrawal of High Court Civil Case 23/2015, the plaintiff issued the present civil case No. 59/17 on 11 September 2017. The plaintiff had been formally appointed administratrix of the estate of the deceased and now has standing in law to bring the claim on behalf of the estate of the deceased. See *Matifa Raurenti –v- Attorney General* (above).

6. The defendant has now challenged the status of High Court Civil Case 59/2017. The defendant objected to the plaintiff bringing the action on the ground that it is time-barred. The defendant relies on section 7 of the *Government Liability Act 2010*.

7. The issue for determination is whether the plaintiff's action in High Court Civil Case No. 59/2017 is statute-barred or not.

## Government Liability Act 2010

8. Section 7 of the *Government Liability Act 2010*, on which the defendant relies is as follows:

**“7. Notwithstanding any provisions of the *Limitation of Action Act*, any claim for torts against the Government must be instituted within one year from the date such claim arise”.**

9. It must be noted that section 7 applies to any claim in tort “**against**” the Government. This is expressly confirmed by section 2(1) of the Act: *Attorney General in respect of Ministry of Public Works and Utilities –v- Waymars Trading Company Ltd* [2013] KICA 5; Civil Appeal No. 5 of 2013 (23 August 2013). The present case is a claim “**against**” the Government.

10. Is High Court Civil Case No. 59/2017 statute-barred? The defendant says that the action is statute-barred while the plaintiff says it is not. On the facts of the case, the cause of action arose on 1 March 2014 and since it is a claim against the Government, the plaintiff had one year within which to bring the action. The present action was filed on 11 September 2017 following the withdrawal of High Court Civil Case 23/15 which was more than three years since the cause of action accrued. That is clearly beyond the time limitation permitted under section 7 of the Act.

11. The contention of the plaintiff is that this is a case of mistake by the former Counsel for the plaintiff, in failing to take the necessary steps to have the plaintiff properly appointed as administratrix of the estate of the deceased in time. It was only after the plaintiff changed advocate that the plaintiff was properly appointed as administratrix and took out the High Court Civil Case No. 59/17. Ms Kabure relied on section 23(c) of the *Limitation Act 2004* to support the argument that in

case of mistake, time does not begin to run until the plaintiff had discovered the mistake on 19 July 2017 which was the date when the plaintiff changed advocate. It was the mistake on the part of the plaintiff's former lawyer, not of the plaintiff herself.

12. In my view section 23(c) of the **Limitation Act** does not help the plaintiff. Section 23 only applies to "**any action for which a period of limitation is prescribed by this Act**" (*Limitation Act 2004*). The present action in fact is brought against the Government and as such the *Government Liability Act 2010* applies "**notwithstanding any provisions of the *Limitation of Actions Act***".

13. Reference was made by Counsel for the plaintiff of the Indian case of *State of Nagaland –v- Lipok Ao and Others* Appeal (crl.) 484 of 2005 to support the suggestion that mistake of Counsel, provided it is not tainted by *mala fide* motive, can be sufficient ground for condonation of delay. That case deals with section 5 of the *Indian Limitation Act 1963* which permits extension of the prescribed period in certain cases provided "**sufficient cause**" is shown. There are provisions in our *Limitation Act 2004*, in particular, section 24 which deals with extension of limitation period in certain cases. The case of **State of Nagaland** does not help the plaintiff's case here.

14. In the same way the argument that the delay in this case which resulted in the action being out of time was due to the mistake of the plaintiff's former Counsel, and as such the Court should not hold it against the plaintiff, is difficult to accept. Not only that ignorance by a lawyer of the legal requirement of appointing an administratrix is not an acceptable excuse, but also, it is one that finds no relief under any provisions of the *Government Liability Act 2010*. Section 23(c) of the *Limitation Act 2004* does not help the plaintiff.

15. In this case, High Court Civil Case 23/15 was not competently brought in the first place. The plaintiff had no legal standing to bring HCCC 23/15 and so it was not competently brought before the Court. In law, High Court Civil Case 23/15 did not exist. In effect there was no action in existence at all up to 11 September 2017: *Teukin –v- Dojin Trading Co Ltd* [2017] KHC 23; Civil Case 58 of 2016 (30 May 2017). High Court Civil Case 59/2017 was the only case competently brought before the Court by the plaintiff against the Government. Unfortunately it was brought more than three years outside the limitation period fixed by law under section 7 of the *Government Liability Act 2010*.

16. I find and hold that High Court Civil Case 59/2017 had been instituted well outside of the one year time limit fixed under section 7 of *Government Liability Act*. As such it is statute-barred and it is struck out.

Order accordingly.

Dated the 14<sup>th</sup> day of December 2018

