

IN THE HIGH COURT OF KIRIBATI 2019

CIVIL CASE NO. 53 OF 2017

	[ABERAAM KORU	PLAINTIFF
	[
BETWEEN	[AND	
	[
	[TABITEUEA MEANG ISLAND COUNCIL	DEFENDANT

Before: The Hon Chief Justice Sir John Muria

6 September 2019

Ms Elsie Karakaua for Plaintiff

Mr Monoo Mweretaka for Defendant

JUDGMENT

Muria, CJ: By a Writ of Summons filed in this case, the plaintiff claims the return of all his beers confiscated by the defendant on the island of Tabiteuea Meang. The plaintiff also claims special damages, general damages, punitive damages and costs.

Brief background

2. The plaintiff is a businessman from Tabiteuea Meang. He runs retail shops on the island, selling groceries and fuel. He registered his business with the Registrar of Business Names and he was issued with a Certificate of Registration under the name ONAJI STORE in 2013. The copy of the Certificate of Registration was not signed nor dated. But

there is no dispute that the plaintiff's business was registered on 6 February 2013.

3. The plaintiff also applied for permit to sell liquor. On 19 June 2017 the Ministry of Commerce Industry and Cooperatives approved for the plaintiff to include liquor trading as part of his business. A notice to that effect was signed and issued by the Registrar of Business Names on 19 June 2017.

4. With his licence permitting him to buy and sell liquor, the plaintiff bought 50 cartons of beers from Peter and Sons Store in Tarawa on 22 July 2017 and shipped them off to Tabiteuea Meang. He paid \$3,482.00 for the beers (see Receipt "A3").

5. The plaintiff's cartons of beers were seized by the defendant upon their arrival at Tabiteuea Meang. The basis for the seizure of the beers was the Unimwane's decision banning the sale of alcohol in Tabiteuea Meang. The defendant agreed that consumption of liquor on the island was not banned. Only the sale of liquor was banned.

Business Licence

6. It is not disputed that Tabiteuea Meang Island Council does not have any bye-laws regulating the sale of liquor on the island. Thus the defendant only relied on the Unimwane's decision banning the sale of liquor on the island as the basis for its action to seize the plaintiff's 50 cartons of beer. Strangely the Unimwane's decision does not prohibit the consumption of liquor. It only prohibits the sale of liquor on the island.

7. The plaintiff obtained his permit/licence to sell liquor on Tabiteuea Meang from the Ministry of Commerce Industry and Cooperatives. That licensing power of the National Government of Kiribati has lawful effect anywhere in Kiribati. Since the function of licensing liquor business has not been devolved to the defendant Council, the plaintiff is entitled to lawfully operate his liquor business on the island of Tabiteuea Meang on the authority of the licence issued to him by the Ministry of Commerce Industry and Cooperatives. The Unimwane's decision banning the sale of liquor on the island has no legal effect on the plaintiff's licence to sell liquor issued to him by the Ministry of Commerce Industry and Cooperatives unless it is established that the Unimwane's decision has the force of law.

8. Thus the only basis for the defendant's action was the ban imposed by the Unimwane on the sale of liquor on the island. The onus is on the defendant to establish that the Unimwane's decision banning the sale of liquor on the island is a "customary law" having the force of laws in Kiribati.

9. Mr Mweretaka's submission is that the Unimwane's decision has the force of law and so the defendant's actions were lawful. Counsel relied on sections 4(2) and 5(1) of the *Laws of Kiribati Act 1989* which provide:

"Section 4(2) In addition to the Constitution, the laws of Kiribati comprise –

- (a) Every Ordinance and every Act and all subsidiary legislation made thereunder;
- (b) Customary law;
- (c) The common law of Kiribati;
- (d) Every applied law

5(1) Customary law comprise the customs and usages existing from time to time, of the natives of Kiribati”.

10. It is important to note that subsection (2) of section 5 provides for the exception that where customary law is in conflict with an enactment and applied law, customary law does not apply. Thus, assuming that the Unimwane’s decision is customary law (which is clearly not), and if an enactment or an applied law provides for issuance of licences to sell liquor, and the Unimwane’s decision prohibited the sale of liquor, the Unimwane’s decision cannot prevail.

11. In this case, the plaintiff’s business was registered under the name ONAJI STORE on 6 February 2013 (see Certificate of Registration). On 19 June 2017 the Registrar of Business Names, pursuant to section of the *Registration of Business Names Act 1988*, included Liquor as a new nature to the plaintiff’s business. The plaintiff was therefore authorized by law to sell liquor. The Unimwane’s decision banning the plaintiff from selling liquor was clearly in conflict with the law and must give way.

12. It must be noted, however, that “**customary law**” is defined in section 5(1) of the *Laws of Kiribati Act 1989* as comprising the “**customs and usages**” existing from time to time, of the natives of Kiribati. That entails a customary law that has evolved from time immemorial and has stood the test of time.

13. A decision banning the sale of alcohol made by the Unimwane under social or community pressure does not fit in the definition of customary law as defined in section 5(1) of the *Laws of Kiribati Act 1989*. As such it does not have the force of law.

14. I think it is also worth noting that the words "customs and usages existing from time to time, of the natives of Kiribati" denote a special tenor to the definition of "customary law" as defined in section 5(1) of the *Laws of Kiribati Act 1989*. They imply that the "customs and usages" must be shown to have existed from time to time and are of the natives of Kiribati. It entails some proof by evidence of the existence and application of such "customs and usages" of the natives of Kiribati from time to time. Viewed in that light, the decision of the Unimwane, banning the sale of liquor on the island could not be regarded as "customary law" within the definition under section 5(1) of the Act.

Whether the seizure of the plaintiff's beers lawful

15. There is no law authorizing the ban of selling liquor in Tabiteuea Meang. The plaintiff had licence to sell liquor in Tabiteuea Meang. The seizure of his 50 cartons of beers at Tabiteuea was without legal basis and was unlawful. The continuing detention of the plaintiff's beers was unlawful also.

16. The plaintiff is clearly entitled to damages for the unlawful seizure and detention of his 50 cartons of beers.

Damages

17. The plaintiff's evidence shows that he bought the 50 cartons of beer for \$3,452.00. The profits he would have earned from the 50 cartons of beer would be \$2,328.00. His total loss therefore is \$5,780.00.

18. The plaintiff, however, says that had his beers not been seized, he would have continued his order for the supply of the same amount of

beers from Tarawa and would have earned \$43,028.00 by 25 June 2018, that is, at \$2,328.00 profits every three weeks. Unfortunately, the projection of profits for every three weeks at \$2,328.00 is based on a non-existent supply of goods. It is fraught with uncertainties and it is speculative since a number of assumptions would have to be established by the plaintiff, such as a constant supply of the same number of cartons of beer every three weeks, the price of the beers would remain constant, the transportation of goods from Tarawa to Tabiteuea Meang remains constant, and the market in TabNorth remained constant. There is no evidence to support such a projection.

19. As to general damages, I feel the plaintiff is entitled to some compensation for the loss, harm and injuries suffered as a result of the defendant's actions. Applying the principles set out in *Tebetanga –v- Betio Town Council* [2014] KHC 41, I award general damages to the plaintiff in the sum of \$5,000.00.

20. I think this is also an appropriate case for punitive damages. This is a case where the plaintiff suffered because of the unlawful act of the defendant. Punitive damages is to penalize the wrongdoer for his unlawful act. I award the plaintiff the sum of \$4,000.00 as punitive damages in this case.

21. The total damages awarded to the plaintiff is \$14,780 comprising as follows:

Cost of 50 cartons of beers	\$3,452.00
Profits on 50 cartons of beers	2,328.00
General damages	5,000.00
Punitive damages	<u>4,000.00</u>
	<u>\$14,780.00</u>

22. The plaintiff shall have interest of 5% per annum on the judgment sum until it is paid in full.

23. The plaintiff shall also have his costs of this action to be taxed, if not agreed.

Dated the 20th day of October 2020

