

REPUBLIC PROCEEDINGS (AMENDMENT) BILL 2010

Second Reading Speech

By the Honourable Minister for Justice and Border Control
Honourable Mathew Batsiua MP

18 November 2010

Mr Deputy Speaker, Honourable colleagues

This Bill seeks to amend the *Republic Proceedings Act* 1972, which provides for the manner in which legal proceedings may be taken by or against the Republic, its officers and its instrumentalities.

The Bill, if passed, will serve three main purposes: the definition of the expression ‘instrumentality of the Republic’ is amended, to ensure that appropriate statutory bodies receive the protection of the Act; the steps to be taken by anyone seeking to commence legal proceedings against the Republic are clarified; and provision is made for the Court to allow payment of a judgment debt by instalment.

This Bill became necessary as a result of the recent decision of the Supreme Court in the case of *Keung-Wah and others v. RONPHOS and Secretary for Justice*. The applicants in that case already had a judgment in their favour against RONPHOS. They have been seeking an order for the forced seizure and sale of RONPHOS assets to satisfy the judgment debt. This application was resisted, on the ground that, as an instrumentality of the Republic, the assets of RONPHOS were not liable to seizure in this manner. This position was supported by the 1987 Supreme Court decision of *Heinrich v. Nauru Phosphate Corporation*, which had held that the NPC was such an instrumentality. However during the recent Supreme Court sitting the decision in *Heinrich* was overturned, and RONPHOS was held not to be an instrumentality for the purposes of the Act. Unless amendments are made to the Act to clarify which instrumentalities are covered, then the assets of RONPHOS (and many other statutory bodies) will be liable to forced seizure and sale. This has the potential to seriously undermine the finances of the Republic.

With the change to the definition of the expression ‘instrumentality of the Republic’, it becomes necessary to amend section 3 of the Act. Section 3 deals with the

requirements for commencing proceedings against the Republic. In its present form it is obscurely worded and difficult to understand. In amending section 3 to take account of the changes dealing with instrumentalities, it was considered desirable to also seek to improve the clarity of the section as a whole. With the passage of this Bill, it should be clear which classes of legal proceedings will require the prior approval of the Cabinet, and which may be commenced without first obtaining that approval.

Furthermore, at present there is no power for the Court to provide for judgment debts owed by the Republic or its instrumentalities to be paid in instalments. It is assumed that a judgment debt will be paid in full upon presentation of a certificate obtained under section 18 of the Act. Given the Republic's present financial situation, that is not always going to be possible, particularly where the amounts owed are large. It is well-known that many people are owed money by the Republic and its instrumentalities. This is a consequence of the profligacy and mismanagement of previous administrations. This Government does not seek to evade its responsibilities with respect to these debts. It is however necessary to ensure that the repayment of these debts is carefully managed, to guard against calls being made on the public purse that are unsustainable, and which threaten the ability of the Government to deliver essential services. The amendments to section 18 proposed by this Bill will allow a Court, when considering an application for a certificate, to take into consideration the Republic's financial position, and to order that the judgment debt may be paid in instalments.

Mr Deputy Speaker, I commend this Bill to the House.

Thank you.