

IN THE HIGH COURT OF KIRIBATI
(BEFORE THE HON R LUSSICK C.J.)

HCCrC 21/96

THE REPUBLIC
versus
KAKIABA TEKANENE
TOANUEA ITINTARAWA
ROUA TAMOAIETA
MARAITI KATIA
TEATA ANGABURE

Mr T Tabane for the Republic
Mr B Berina for the Accused

Date of Hearing: 18 August & 3 September 1997

J U D G M E N T

The five accused have been charged under section 299(1) of the Penal Code Cap. 67 with concurring in making a false entry in a book, in that on the 13th December 1995 at Bairiki, Tarawa, whilst employed as magistrates of the South Tarawa Lands Court, they concurred in making a false entry purporting to be Case Number 721/95 in the South Tarawa Lands Court Minutes Book.

The Republic alleges that the five accused held a bogus lands court trial in which they approved the transfer of a parcel of land to Court Clerk Nei Nuea Tabuia so that she could present the minutes to the bank as a form of security to obtain a loan.

Last year, Court Clerk Nei Nuea Tabuia pleaded guilty to a similar charge and was sentenced to imprisonment. Needless to say, her admission of guilt is not admissible as evidence to prove the guilt of the accused.

Nuea testified that she was experiencing financial difficulties, so in December 1995 she approached the bank for a loan. There she was told that she would need to produce some form of security such as land.

She consulted the first-named accused Kakiaba Tekanenc (who was Presiding Magistrate) about her problem and he advised her that she could get a loan from the bank with land on the outer islands as security.

Nuea arranged for her mother to write a letter saying that she wished to sell her land on Abemama to Nuea and have Nuea registered as owner. Nuea then asked Kakiaba for his assistance in organising a hearing of the lands court to approve the sale. She said that Kakiaba knew that it was not a genuine case and that its only purpose was to obtain a court minute which she could produce to the bank to secure a loan. According to Nuea, Kakiaba told her that they had done it before for loans from the Development Bank.

Nuea said that on the day in question she spoke to Kakiaba and the other four accused about her loan. They then went into a room where court was not normally held and a hearing was conducted. Nuea was emphatic that the purpose of the hearing was purely to obtain the minutes necessary to produce to the bank.

The minutes of the hearing were taken by Temooa Iaribwebwe, a young court clerk aged 19 at the time, who was still in training. The minute book used (exhibit A) was one no longer in use; it was a minute book for 1994 criminal cases. Most of the pages in that book are blank, yet the minutes were written on the very last page.

All of the accused signed the minutes. Nuea then tore the page from the book. She stamped the page with the seal of the court and gave it a fictitious number - 721/95. Later she took the minutes to the bank and obtained a loan of over \$1,000.

During the hearing before the five accused, Nuea said that she produced a letter from her mother. The mother herself did not attend. This letter is not mentioned in the minutes and its whereabouts are not known. The minutes themselves (exhibit B) show the plaintiff (Nuea's mother) as appearing in person and giving evidence as follows:

"Plaintiff: I would like to register Nuea's name as she is going to buy my land namely Temarenaua for the amount of \$2,500".

Nuea's evidence, as shown on the minutes, reads:

"Defendant: You Worships I agree to buy this lady's land in the amount of \$2,500".

The five accused then delivered the following decision, which all signed:

"The Court confirmed the sale of land between Tebeta Tito and Nuea Tabuia and the Court certified the amount of \$2,500".

Nuea testified that at the hearing before the magistrates, they discussed the fact that the land concerned was in the outer islands (their jurisdiction was limited to South Tarawa). However, according to Nuea, after one of the magistrates said that it was just for Nuea's loan and they had done it before, they all signed the minutes.

The Court Clerk who recorded the minutes was Temoaa Iaribwebwe, who is currently under suspension. She said that she was still on probation in December 1995.

She testified that the room where the hearing was held was mostly used for criminal and civil cases. Land cases were held in court clerk Tabokai's room. Tabokai was the court clerk responsible for land matters.

On the 13th December 1995 she had returned from shopping. She walked into her room and found all of the magistrates

seated ready for a hearing, as well as court clerk Nuca. The minute book was open and there was a pen ready for her. The minute book was opened at the last page and she was told by Kakiaba that it was there that she was to write her minutes.

Temoaa testified that perhaps she made a mistake in not mentioning the letter from Nuea's mother in the minutes. However, when cross-examined she explained that everything she wrote in the minutes she was told to write by Kakiaba, including the contents of the letter.

She remembered that the magistrates held a discussion before signing the minutes but she could not recall what they discussed.

Having recorded the minutes, it would normally have been her duty to enter the transfer in the register, but on that occasion Nuea had told her that she would attend to it.

Temoaa also testified that she would occasionally assist in land cases if Tabokai was busy, but she remembered that Tabokai was not busy that day and would have been available to record the minutes.

Tabokai Kanoua gave evidence that he is the court clerk responsible for the sittings of the lands court at Bairiki.

He said that sometime in December 1995 Nuea approached him and asked if he would make some false minutes showing that she had purchased land so that she could obtain a loan. He refused her, saying that it was illegal.

On the 13th December 1995 a lands court sitting was held at 9 o'clock in the morning in the main courthouse with the five accused on the bench. The list was short and the sittings did not take long to complete.

Sometime after that he went into another room and was surprised to find the five accused were holding court there. He apologised and left the room. He could see that the case

was a land matter and felt that he should have known about it since he was the clerk responsible for lands court sittings. He later saw the record of the case inside a minute book for criminal cases for the year 1994 at the very last page of the book. It had been torn off and just placed there. He knew immediately that the minute was false as it was not where it should have been.

Naomi Tainu, Registrar of the High court, produced records of the appointments of the five accused. Kakiaba Tekanene was appointed a magistrate on 1 May 1978. Toanuea Itintarawa was appointed on 1 May 1978, Roua Tamoaieta on 28 October 1988, Teata Angabure on 28 October 1988, and Maraiti Katia on 9 September 1991.

All of the accused were appointed for the Magisterial District of Betio including South Tarawa.

The fifth and last witness for the prosecution was Detective Constable Tawatana Merang, who took cautioned statements from each of the accused. Such statements were put into evidence without objection.

The accused Kakiaba Tekanene claimed in his cautioned statement that the hearing was genuine.

The accused Toanuea Itintarawa gave a rather confusing cautioned statement and record of interview. In his cautioned statement he said he was doubtful whether they heard the matter or not. He agreed that he signed the court minute but stated that he may not have read it carefully. However, when questioned by the investigating officer, Toanuea was able to remember discussing the matter in the office with the other four accused (Qs 8 and 9). He agreed that this discussion did not take place as part of the court proceedings (Q. 16). He also acknowledged that the case had been heard inside the office and not during a court proceeding (Q. 15).

The accused Roua Tamoaieta told the police that he and the other accused heard the case inside the court office at the

urgent request of Nuea Tabuia because Nuea wanted to raise a bank loan to buy Tebeta Tito's land on Betio (as mentioned earlier, the land was not on Betio but on Abemama, which is beyond the jurisdiction of the five accused). When questioned by the investigating officer, he agreed to signing the case record but denied responsibility for there being no record in the minute book (Qs 6 and 7). He agreed that the minute was not that of a proper proceeding but one that was falsely compiled by Nuea to support her personal loan from the Bank of Kiribati, but he stated that it was Nuea's doing. He also stated that the reason he signed it was because Nuea was only requesting money to buy the land (Qs 8 and 9).

The accused Maraiti Katia merely admitted that he had signed the record and that the plaintiff Tebeta Tito was represented by letter.

The accused Teata Angabure claimed in his statement that he had not been in error in signing the record because they had really heard the case. He claimed that he objected to the plaintiff not being present, but when the other magistrates decided to accept the plaintiff's letter he went along with them. He alleged that the case was heard in the court office because a criminal session was on at the time. (This particular claim is at variance with the sworn evidence of the three court clerks and I do not believe it). He told the police that he had no knowledge that the sale was false and he believed it was only intended to support Nuca's loan from the Bank of Kiribati.

I remind myself that any admission made by an accused in his cautioned statement (or anywhere else) is not admissible to prove the guilt of any of the other accused.

That concluded the case for the Republic.

The five accused elected to remain silent, neither giving evidence nor calling evidence.

★ Why mother not called?

There is, of course, no onus on the accused at any stage to prove their innocence. The prosecution bears the onus of proof beyond reasonable doubt from first to last. The prosecution must prove the charge and each element of the charge beyond reasonable doubt, and if it fails to do so then the accused are entitled to be acquitted.

The provision of the Crimes Ordinance under which the accused have been charged is in the following terms:

“299(1) Any clerk, office nor servant, or any person employed or acting in the capacity of a clerk, officer or servant, who wilfully and with intent to defraud destroys, alters, mutilates or falsifies any book, paper, writing valuable security or account which belongs to or is in the possession of his employer, or which has been received by him for or on behalf of his employer, or who wilfully and with intent to defraud makes, concurs in making, any false entry in, or omits or alters, or concurs in omitting or altering any material particular from or in any such book or document or account is guilty of a misdemeanour, and shall be liable to imprisonment for 7 years.

(2) It shall be sufficient in any information under this section to allege a general intent to defraud without naming any particular person intended to be defrauded”.

It does not seem to be in issue that at the time of the alleged offence all of the accused were officers or that the minute concerned was made in a book belonging to their employer. The evidence of the Registrar of the appointment of each accused to the office of magistrate proved that they were all judicial officers. The evidence was also clear that the minute concerned was made in a book provided to the Bairiki Magistrates' Court to record court proceedings. The only logical inference to be drawn from that evidence is that the minute book was provided by, and therefore belonged to, the

employer of the accused magistrates. I am therefore satisfied that the prosecution have proved those particular elements beyond reasonable doubt.

What remains to be considered is whether it has been proved beyond reasonable doubt that the five accused concurred in making a false entry wilfully and with intent to defraud.

To begin with, there can be no doubt at all that the entry in the minute book was false. I accept the evidence of Court Clerk Nuea Tabuia that the hearing was not genuine and that its only purpose was to produce a minute which could be used to support a loan from the bank. No proper record of the case was kept. It was not recorded in the 1995 land cases minute book as it would have been had it been a real case. Instead, the minute was entered in a 1994 minute book for criminal cases and torn out soon afterwards. No transfer of land was entered in the land register since no transfer of land ever took place. As Nuea said, the minute was not that of a genuine case and the only use to which it was put was to produce it to the bank.

It is not disputed by the five accused that they all signed the minute. There is thus also no doubt that each of the accused concurred in making an entry in a minute book which proved to be false. However, the onus is upon the prosecution to prove beyond reasonable doubt that the accused knew that the minute was false and so concurred in making the false entry wilfully, or deliberately.

As already mentioned, Court Clerk Temoaa, in explaining why it appears from the minutes that the plaintiff gave evidence in person, said in chief that perhaps it had been her mistake. However, when cross-examined, she asserted that it had been Presiding Magistrate Kakiaba who had told her to write into the minutes the contents of the letter. She said that Nuca and Kakiaba told her what to do, but mostly it was Kakiaba. I accept her evidence. She was at the time a young, inexperienced clerk, still in training, and would have been vulnerable to the influence of a Presiding Magistrate. I have

no doubt that the minute was produced on the instructions of Kakiaba with some help from Nuea.

The minute itself is calculated to deceive. The evidence and decision as they appear on the minute have already been mentioned. The case is headed: "Tebeta Tito -vs- Nuea Tabuia. Matter: Land sale (Temarenaua)". Any person reading those minutes would be likely to conclude that it was a normal transfer of land. There is no way of telling from the minutes that the land was on Abemama - and therefore that the magistrates had no jurisdiction - or that the evidence purportedly given by the plaintiff was not really given because there was no plaintiff in court. With five magistrates and two court clerks involved, the minute would have stood up to a fair amount of scrutiny.

Both Nuea and Temoaa testified that the magistrates held a discussion before signing the minutes, although Temoaa could not remember what was discussed. Nuea, however, was quite certain that one of the matters discussed by the magistrates was the fact that the land concerned was on the outer islands. I accept that evidence. At the time of the alleged offence the accused Kakiaba and Toanuea had been serving as magistrates for more than 17 years, Roua and Teata for more than 7 years, and Maraiti for more than 4 years. Obviously none of them could be described as inexperienced. It stands to reason that they must have known that since the land was on the outer islands they had no jurisdiction to deal with the case. Had the case been genuine, the only proper thing for them to have done was to refuse to hear it. The fact that they nevertheless proceeded to deal with the case is strong support for the conclusion that they knew it was not a real case but only a pretence to enable Nuea to obtain a minute to produce to the bank.


It has been submitted for the accused that from time to time other cases had been heard in the room in which the case in question was heard and that there was thus nothing unusual in not using the main courtroom. However, Court Clerk Tabokai Kanoua, who was responsible for land cases, testified

that on the day in question a lands court sittings with the five accused had already been held in the main courtroom. He said that he was later surprised to see the same magistrates sitting in another room on a land case about which he knew nothing. In the circumstances, it can only be concluded that what the magistrates did was highly irregular. There had been a list of land cases for that morning but Nuea's case had not been included in it. The court clerk responsible for land cases had not been told about Nuea's case and, instead, an inexperienced clerk still in training had been used. The case had been heard in a room away from the main courtroom even though it could have been included in the list that was heard that morning. I am satisfied that such arrangements were made in an attempt to keep the case away from the attention of the general public and of Court Clerk Tabokai. Tabokai, it will be remembered, had some days earlier refused to assist Nuea in obtaining a false court minute, telling her it was illegal.

In my view, the evidence points to only one logical conclusion, and that is that each of the five accused knew that the entry in the minute book was not the record of a genuine case. I therefore find that it has been proved beyond reasonable doubt that all five accused, in concurring in making a false entry, did so wilfully.

The last element which the prosecution must prove is that each of the accused had the intention to defraud. The meaning of "defraud" was defined in the case Re London & Globe Finance Corporation Ltd (1903) 1 Ch. 728, at 733 (per Buckley J): "To defraud is by deceit to induce a course of action". There can be no doubt on the evidence in the present case that all of the accused knew and intended that the false court minute would be produced to a bank officer to induce him or her to approve a loan to Court Clerk Nuea. I am therefore satisfied that the prosecution have also proved beyond reasonable doubt that each of the accused, in concurring in making the false entry, did so not only wilfully but with intent to defraud.

All elements of the offence having been proved beyond reasonable doubt, I find all five accused guilty of the offence of concurring in making a false entry contrary to section 299(1) of the Penal Code and they are convicted accordingly.



THE HON R B LUSSICK
Chief Justice
(12/09/97)

SENTENCE

What these accused did was a gross abuse of a trusted position. There is no telling what damage has been done to the reputation of the Judiciary. A case such as this will almost certainly erode or destroy the public's confidence in magistrates' courts and perhaps beyond that. The case can only be regarded as a very serious one of its kind. In my view, it is a case which is quite impossible to deal with without an immediate custodial sentence. Furthermore, there can be no doubt that offences of this kind need to be deterred by sentences which are substantial. Nevertheless, in the light of these principles I have to take into account the personal circumstances of the individual accused. Their counsel tells me that all of the accused realise that they have done wrong and that they are very sorry. They fully appreciate that they must pay for the wrong they have done.

All of these men are of a quite advanced age. I am told by their counsel that the accused No. 1 Kakiaba is aged 67. I note that when he gave a cautioned statement to the police in June

of last year he gave his age as being only 60. His counsel tells me that he suffers from diabetes and has to be examined by a doctor every two weeks. I have not seen any medical evidence to support this claim.

I am told that Accused No. 2 Toanusa is aged 72. When he gave his cautioned statement to the police in June last year he gave his age as 69.

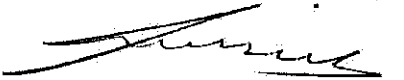
I am told that the Accused No. 3 Roua is aged 72 but when he gave his cautioned statement to the police in June of last year, he said he was only 63. I am told further that Roua suffers from stomach ulcers, also pain to the left chest and has difficulty sleeping. There is on file a letter from Dr Priit Melmit dated 16 May 1997 which confirms that Roua is suffering from stomach ulcers. There is no medical evidence before me as to his other complaints.

As to Accused No. 4 Maraiti, I am told he is aged 65. That would appear without doubt to be his correct age because when he spoke to the police in June last year he gave his age as being 63.

As regards Teata, he also gave his correct age of 60 to the police when spoken to. I am told that Teata has a heart problem and has been advised by a doctor to take certain kinds of meals and to refrain from certain foods. Again, there is no medical evidence before me to support this claim.

Despite the discrepancies in ages mentioned above, there can be no doubt that whatever the true ages of these accused they can be regarded as old men, especially by Kiribati standards. I also take into account that all of the accused are first offenders. I accept what their counsel says that the disgrace of this conviction will remain with them for a long time, perhaps forever. No court willingly sentences men of their ages to spend a large part of the remainder of their lives in prison. In the circumstances, as an act of mercy, the sentence which would normally be appropriate to this case will be

substantially discounted. Consequently each accused is sentenced to imprisonment for a term of 18 months.



THE HON R B LUSSICK
Chief Justice
(12/09/97)