

IN THE HIGH COURT OF KIRIBATI )  
CRIMINAL JURISDICTION )  
HELD AT BETIO )  
REPUBLIC OF KIRIBATI )

CRIMINAL CASE NO. 15 OF 2000

**THE REPUBLIC**  
**V.**  
**NEI NGAIA KAUTU**

**FOR THE REPUBLIC:** MR KIRATA KOMWENGA  
**FOR THE ACCUSED:** MS TAOING TAOABA

**DATE OF HEARING:** 13 & 14 AUGUST 2001

**J U D G M E N T**

The accused, Nei Ngaia Kautu, has been charged with two offences against the Customs Act, evading customs duty and making a false statement in a matter relating to customs laws.

The provisions under which Nei Ngaia is charged are:-

134(1) Any person who, in any matter relating to the customs laws ..... -

- (a) makes or causes to be made any false statement orally or in writing; .....

commits an offence.

(2) Any person who - .....

- (f) knowingly is concerned in any fraudulent evasion or attempt of evasion of any import or export customs duties, or of the customs laws;

commits an offence.

In May 1998 the accused and her friend Nei Tautongo Tokaniman were in Fiji shopping. It seems that they are each in business in Kiribati and went to Fiji to buy stock. They bought various items, mainly but not only clothing, and had it shipped to Tarawa on the MV "Matangare". All the goods were shipped in the name of Nei Ngaia. She took the goods to the wharf in Suva and had them loaded. No shipping agent was used.

According to Rebeta Yee On, the supercargo on "Matangare", the accused came on board "Matangare" at Suva. She told him she wanted to load some cargo. He told her that "when she arrived with the cargo she must see me first so that I may work on cargo. I did not see her again in Fiji ....."

I presume that by "working on cargo" Rebeta meant checking the items so that they could be listed on the manifest: once freight had been paid, then the goods would be listed, he said. According to the accused, Rebeta merely told her to see the bosun to have the goods loaded and that is what she did. The bosun, Kaai Katokauea, said the accused came to him requesting that her cargo be loaded and, by use of the crane, he loaded it into the hold. He did not know if she had paid freight or not.

How Kaai came to load the goods without the paper work is a mystery but not one relevant to the charges. The result, though, is that Nei Ngaia's goods were brought to Tarawa on "Matangare" but they did not appear on the cargo manifest (Exhibit P4).

The goods were discovered by Antoon Tekai, customs officer, when he boarded the ship in the port of Betio. Subsequently Nei Ngaia produced the tax invoice (Exhibit P5) prepared by the merchants in Suva from whom she had bought the goods. A physical check of the goods against the tax invoice shewed that there were items not listed on the tax invoice. A list of those goods is contained in Exhibit P1.

Duty on the goods declared was calculated at \$2,800.66 (Exhibit P2) but the duty payable on the undeclared goods has not being calculated.

To sum up the facts, the accused shipped the goods from Suva to Betio without documentation and then in Betio failed to declare some of the goods which had been shipped. The documents, all exhibited by consent, confirm what Nei Ngaia did.

The accused gave evidence in her defence. She deserves credit for that. She said this was not the first time she had shipped the goods in the same way. There was, she said, nothing unusual about the way these goods were shipped: she had not on previous occasions done anything about the paper work: she expected to pay duty when the goods arrived here.

Nei Tautongo confirmed Nei Ngaia's story. Some of the goods, "perfumes and children's stuff", were hers but all the goods were shipped under Nei Ngaia's name. She had had an invoice for her goods but lost it.

Having heard and seen the witnesses I accept those who gave evidence for the prosecution. In particular I refer to Rebeta's evidence that when the accused approached him he told her to come back with the goods so that he could check them but she never came back.

I am satisfied beyond reasonable doubt that the accused tried to avoid paying duty on some of the goods she imported, those set out in Exhibit 1, and that when she produced the tax invoice, Exhibit P5, she knew it did not list all the items she was bringing into the country.

Even without the evidentiary aid which section 132 of the *Customs Act* gives to the prosecution, I am able to find both offences proved beyond reasonable doubt.

Accordingly the accused is guilty on both counts.

Dated the 20<sup>th</sup> day of August 2001

*Robin Millhouse*

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THE HON ROBIN MILLHOUSE QC  
CHIEF JUSTICE