

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

HIGH COURT CRIMINAL CASE NO. 28 OF 2004

THE REPUBLIC
VS
ROUATU TEKIREE
FENG JIAN CHOW

FOR THE REPUBLIC: MS PAULINE BEIATAU
FOR THE ACCUSED: MR BANUERA BERINA

DATE OF HEARING: 22 & 23 JULY 2004

SENTENCE



Rouatu Tekiree and Feng Jian Chow: you had been found guilty of carrying on business in Kiribati without a certificate of registration under section 18(1) of the *Foreign Investment Act 1985*. This is indeed a very serious crime which attracts a penalty of \$10,000.

Rouatu Tekiree, you are 34 years of age, married with children. You are currently employed by the Public Utilities Board. Your wife is unemployed and you are the only breadwinner in the family. Apart from your family you are also looking after your mother. You are also in a position to pay a reasonable fine.

Feng Jian Chow you are aged 35, employed by the Red House and earn \$300 a month, and you are married to a local girl.

In your favour is the fact that you Rouatu and Feng have never been in trouble with the law before. So you are first offenders and this fact will have the effect of reducing the penalty which may be imposed on you.

I am informed by your counsel Mr Berina that you both have been remorseful for what you did and thus you had apologised to the Foreign Investment Commission (FIC) and had also applied to the FIC to have your enterprise registered.

Also the fact that your business or enterprise in the form of the Red House Restaurant had been in operation since the end of 2001 and up to April 2004 with the proper work permits for all foreign employees in the Red House having been granted and issued by the proper immigration authority without such authority even questioning your legal status then under the law is also in your favour as the authority may have thought that your business is a mere local business simply employing foreigners as well as local people.

Counsel for the Republic Ms P Beiatou has urged the court to impose an appropriate fine on the accused as provided for under section 18(1) of the Act. As I mentioned earlier the maximum penalty imposed under section 18(2) is \$10,000. Ms Beiatou also refers me to *The Republic vs Tiputa Samasoni* HCCrC 9/99 where the High Court imposed a total fine of \$5,000 for four counts. The Court in that case found that the amount earned by the defendant over the time that he was engaged in business without a certificate of registration were not excessive, the total sum earned being in fact \$4,950.

Tiputa Samasoni's case is a useful precedent but its facts are not exactly the same as in the present case. Tiputa Samasoni the defendant came to Kiribati as an employee of the Development Bank of Kiribati (DBK). When his contract with DBK expires he then applied for a work permit to be a foreign investor. The Foreign Investment commission did in fact approved his foreign investment project. However the Foreign Investment Commission told the defendant not to commence his foreign investment project until the registration and certificate were issued. Instead of the defendant commencing operation after the registration and licence certificates were issued he commenced his foreign investment project before such certificate of registration and licence were issued.

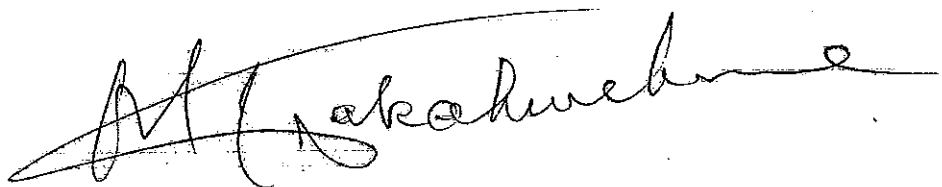
Thus the defendant was aware of the requirement of the *Foreign Investment Act 1985*.

Mr B Berina, counsel for the accused has asked the Court to be lenient to the accused in the present case as by having tried to comply with the law those very documents which the accused had submitted to the authority have laid down the foundation for the conviction.

Mr B Berina also submits that what the accused had done was not intentional.

So taking the whole of the circumstances of the present case into account including the profit from the operation of the Red House since the end of 2001 (net loss: 1319), 2002 (net profit: \$7,883.37), 2003 (net profit: \$15,097.71) I consider that the appropriate penalty to be imposed under the circumstances is a fine of \$3,500 for each of you to be paid by each of you not later than 4 pm on the first day of each month by monthly instalment payment of \$250 each commencing on 1 October 2004 till the full amount of the fine of \$3,500 payable by each one of you is fully paid by each of you on 1 November 2005 and in default of payment 12 months' imprisonment. If the fine is not paid by 1 November 2005 you will go to gaol for 12 months.

Dated the 9th day of September 2004



THE HON MR JUSTICE MICHAEL N TAKABWEBWE
Judge