

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

**HIGH COURT CRIMINAL CASE No. 7 OF 2006**

THE REPUBLIC  
V  
TAKARIA UBWAITOI  
KAITANGARE TEANU  
ATONIMARAWA KANGOOA  
TEUEA NABETARI

FOR THE REPUBLIC: MS OLGA GUILLEN  
FOR THE 1<sup>ST</sup> ACCUSED: MR KAROTU TIBA  
FOR THE 2<sup>ND</sup> 3<sup>RD</sup> AND 4<sup>TH</sup> ACCUSED: MR AOMORO AMTEN

DATES OF HEARING: 22 & 23 MAY 2006

### JUDGMENT

The prosecution called eight witnesses at this trial. The defence also called eight including the four men accused. Hoping to make it easier to follow the account of events I list and briefly identify the witnesses, to most of whom I shall refer.

#### For the prosecution

Dr Bwabwa Oten: made a report and described the injuries to Kobaia Terimoa

Nei Kamwea Atauea: owner of the house damaged  
Nei Tinterera Konene: Nei Kamwea's 14 year old daughter  
Nei Maria Terimoa: neighbour of Nei Kamwea

Kobaia Terimoa: alleged victim and head of the family living in Nei Kamwea's house

Tererei Taatere: Kobaia's brother-in-law, was at Nei Kamwea's house

Kabeia Taatere: also at Nei Kamwea's house

Euta Taokai: Inspector of police, went to Nei Kamwea's house after the incident

For the defence

Takaria Ubwaitoi: 1<sup>st</sup> defendant

Nei Namoua Tiaon: Takaria's wife

Nei Teboia Ubwaitoi: Takaria's mother

Nei Tataang Bamaere: was at Takaria's house

Kaitangare Teanu: 2<sup>nd</sup> defendant, lived at Takaria's house

Atonimarawa Kangooa: 3<sup>rd</sup> defendant, was at Takaria's house

Teuea Nabetari: 4<sup>th</sup> defendant, Takaria's brother-in-law, denied being there at all

Nei Tekeei Teuea: Teuea's wife, corroborated Teuea's evidence

An incident at Nawerewere during the late afternoon of Wednesday 6 July last year was preceded in the morning by a dispute which became a fight between two ladies, neighbours, Nei Namoua, wife of Takaria Ubwaitoi and Nei Taware, wife of Kobaia Terimoa. The incident itself out of which the charges against the four accused arise led to the death of one man, Rereia and injuries to others.

At the beginning of the trial Ms Guillen, prosecuting, told me that the Attorney General had granted immunity to Kobaia Terimoa, whom she proposed to call, from prosecution for any of his actions during the incident. Ms Guillen did not tender a certificate from the Attorney General granting him immunity. I would have preferred to have had it in writing but I accepted Ms Guillen's assurance.

As a result I did not warn Kobaia. Indeed, before the trial began, it would have been difficult for me to give an appropriate warning as I had no idea what to warn him about. Gradually it came out, through questions in cross examination, that a man named Rereia had died as a result of his injuries, presumably inflicted by Kobaia. During addresses all counsel acknowledged that Rereia died as a result of this incident. I should have been told this at the beginning rather than the end of the proceedings.

The four defendants are charged with:-

## Count 1

## Statement of Offence

TAKING PART IN A RIOT AND CAUSING DAMAGE contrary to s. 23(1) of the Public Order Ordinance Cap. 82

## Particulars of Offence

On 6 July 2005 at Nowerewere, Bikenibeu in the Republic of Kiribati, TAKARIA UBWAITOI, KAITANGARE TEANU, ATONIMARAWA KANGOOA & TEUEA NABETARI took part in a riot and unlawfully damaged a house, property of one Kamwea Atauea.

## Count 2

## Statement of Offence

WILFULLY AND UNLAWFULLY DESTROYING PROPERTY contrary to s. 319(1) of the Penal Code Cap. 67

## Particulars of Offence

On 6 July 2005 at Nowerewere, Bikenibeu in the Republic of Kiribati, TAKARIA UBWAITOI, KAITANGARE TEANU, ATONIMARAWA KANGOOA & TEUEA NABETARI willfully and unlawfully destroyed and damaged windows, tables, cupboards, property of one Kamwea Atauea.

## Count 3

## Statement of Offence

GOING ARMED IN PUBLIC contrary to s. 25(1) of the Public Order Ordinance Cap. 82

## Particulars of Offence

On 6 July 2005 at Nowerewere, Bikenibeu in the Republic of Kiribati, TAKARIA UBWAITOI, KAITANGARE TEANU, ATONIMARAWA KANGOOA & TEUEA NABETARI were armed in public without lawful authority or reasonable excuse in a manner such as to cause terror.

Takaria Ubwaitoi alone is charged with:-

Count 4

Statement of Offence

CAUSING GRIEVOUS HARM contrary to s. 218(a) of the Penal Code Cap. 67

Particulars of Offence

On 6 July 2005 at Nowerewere, Bikenibeu in the Republic of Kiribati TAKARIA UBWAITOI with the intent to do some grievous harm, unlawfully wounded Kobaia Terimoa.

All defendants pleaded not guilty to all charges.

On 6 July 2005 Kobaia and his wife and family were close neighbours of Takaria and his wife and family. There was bad blood between the families. This had boiled over into fighting between the two ladies in the morning of that day and during the late afternoon into fighting between the men on both sides. During the trial each side blamed the other for being the aggressor, having gone over to the other house challenging to fight.

The prosecution alleges that Takaria's side was the aggressor, that the four accused and probably others went over to the house where Kobaia and his family were living. [The house was owned by Nei Kamwea Atauea who was not there at the time - she came back about 8 o'clock in the evening and described the damage and disarray she found.] The defence, to the contrary, is that Kobaia and his wife came over to challenge Takaria and his wife.

I must be careful not to fall into the trap of "deciding which story to believe". I remember that the accused do not have to prove anything. The onus of proof is on the prosecution to prove beyond reasonable doubt against each accused each element of each offence. To convict on any count I must find proved beyond reasonable doubt the prosecution version of events.

Whether I find the prosecution version proved beyond reasonable doubt or not, having made a finding I then must consider each count in relation to each accused before I may decide on verdicts.

A difficulty is that the witnesses, both for prosecution and defence, gave evidence plausibly. I cannot wholly reject the evidence of any of them as

obviously unbelievable. It is necessarily a case in which I accept some parts of the evidence of some witnesses and reject other parts. For example I accept the evidence of Nei Teboia Ubwaitoi that she was giving Atonimarawa a massage but reject her evidence that her family were the defenders not the attackers (I find that part of her evidence likely to have been rehearsed).

I have to search for clues. There is one which tips the balance beyond reasonable doubt in favour of the prosecution.

It is the damage to her house which Nei Kamwea saw:

**Got home (about) 8 o'clock. Eating place upside down, table and cupboard damaged, bedroom window frames broken, security wire torn down, lock to door broken after kicked in. Verandah post broken, glass everywhere. Damage - \$500.00.**

I accept that description.

Tererei said who did it:-

**I saw the table overturned. Table underneath verandah. Takaria and his team overturned it.**

Likewise Kabeia:

**Takaria kicked door. I went out and saw table, cupboard eating utensils overturned and a lot of people under verandah. Things already overturned when I came out.**

There is no doubt about the damage etc. at Nei Kamwea's house. There is no suggestion of damage at Takaria's house. The strong inference is that the attackers - "Takaria and his team" to use Tererei's description - were responsible.

Ms Guillen tried very hard in cross examination and in her address to show that Takaria must have been told during the day about the fight in the morning between the ladies. Takaria denied that he knew anything about it until he came home from work (at the TTI in Betio) between 5 and 6 in the evening. That was the evidence of other defence witnesses as well. I accept that denial. The house had no telephone: communication is not

always easy on South Tarawa. Takaria first found out about the fight when he came home.

What may have happened is that when his wife told Takaria what had gone on in the morning he became so indignant and angry that he mustered those he could and went over to have it out with Kobaia and Kobaia's wife. Whether that surmise is correct or not, I am satisfied beyond reasonable doubt that Takaria and others initiated the attack and it took place at Nei Kamwea's house (mainly on the verandah). Takaria and his wife were the aggressors.

There is another clue, perhaps less strong because it is a matter of my impression not of any piece of real evidence. My impression of Takaria having seen and heard him give evidence and having watched his behaviour in the dock for two days, is of a man with an aggressive personality. I find it difficult to believe that a man like Takaria would not react aggressively to the news of a fight between his wife and her neighbour. He would be far more likely to take the fight to the other side than to retreat into his house when the other side came to him leaving it to his friends to defend him.

Having established beyond reasonable doubt which side was the aggressor it is time to consider who was present and who took part in the incident. In doing so I must remember what the courts have many times said about the dangers of identification evidence, the risks of relying on it. The more so in a situation where passions were high and people were all over the place: a scene of confusion.

#### Count 1 TAKING PART IN THE RIOT AND CAUSING DAMAGE

There is no doubt Takaria took part. He admits he was there. Takaria was one of the aggressors. Kaitangare in evidence in chief merely confirmed Takaria's version of events and Takaria refers to Kaitangare being there. In cross examination Kaitangare said Tererei hit him with a bush knife. No doubt Kaitangare was there.

In his evidence in chief Atonimarawa agreed with the evidence given by Takaria and Kaitangare. In cross examination Atonimarawa said Nei Teboia had been giving him a massage in Takaria's house. Atonimarawa denied he went outside but Kobaia and Kabeia said they saw him: two other witnesses, Nei Tinterera and Tererei were less certain. Nei Maria did not recognize him.

It may well be that, although Atonimarawa was at Takaria's house, he took no part in the incident. I have a reasonable doubt about his taking part.

Teuea denied being there at all. Both he and his wife said they were at their own house some distance away building a seawall. Nei Tinterera, as with Atonimarawa, first admitted telling the police Teuea was not there but finally in evidence asserted she was sure they both were. I could not rely on her evidence. Nei Maria said she recognized Teuea; so did Kobaia and Kabeia. Tererei said "I may have seen Atonimarawa and Teuea but I can't remember". The defence witnesses either did not mention Teuea or said he was not there.

There is one straw in the wind blowing towards his taking part. It came out late in evidence that Nei Tekei, Teuea's wife, is Takaria's brother: it would be logical to enlist the aid of a brother-in-law. Nevertheless I have a reasonable doubt about Teuea being there.

I can find beyond reasonable doubt only that Takaria and Kaitangare took part in the riot. There is no doubt that Rereia was present. He took a leading part and, it seems, paid for it with his life. So there are at least three of them in the attack – sufficient to make it a riot pursuant to s. 21(1) of the Public Order Ordinance. I have the picture, although unproven, that there were others in it as well but there were at least three.

As for the damage Kobaia saw Takaria kicking in the door. I have already set out Tererei's evidence:-

**I saw the table overturned. Table underneath verandah. Takaria and his team overturned it.**

Apart from this direct evidence the overwhelming probability – to it being beyond reasonable doubt – is that the attackers did the damage. It does not matter which individual: it was a joint enterprise and both Takaria and Kaitangare are guilty of causing the damage.

Takaria and Kaitangare are guilty on count 1 and Atonimarawa and Teuea are not guilty.

Count 2 WILFULLY AND UNLAWFULLY DESTROYING PROPERTY

It follows from the findings made on count 1 that Takaria and Kaitangare are guilty on this count and that Atonimarawa and Teuea are not guilty on either count 2 or count 3.

Count 3 GOING ARMED IN PUBLIC

Takaria said the only weapon he had was the bush knife which he picked up when Tererei dropped it after hitting Kaitangare on the lip. Takaria said Kaitangare had no weapon. Witnesses for the prosecution tell a different story. Nei Maria, Kobaia, Tererei and Kabeia all say both men were carrying knives. Nei Tinterera says Takaria was carrying a bush knife; she did not see Kaitangare carrying anything.

In the light of the evidence I have no reasonable doubt that both Takaria and Kaitangare were carrying knives. They were going armed in public.

Takaria and Kaitangare are guilty on this count.

Count 4 CAUSING GRIEVOUS HARM

This count is charged against Takaria only. For a conviction Ms Guillen relies on sections 21 and 23 of the Penal Code:-

**21(1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with committing it, that is to say - .....**

**(d) any person who aids or abets another person to commit the offence. ....**

Takaria (this is common ground between prosecution and defence witnesses) did not fight himself. His story is that it was he who was challenged but he stayed inside his own house, sending his friends out to fight the battle for him.

The evidence of the prosecution which I accept beyond reasonable doubt is that outside Nei Kamwea's house Takaria pushed forward Rereia to fight Kobaia.



Nei Tinterera:-

**Takaria shoved Rereia towards Kobaia. Rereia and Kobaia fought.**

Nei Maria:-

**I saw Takaria give Kaitangare a shove. Saw Kaitangare run away. Saw Kaitangare's brow and neck.**

Kobaia:-

**When they came Takaria was shouting challenge. Pushed Rereia towards me. "Go kill him". Did not see Takaria do anything to the door but Rereia ran towards me to stab me.**

Tererei:

**Rereia fought with Kobaia. Takaria shoved him forward.**

Rereia inflicted the injuries on Kobaia but Takaria encouraged – counseled and procured – Rereia to do it.

Dr Bwabwa Oten described, in his report the injuries:-

- Injury**
- **deep penetrating wound at occiput – 7-8 cm**
  - **bleed moderately**
  - **small incisional wound above right eyebrow – 1 x 1 cm**

In evidence Dr Oten said the wounds were caused by a "sharp object like a knife".

It was more than actual harm: this was grievous harm.

Takaria is guilty on count 4.

There is only one matter to mention. At the close of the prosecution case Mr Amten submitted that his three clients had no case to answer on count 3 as they were not "in public". I rejected the submission. The definitions of

"public place" and "public way" in section 4 of the Penal Code make any area, however small, between houses in different occupation a public place. I take judicial notice of the fact that people may pass between houses even in the most crowded areas. Those concerned in this trial, going from one house to another, were "in public".

The verdicts in tabular form:-

Count 1	Takaria	Guilty
	Kaitangare	Guilty
	Atonimarawa	Not guilty
	Teuea	Not guilty
Count 2	Takaria	Guilty
	Kaitangare	Guilty
	Atonimarawa	Not guilty
	Teuea	Not guilty
Count 3	Takaria	Guilty
	Kaitangare	Guilty
	Atonimarawa	Not guilty
	Teuea	Not guilty
Count 4	Takaria	Guilty

Dated the 31<sup>st</sup> day of May 2006

