

IN THE HIGH COURT OF KIRIBATI) HIGH COURT CRIMINAL CASE No. 49 of 2006
 CRIMINAL JURISDICTION)
 HELD AT BETIO)
 REPUBLIC OF KIRIBATI)

THE REPUBLIC
 V
 BUREUA TEANGABURE
 KANGOOA ATONIMARAWA
 TAUARO ABERE
 ATONIMARAWA KANGOOA
 TEWAEA KANGOOA
 KAKOROA RAIRAKI
 TIRIAN ROBUTI
 ARIREI KANGOOA
 ATINTA TETABEA

FOR THE REPUBLIC: Ms PAULINE BEIATAU
 FOR THE ACCUSED: Ms JOELLE GROVER

DATE OF HEARING: 7 & 8 MARCH 2007

JUDGMENT

Two families in Eita, related though they were, had been on bad terms for some time. They lived not far apart.

On Thursday 2nd June 2005 there was a fight. In the course of it at least two of those taking part were injured and some damage was done to the house of one family. Each side blamed the other for being the aggressor.

What is not in dispute is that one side, of which Bureua Teangabure was the leader, came along the road leading from Bureua's house towards Nei Tekunea Ioram's house. There were nine or more of them in a group as they approached.

The rest of facts are in dispute.

Nei Tekunea raised the alarm. She woke members of her family sleeping inside the house. Nei Tekunea herself had been on a buia. She saw the group approach. She believed they were coming to attack her and her family and the house.

Bureua denied that he and those with him had any intention of causing trouble: they were on their way past Nei Tekunea's house to go to repair the house of an old lady, Nei Bare Kabunang, further up the road.

I have so far put opposing stories but I remember what I said in the Republic v Takaria Ubwaitoi & Others (HCCrC 7/2006):-

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.

Whatever Bureua (who was undoubtedly the leader) originally intended there was a commotion and fight in front of Nei Tekunea's house. Nei Tekunea's son, Ioram Winuea and grandson, Teiwaki Ioram, fought Bureua and Atonimarawa Kangooa. Tewaaki and Bureua were injured. The house and a table and utensils were damaged. What actually caused the damage is not clear but some damage there was.

Ioram's wife, Nei Tekiebu Ioram, at the beginning of the encounter, went to call the police. The police came but it was over by then. They took a number of persons, including Ioram, into custody.

As a result of the incident Bureua and eight others - Kangooa Atonimarawa, Taukaro Abere, Atonimarawa Kangooa, Tewaera Kangooa, Kakoroa Rairaki, Tirian Robuti, Arirei Kangooa and Afinta Tetabea - were each charged with three offences, taking part in a riot and causing damage, willfully and unlawfully destroying property and going armed in public. The particulars:-

Taking part in a riot and causing damage: On the 2nd June 2005 at Tebikenikoora, Eita village on South Tarawa in the Republic of Kiribati Bureua Teangabure, Kangooa Atonimarawa, Taukaro Abere, Atonimarawa Kangooa, Tewaera Kangooa, Kakoroa Rairaki, Tirian Robuti, Arirei Kangooa and Afinta Tetabea took part in a riot and unlawfully damaged a house, property of one Ioram Winuea.

Willfully and unlawfully destroying property: On the 2nd June 2005 At Tebikenikoora, Eita in the Republic of Kiribati Bureua Teangabure, Kangooa Atonimarawa, Taukaro Abere, Atonimarawa Kangooa, Tewaera Kangooa, Kakoroa Rairaki, Tirian Robuti, Arirei Kangooa and Afinta

Tetabea willfully and unlawfully destroyed and damaged the house and utensils, table, property of one Ioram Winuea.

Going armed in public: On the 2nd June 2005 at Tebikenikoora, Eita in the Republic of Kiribati Bureua Teangabure, Kangoa Atonimarawa, Taukaro Abere, Atonimarawa Kangooa, Tewaea Kangooa, Kakoroa Rairaki, Tirian Robuti, Arirei Kangooa and Atinta Tetabea were armed in public without lawful authority or reasonable excuse in a manner such as to cause terror.

[In these Particulars Ioram Winuea is named as the owner of the house and things. The evidence suggests the owner may have been his mother, Nei Tekunea Ioram. Who was the owner is a technicality which I ignore.]

Bureua alone was charged with causing bodily harm:-

On the 2nd June 2005 at Tebikenikoora, Eita in the Republic of Kiribati Bureua Teangabure caused bodily harm to Tewaaki Ioram.

On arraignment each pleaded not guilty to each charge.

I set out relevant parts from the evidence of each prosecution witness. Ms Beiatu had indicated that she would call 17 witnesses: finally she called four.

Ioram Winuea:-

..... at my house with mother, daughter, son and other small kids. Wife. Mother came and woke me up that Bureua had come with others Men carrying knives, spears and women carrying sharpened sticks and stones as well. About 5m from house. They threw them at us. We were in the house - local house with tin roof. Security walls. Threw at utensils outside the house. Hit me as I was in front of house - with sharpened wood. I was trying to block them so they couldn't get in. Bureua leading them trying to get into the house. I tried pushing him away. After that they left.

Damage - utensils, roof bent, wall fell down. My boy, Tewaaki, injured. All afraid except my wife who went to call police. When they left we went out of the house they were still next to the house. When they threw stick and stones (family) in house. All of them threw the sticks and stones..... I saw them coming to our house. Knew they were coming to attack because the husband of Bureua's brother is married to my sister. They were coming towards and throwing stones and sticks. They said they wanted to kill us. "We come here now to kill you". All of them called that out. I was frightened.

Tewaaki Ioram:-

I was playing tape recorder at my house. When playing it, my grandmother outside on buia: saw Bureua coming – she came and told me. In house our old people, brothers and parents. Trying to get a way to defend ourselves: myself, my father and Aboki. Recognised them ---- I stopped record player. They were coming forward, Bureua, with weapons, sharp sticks, Bureua carrying knife and spear: ladies – sticks and stones. Bureua sort of leader. All started throwing weapons. Damaged utensils, table, tin roof bent, holes in thatch. I was hit – head hit by stick they threw. Didn't see who threw it: these people. We went out trying to stop Bureua coming in. (People in house and kids). They were 10 paces or less from house. Atonimarawa behind Bureua. Me and my father. Trying to push back Bureua from coming in. I didn't know how I was hurt. Bureua hurt as well, ran away and rest joined him. Injured on my arm..... Bureua and Atonimarawa trying to get forward to get into house – others standing behind throwing. Other people – lot of others – about 20, all carrying weapons..... Bureua said he was going to try to kill us.

Nei Tekunea Ioram:-

I was on buia. Maybe before lunch. They were coming from their house coming towards our house. Their house is far but I can see it from our house. 30m away when I saw them. Weapons, sticks, stones, spears, bush knives. About 20 altogether. They all threw at my house – sticks, axes, stone, metal. 10m away when thrown. I was outside the house when they were throwing..... I woke up my children who were sleeping in the house.

Nei Tekiebu Tione:-

People coming to our house fighting. I was inside house. Husband Ioram and Tewaaki inside, Tekunea and old man (deceased). Saw people ---- Coming with weapons I ran away to get police. I came back with police. Son's hand injured: husband's shoulder. House – utensils, table Can see Bureua's house from inside our house. Saw a lot of people: more than 10. Know them all – Been, Biiu, Teingoi. They were carrying bags of sticks.

I accept beyond reasonable doubt at least the outline of the evidence of each of the four prosecution witnesses. Each appeared to be honestly trying to tell what had happened even though there were differences in details between them. It must have been a scene of confusion and high emotion. That explains discrepancies in their accounts but the overall account is clear beyond reasonable doubt.

Only one of the defendants gave evidence, Bureua Teangabure:-

These people came along and asked for fixing of the house. Atonimarawa, grandson of Bare. House of old lady fell. We agreed

About 9 of us and a lady carrying strings. Ioram, Tewaaki and others came to us on the road. The two of them came and fought me: I was trying to defend myself. Road leads to Bare's house. 20m from Ioram's house to road. I was carrying a knife to cut the strings on the house. Nothing else. All the other accused with me. No one else. Didn't get to the house. They came to us and we ran away. Nothing mentioned but previously we had had an argument about money. I was trying to defend myself as there were two of them. Injured on right arm by a bush knife. Ioram was holding it. At hospital with Tewaaki. We were fighting. I was trying to defend myself. I had a knife with me at the time. Tewaaki carrying a hand spear. Ioram was carrying one of the bush knives. Fighting quite a while. When I got injured I ran away. Other accused when we were fighting they ran away to my house. They all ran away. I was left trying to defend myself..... I was attacked by Ioram and Tewaaki. Kids throwing sticks at me. Taking knife to fix the house, not to attack these people Know nothing of things being damaged. Only my wife carrying string. Other ladies carrying nothing..... My wife was there to carry the string: the other ladies were there to boil water and prepare food they were carrying..... On way to Bare, I carried a small knife: companions carrying bag of string, bags of food. Ladies. The five chaps walking along carrying nothing. Nothing they were carrying. Only one bag of string..... No one carrying spears or stones. No stones thrown. No one called out ("kill"). Don't know if anything said: all I know is they came forward to meet us.

Then Ms Grover caused a surprise by calling a lad, now aged 15, who gave his name as Bill Tekarawa. When he first said his name I wrote down "Biiu" then, through Madam Interpreter, he corrected that. I note that Nei Tekiebu in cross examination had named "Biiu" as one of the other attackers. Ms Grover had not questioned Nei Tekiebu about "Biiu". During addresses Ms Grover would not concede that "Biiu" mentioned by Nei Tekiebu is Bill Tekarawa but I am confident he is. It would be too much of a coincidence to think there were two Biius or Bills. If it were merely a coincidence Ms Grover had had an opportunity to clear up any misunderstanding.

The name of Bill Tekarawa had, apart from Nei Tekiebu mentioning him as one of the attackers on her house, not come into the case at all until he was called for the defence. No cross examination of any of the prosecution witnesses about him: nothing from Bureua about him.

In his evidence Bill said he was living at the time in Ioram's house and took part with Nei Tekunea (who threw the first stone) and Ioram and others in attacking Bureua and his party as they passed by on the way to repair Nei Bare's house. Bill denied that, as Nei Tekiebu had said, he was one of those who attacked Ioram's house.

I was not at all impressed by Bill's demeanour. He was not, in my opinion, telling the truth. His evidence shews all the indications of recent invention on the part of the defendants. I do not accept his version of events. His unexpected appearance as a witness for the defence makes me conclude that he was produced at the last minute to bolster the defendants' case. It does not reflect well on them.

None of the other defendants gave evidence. Each exercised his or her undoubted right to remain silent without any adverse inference being drawn. Bureua said they were all there with him. Bureua confirmed their identification by the prosecution witnesses as having been present.

Considering the whole of the evidence I am satisfied beyond reasonable doubt that Bureua and those with him attacked Ioram's house and caused damage to it. This was a joint enterprise between all the defendants and probably others as well. They are all in it together whatever part they took.

I must now apply the law to the facts as I have found them, in the same way as I did in the *Republic v Takaria Ubwaitoi and Others*.

Taking part in a riot is an offence pursuant to section 23(1) of the Public Order Ordinance. That section must be read in conjunction with section 20(1)(b) and section 21.

Three or more persons were conducting themselves in a manner likely to cause another to fear they would commit a breach of the peace: they were taking part in an unlawful assembly. They did commit a breach of the peace by attacking Ioram and Tewaaki, and by damaging the house and property: they were taking part in a riot.

These people took part in a riot: they are guilty on count 1.

Wilfully and unlawfully destroying property is an offence pursuant to section 319(1) of the Penal Code. The evidence of damage to the house and property is scanty but I accept beyond reasonable doubt that there was some damage caused wilfully and unlawfully. That is sufficient to prove the offence. The defendants are guilty on count 2.

Going armed in public is an offence pursuant to section 25(1) of the Public Order Ordinance. I have not before mentioned it but during the trial a cardboard box containing an assortment of sharpened sticks, three bush knives and a number of thin lengths of metal appeared and disappeared. The box was in the custody of the Republic. None of the items was ever made an exhibit but several prosecution witnesses and one defence witness identified the items as having been the weapons used in the incident. I am satisfied the defendants carried them or some of them to the scene. Police Inspector Taubuki Tebau whom the defence

called, said they had been collected from the scene and from a pond not far away. They are weapons. "Public place" is defined in section 4 of the Penal Code as including "any public way place to which for the time being, the public are entitled or permitted to have access" The attackers, walking towards Ioram's house were in a public place. They were going armed in public. The defendants are guilty on count 3.

Causing bodily harm is an offence pursuant to section 238 of the Penal Code.

I have already found this to have been a joint enterprise. It was a joint enterprise to attack the other family and their house. It must have been in the defendants' contemplation that people could be injured.

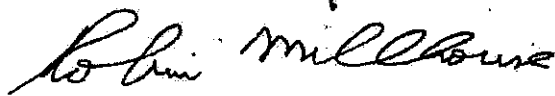
The Penal Code, S.22:

When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

Tewaaki was injured by one of the attackers. All the defendants could have been charged with causing bodily harm but only Bureua has been. Even though he may not himself have inflicted Tewaaki's injury he is deemed, pursuant to S.22, to have inflicted it. Bureua is guilty on count 4.

The result is that all nine defendants are guilty on counts 1, 2 and 3 and Bureua is guilty on count 4 as well.

Dated the 14th day of March 2007



THE HON ROBIN MILLHOUSE QC
Chief Justice