



## HIGH COURT OF KIRIBATI

*Criminal Case No 27/2018*

**THE REPUBLIC**

**v**

**BETERO BEBEIA**

*Taburuea Rubetaake for the Republic  
Teetua Tewera for the accused*

*Dates of hearing: 7-8 November 2018*

*Date of judgment: 12 November 2018*

### **JUDGMENT**

- [1] The accused has pleaded not guilty to 1 count of careless driving causing death, contrary to section 33(1) of the *Traffic Act 2002*.
- [2] An information was originally filed in this case on 22 May 2018. That information did not comply with section 70 of the *Criminal Procedure Code (Cap.17)*. On 3 August the Attorney-General rectified the defect by filing a fresh information (in the same terms) signed by her. On the first day of the trial a minor amendment was made to the charge (to correct the title of the Act under which the charge is brought), without objection.
- [3] Three witnesses were called by counsel for the prosecution. The first was Eitoka Tewannanti, a 51-year-old man who works as a security guard at the Betio Mini Market. Around lunchtime on 27 July 2017, Eitoka went to the Mini Market to buy something for lunch. He was inside the store when he heard a loud bang. He went outside and, from about 10 metres away, he could see that a truck and a motorcycle had collided at the intersection of the main road and the road to the Betio hospital. The weather was fine and there had been no rain. Eitoka went to see if he could help. The truck was facing north, towards the lagoon. The motorcycle was at the front of the truck, on top of the motorcyclist, who was unconscious. Eitoka saw that the motorcyclist had vomited, but he could not see any injuries, other than a scratch on his leg. Eitoka did not know the motorcyclist. He helped to move the motorcycle, after which the motorcyclist was put onto a pick-up and taken away.

- [4] Etitoka saw that the truck that had been involved in the collision had been moved to a spot between the Mini Market and Peter and Sons' store. He went over to talk to the driver, who he identified as the accused. He asked the accused if the truck's indicator had been on, to which the accused responded, "Yes, it was on. I don't really know what happened."
- [5] The second prosecution witness was Tatiana Teikake, a 22-year-old woman who also works at the Mini Market. At about 1:00pm on 27 July 2017, she was about to get into a car that was parked at the front of the store. She recalls hearing (but not seeing) a motorcycle pass by, heading in a westerly direction. The motorcycle was very loud. Very soon after it passed her, Tatiana heard a loud bang. She looked up and saw a motorcycle under the front of a truck, which was facing north. The truck was still moving forward, dragging the motorcycle. She had seen the truck shortly before the accident, parked in front of Peter and Sons' store, facing west.
- [6] Tatiana ran to the scene and saw the motorcyclist on the road. He was having difficulty breathing, and he had vomited. She could not see any injuries. The motorcyclist was loaded onto a pick-up and taken away. He was still alive at that time. Tatiana did not know the motorcyclist.
- [7] Tiimi Raimon is 29 years old. On 27 July 2017 he was working at Peter and Sons' store, helping out in the garment factory at the back of the store. He heard the sound of a collision from the road and went to investigate. He saw a man lying in the road. He recognised the man as someone with whom he had attended the Marine Training Centre, but he could not recall his name. The side of the man's face was swollen and there was blood coming from his mouth, nose and ears. He was unconscious. Tiimi and others loaded the man onto a pick-up, and he went with the man to the Betio hospital. The man was taken to emergency; he was still unconscious but alive. Tiimi went back to work.
- [8] Counsel for the prosecution then applied to tender a medical report, to which counsel for the accused objected. Counsel for the prosecution sought to rely on section 26 of the *Evidence Act* 2003, which deals with the admission of certain business records. I understand that this approach has been used at least once before, in the case of *Republic v Tekaei Teaei and Kaere Tekaei*.<sup>1</sup> With respect to the trial Judge in that matter, I am unable to see how a medical report, prepared in response to a request from the Police in the course of an investigation, can be admissible in a case such as this, given the express exclusion of such documents under section 26(2). I denied the application.
- [9] That brought the prosecution case to a close. In light of the fact that there had been no evidence that anyone had died as a result of the collision, counsel for the prosecution applied to further amend the information, to reduce the charge

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<sup>1</sup> High Court Criminal Case 32/2012

to one of careless driving *simpliciter*, contrary to section 33(2) of the Traffic Act. Counsel for the accused did not object. Being satisfied that the accused would not be prejudiced by such a change, I allowed the amendment and the accused was arraigned afresh on the new charge. He maintained his plea of not guilty.

[10] Counsel for the accused then submitted that his client had no case to answer. He argued that, as none of the witnesses had actually seen the collision, there was no evidence that his client had driven without due care and attention.

[11] I reminded counsel that the test to be applied in the High Court is as set out in section 256(1) of the Criminal Procedure Code. As I said in *Republic v Bitiauoki Temeria*:

a submission of 'no case' can only succeed if there is no evidence at all that the accused committed the offence. This determination should be made by taking the evidence from the prosecution witnesses 'at its highest', and putting to one side any concerns I may have regarding the veracity of any or all of the witnesses.<sup>2</sup>

[12] The absence of an eyewitness does not necessarily mean that there is no evidence. In the circumstances I was satisfied that the evidence of the location of the accused's truck immediately prior to the collision, and its undeniable involvement in the collision, were sufficient to constitute some evidence that the accused had committed the offence. I refused the application and found that the accused had a case to answer.

[13] I then informed the accused of his rights, as required by section 256(2) of the Criminal Procedure Code. The accused elected to give evidence on oath in his own defence.

[14] The accused is a 38-year-old man. He is a pastor with the Uniting Church, and is presently posted to Nikunau island. On 27 July last year, Peter and Sons' store had organised to hire a truck belonging to the Ekuetoa church group. The accused was on leave at the time, and drove the truck that day. He started mid-morning, and made 2 trips between the port and Peter and Sons' store. The accused went home for lunch and returned to the store at about 1:30pm. The people he was expecting to meet were not there, so he went looking for them at the port. They were not there either, so he returned to the store. The accused parked the truck on the main road in front of the store, facing west, as close to the left-hand kerb as possible. There was a truck parked in front of him, facing east. There were cars parked behind the accused's truck, in front of the Mini Market. After about 5 minutes, a woman from the store came and told the accused that it was time to go.

[15] The accused intended to make a U-turn, using the additional space provided by the intersection between the main road and the road to the Betio hospital, directly across from the Peter and Sons' store. He activated his right-hand

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<sup>2</sup> High Court Criminal Case 9/2018, at [20]

indicator, and checked his right-side mirror. Seeing nothing, the accused pulled out into the left-hand lane and began to make the U-turn at low speed. At that point the motorcycle, travelling at speed, collided with the front driver's side of the truck, breaking the driver's side window. The accused was shocked, and the truck continued forward for some distance. The accused estimates that the truck kept moving for about 5 seconds.

[16] When the truck came to a stop, the motorcycle was wedged under the truck's front bumper, and the motorcyclist was pinned underneath the motorcycle. Someone asked the accused to reverse the truck, to free the motorcycle. He did so. He then returned the truck to where it had been parked in front of the store. The accused did not see any injuries on the motorcyclist. A police officer came and told him to stay where he was. He was later taken to the police station, and a police officer drove the truck. The accused was told that the police mechanic would need to examine the truck.

[17] Under cross-examination, the accused was adamant that he had checked for other vehicles before commencing the U-turn. He thought that it was safe. The accused testified that he had been driving trucks since the time he first got his driver licence, in 2000 or 2001.

[18] That brought the defence case to a close.

[19] In considering the evidence in this case, I remind myself that it is not for the accused to prove his innocence. The burden rests with the prosecution to prove, beyond reasonable doubt, each and every element of the offence charged.

[20] Section 33(2) of the Traffic Act provides as follows:

A person must not drive a motor vehicle on a road or elsewhere without due care and attention, or without reasonable consideration for other persons using the road or place.

[21] In the case of *Republic v Bwereata Kamoriki*,<sup>3</sup> I referred to the remarks of White J of the South Australian Supreme Court in *Police v Melisi*, in which he said, "The legal principles applicable to alleged contraventions of the obligation to drive with due care are well established".<sup>4</sup> He went on:

The issue is to be determined objectively. The obligation to drive with due care is the duty to exercise the standard of care which one would expect of a reasonably prudent driver in the like or similar circumstances... The reasonably prudent driver is expected to drive with a defensive outlook, *ie*, a lookout "that not only sees immediate, or immediately developing, danger, but looks well ahead and searches for potential danger".<sup>5</sup>

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<sup>3</sup> High Court Criminal Case 2/2017

<sup>4</sup> [2010] SASC 21, at [17]

<sup>5</sup> *ibid.*, citations removed

- [22] The area around the intersection between the main road and the road to the Betio hospital is a busy one. Traffic on the main road is heavy in both directions, particularly during the day. The road is straight, and the view is unobstructed for at least 100 metres in both directions. The accused should have seen the motorcycle approaching, even if it was travelling at high speed. Before pulling out and commencing the U-turn, the accused made the fundamental error of relying solely on his rear-view mirror, and failing to make allowance for the mirror's blind spot. A reasonably prudent driver would be expected to also turn and look over his or her right shoulder, to make doubly sure that the road was clear before moving off. Had he done this, I am of the view that the accused would have seen the motorcycle travelling towards him. He would then have been in a position to allow the motorcycle to pass before executing the U-turn. The accused did not see the motorcycle at all, and this can only mean that he was not keeping the lookout expected of drivers in such circumstances.
- [23] I am therefore satisfied, beyond reasonable doubt, that the accused was driving without due care and attention. I find the accused guilty of the offence of careless driving contrary to section 33(2) of the Traffic Act, and he is convicted accordingly.
- [24] I will hear counsel as to sentence.

  
**Lambourne J**  
Judge of the High Court

The seal of the High Court of Kiribati is circular with a red border. The text "HIGH COURT OF KIRIBATI" is written in red capital letters around the top inner edge. In the center is a red shield featuring a white sun with rays, a white bird, and white waves. Below the shield is a red banner with white text. The bottom inner edge of the seal contains the text "TEKONI AE E RIETATA I KIRIBATI" in red capital letters.