



HIGH COURT OF KIRIBATI

Criminal Case No 26/2016

THE REPUBLIC

v

MWERETAKA FRANCIS

*Tumai Timeon, Senior State Attorney, for the Republic
Aomoro Amten for the accused*

*Dates of hearing: 12-15 November 2018
Date of judgment: 19 November 2018*

JUDGMENT

- [1] The accused has pleaded not guilty to 1 count of murder, contrary to section 193 of the *Penal Code* (Cap.67).
- [2] An information was originally filed in this case on 9 March 2016. It was followed by a further information (in the same terms) filed on 8 September 2016. Both informations were defective, in that they failed to comply with section 70 of the *Criminal Procedure Code* (Cap.17). On 20 July 2018 the Attorney-General rectified the defect by filing a fresh information, signed by her. Apart from a minor amendment to the particulars of the charge, made without objection on the first day of the trial, we proceeded on that information.
- [3] At the start of the trial, counsel for the prosecution indicated that she planned to tender a medical report, despite the fact that the doctor who had prepared the report was overseas. Counsel for the prosecution sought to rely on section 26 of the *Evidence Act* 2003, which deals with the admission of certain business records. As I explained only last week in the case of *Republic v Betero Bebeia*,¹ section 26(2) of the Evidence Act expressly excludes documents prepared in the course of, or for the purposes of, the investigation of the facts of the alleged offence being dealt with by the court. In the circumstances, counsel advised that she would no longer be seeking to rely on the medical report.

¹ High Court Criminal Case 27/2018

- [4] The evidence in this case is far from straightforward. Counsel for the prosecution called 6 witnesses. The first of these was Tetabo Kaitara, a 55-year-old resident of Tangintebu. He testified that, on the morning of Sunday, 6 March 2016, he was close to the Joinery in Bairiki, where his son Reuta was causing a disturbance. Reuta was beating Tetabo's mother-in-law (and Reuta's grandmother), Nei Mae. The disturbance attracted a crowd of onlookers. Someone named Bwaroko came and hit Reuta, and he was followed by 2 others, one of whom was the accused. Tetabo told those who had assaulted Reuta that the matter was none of their business. The accused then hit Tetabo, and he hit the accused back. The accused had a shoulder bag – "a bag for a laptop" – and he appeared to be reaching into it to get something. Bauro Teetan then jumped onto the accused and hit him. Tetabo described Bauro as a friend of his. Bauro and the accused started fighting.
- [5] At one point in the fight, Bauro stepped away and the accused went after him. The fight moved across the road, in front of the bank. Tetabo was still close by. He saw a knife in the accused's hand. The accused stabbed Bauro in his right side, towards the back. Tetabo called out that the accused had a knife. The accused stabbed Bauro 3 times, after which several villagers chased the accused away.
- [6] In cross-examination, Tetabo conceded that he did not know the accused, and had not seen him before that day. After the accused had run away, the next time Tetabo saw him was at the police station. When asked if he was sure that it was the accused who had stabbed Bauro, he answered, "I think it was him." He insisted that no one else had fought with the accused other than Bauro.
- [7] The next prosecution witness was Nei Mae Bakeruru, a 63-year-old resident of Bairiki village. She testified that, on the morning in question, her grandson Reuta had been chased away by several villagers for being drunk and making a nuisance of himself. She followed him to near the Joinery, where he slipped and fell. Reuta was assaulted by some people. Nei Mae identified one of the assailants as the accused. The accused then assaulted Tetabo, who fell down. Mae did not know the accused, and had not seen him before that day. After Tetabo was assaulted, Bauro jumped on the accused and started hitting him. The accused hit someone else. Bauro then fell to the ground, covered in blood. The accused ran away, being chased. The fight had been between Bauro and the accused, and no one else.
- [8] In cross-examination, Nei Mae agreed that she had told the police that one of the people who assaulted Reuta had arrived at the scene on a motorcycle. She said that person was the accused. When asked if it was possible that the person who arrived on the motorcycle was not the accused, Nei Mae insisted that it had been the accused. It was put to her that, despite her evidence, 3 or 4 young men had also attacked the accused. Nei Mae testified that she did not really see them, as she had been concentrating on her grandson, and she was "a little bit confused".

- [9] In response to questions from the court, Nei Mae denied that Reuta had assaulted her, and said that the scene at the Joinery was quite chaotic, with lots of people fighting.
- [10] The third prosecution witness was Karoua Aukitino, a 44-year-old carpenter from Bairiki village. He testified that he was among the crowd watching that morning. He saw the accused talking with Tetabo near the Joinery, "trying to get something straight". The accused hit Tetabo, causing him to fall down. Karoua did not know the accused, and had not seen him before that day. He then saw 2 men, Bauro and his brother Teuearaoi, jump onto the accused and punch him. Teuearaoi was the first to hit the accused, then Bauro continued on with it. The accused and Bauro fought for about 5 minutes. Bauro stepped back and said, "Why did you stab?" Karoua then saw that the accused had a knife in his hand. He shouted, "That man has a knife." The accused ran away and Bauro staggered and fell down. He was bleeding from a single wound at the base of the sternum.
- [11] Karoua pursued the accused along the lagoon-side of Bairiki square, towards the Ministry of Finance. When the accused reached the end of the Post Office, he turned and confronted Karoua, brandishing his knife. Karoua picked up a stick and the accused turned and ran. Karoua chased him to the Ministry of Finance building and past the old Parliament house. The accused headed west along the lagoon-side back road, in the direction of the police station. There Karoua was joined in the pursuit by another villager, Taukabwan. The accused tried to stop a car, without success. Some distance down the road, close to the fish market, the accused stopped a motorcyclist and, after a brief conversation, he got onto the motorcycle and rode away.
- [12] Under cross-examination, Karoua did not accept that anyone other than Bauro and Teuearaoi had assaulted the accused. He rejected the suggestion that he had been among those who had assaulted the accused. He denied that the accused had been repeatedly assaulted over the distance between Bairiki square and the old Parliament house. Karoua did not accept that the accused had fallen close to a container near the old Parliament house and had been rescued by a person on a motorcycle from that spot.
- [13] Karoua said that the blade of the knife was shiny, and about 3 inches long. He could not see the handle, but it looked like a pocket knife.
- [14] Tiekabu Teinai is a cousin of the deceased. He is 39 years old and lives at Buota. He was at the scene that morning. He testified that he saw Bauro get stabbed. Tiekabu saw Bauro return from the accused. Bauro said, "This man stabbed me." Bauro ran to the roundabout in front of the Bank. He then ran west, towards the clinic, before returning to the roundabout. He appeared to be having difficulty breathing. Bauro then collapsed and died. Tiekabu went to Bauro's assistance. He felt for a pulse, but there was no pulse. Bauro was not breathing. Tiekabu could see 3 wounds: 1 at the base of the sternum; 1 on the left side, below the

ribs; and 1 on his back, low down on the left side. Tiekabu then conceded that he had not seen Bauro get stabbed, although he did see him with the accused. As with the others, Tiekabu did not know the accused before that day. After Bauro had shouted, the accused was chased away by people from Bairiki village. Tiekabu stayed with Bauro until a police car came. Bauro's body was loaded on to the police car and taken to the Betio hospital. Tiekabu went along as well.

[15] Under cross-examination, Tiekabu agreed that he had told the police that, when he first saw Bauro, the accused was already being chased by the villagers. He agreed that what he had told the police was correct.

[16] In response to questions from the court, Tiekabu said that he had seen a small knife in the accused's possession, one with a blade about 3 inches long. He said that about 10 people had been chasing the accused, including Karoua.

[17] Constable Nauto Tion was on duty at the Bairiki police station that morning. He went to the scene and saw the deceased. Although he did not check for signs of life, Nauto said that the deceased looked unconscious, or "nearly dead". He saw a wound to the lower right ribcage. Nauto took the deceased and another person in the police car to the Betio hospital. He waited in the car at the hospital, and then brought the deceased's body back to Bairiki.

[18] The final prosecution witness was Senior Constable Katoka Kabubuke. He was also on duty at the Bairiki police station that morning. He stayed behind at the station while Nauto and others attended the incident. Not long after Nauto left a motorcycle arrived, with the accused as a passenger. The accused ran into the station and asked to be put into the cell. Despite the fact that he looked like he was in trouble and needed protection, Katoka told the accused that he could not put him in the cell because he had not committed any offence. The accused then said, "I stabbed a person." Katoka began to administer the standard caution under the Judges' Rules when a group of people from the village arrived at the station, armed with stones. The accused was put in the cell, but Katoka told the villagers that he was not there.

[19] Under cross-examination, Katoka rejected the suggestion that the accused was a bit dazed. In response to questions from the court, Katoka said that the accused had a bag – what Katoka called a 'waist bag' – but there was nothing of interest in the bag. He also said that the accused had what appeared to be blood on one of his hands.

[20] That brought the prosecution case to a close. Counsel for the accused submitted that his client had no case to answer. 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.²

- [21] While it was true that each of the first 4 prosecution witnesses had some issues in testifying, I took the view that those issues went more to their credibility. Putting their evidence at its highest, there was clearly some evidence that the accused had committed murder. I refused the application and formally found that the accused had a case to answer.
- [22] I 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. Counsel advised that 3 other defence witnesses would be called.
- [23] The accused is 49 years old and lives at Banraeaba with his family. On the morning of 6 March 2016, he and his wife and their 2 young children attended church, before catching a bus to go shopping in Bairiki. Close to the bus stop opposite the Broadcasting and Publications Authority, while still on the bus, the accused saw a young man punch an old woman. She fell to the ground and the young man ran off towards Bairiki square, chased by a group of people. The old woman followed. The bus, impeded by the crowd of people, moved slowly forwards. Outside the Joinery, the accused saw the young man again punch the old woman. The young man was then assaulted by the villagers who had chased him.
- [24] The accused and his wife got off the bus at the bus stop past the Super Mall. The accused started walking towards the bank, intending to withdraw money from the ATM for their shopping. He had with him the ATM card and nothing else. The plan was for his wife was to follow along behind with the children. Before he got to the bank, the accused stood under a palm tree at the roundabout, watching the disturbance that was taking place across the road near the Joinery. The old woman who he had seen being punched by the young man was in the middle of things. The scene was chaotic.
- [25] The accused asked the other bystanders, "Why don't you go and help?" No one did anything. A skinny man came up to the accused and said, "Are you going to try and resolve things?" He then punched the accused above the right eye. The accused did not know the man who hit him. The 2 men then started fighting. Two other men, neither of whom was known to the accused, came and started punching the accused as well. He called out, "I am about to die." He felt dizzy and was trying to get away. The accused testified that he felt like he was losing his mind. He was disoriented and his recollection is fuzzy. He fell, and tried to crawl away. He got up and ran for a distance towards the old Parliament house before being caught and falling down again. He recalls being on the ground beside a shipping container, and the assault was continuing. He was pulled up by a

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

stranger with a motorcycle. He got onto the motorcycle and was taken to the police station. The accused remembers asking the police to keep him safe.

- [26] Under cross-examination the accused said that he did not remember telling the police officer that he had stabbed someone. In response to questions from the court, the accused denied having a knife or a bag with him that day. He did not know any of the people who had assaulted him, and he did not recognise any of the people who had given evidence against him.
- [27] The second defence witness was Nei Tirikau Maunana, wife of the accused. She testified that she had attended church that Sunday morning with the accused, along with their 2 young children. After church they caught a bus to Bairiki. Across from the BPA building, she saw a young man hitting an old woman. The bus was moving slowly, because of the crowd of people. Tirikau and the accused and the children got off the bus at the stop next to the sports field.
- [28] The accused went ahead to the bank, while Tirikau followed behind. She had 1 child in her arms and was holding the hand of the other. They were moving very slowly. By the time Tirikau got to the end of the clinic closest to the bank, she had lost sight of the accused. There was a large crowd of people. A stranger came up to Tirikau and told her something, as a result of which she feared that the accused had been killed. She sought help from the security guards at the nearby ATHKL, where she stayed for about 30 minutes. Tirikau called her neighbours from there and they came and got her. She and the children were taken to Buota, and she did not see the accused again that day.
- [29] Tirikau had given the accused the ATM card before he went to the bank. He had nothing else with him; no bag, no knife. She testified that the accused did not own a knife – not even a toddy knife. The smallest knife they had at home was a bread knife.
- [30] The next defence witness was Mack Muller, a 42-year-old man from Teoraereke. That morning he had taken his wife to work in Betio and was returning home. In Bairiki he saw an altercation between a young man and an old woman. There was a large crowd of onlookers, blocking the road. Mack parked his motorcycle in the ATHKL parking lot and went to watch. He saw the accused standing on the road in front of the bank. He and the accused have known each other for some time – they were regulars at the same kava bar. Mack heard the accused calling out for someone to help the old woman. The accused said, “Why don’t you help the lady, instead of just watching?” The young man who had been beating the old woman then came up to the accused and punched him in the eye. The accused struggled with the young man, and then 2 other young men came and joined in attacking the accused. Mack heard the accused shout, “I’m dying.” Then the young man who had first hit the accused said, “Who did the stabbing?” They fell to the ground and the fight continued. The other 2 young men continued attacking the

accused. The fighting continued for nearly 10 minutes, during which the group slowly moved towards the old Parliament house.

- [31] Mack followed until he got to close to the Civil Registry office, at which point he returned to retrieve his motorcycle. He drove around the lagoon-side road to the other side of the old Parliament house. By then there was just 1 young man attacking the accused, who was on the ground. Many people were watching. Mack watched as a stranger pulled the young man off the accused. That person then put the accused on his motorcycle and rode off in a westerly direction along the lagoon-side road. Mack then returned home.
- [32] In cross-examination, Mack testified that he did not see the accused stab anyone, and he did not see anyone get stabbed. At no time did he see the accused with a knife or a bag.
- [33] The final witness was Aorabu Bakarewe, a 58-year-old man from Banraeaba. That day Aorabu had visited the fish market in Bairiki to buy some fish. He then went to the bus stop opposite the BPA building to head home. He saw an old woman being beaten by 3 or 4 young men on the other side of the road. A man on a motorcycle came to help the woman, but then he was beaten, so he ran away. Aorabu followed the crowd down to Bairiki square, from where he could see the old woman again being beaten, close to the Joinery. He heard a shout and saw the accused next to a palm tree in front of the bank. The accused said, "You people just keep on watching and you do not help the old lady who is being beaten up?" Aorabu knew the accused from kava drinking sessions they had attended together.
- [34] Aorabu saw 1 of the men who had been hitting the old woman go up to the accused and say, "Are you the one who is going to deal with this matter?" The man then punched the accused in the eye. They started fighting. Two other men came and started punching the accused. Aorabu heard the accused say, "I am dying." The person who had first punched the accused said, "Who did the stabbing?" The accused was on the ground, and the first assailant was holding him down, punching him. The other 2 men were kicking the accused. The accused attempted to push the men off him and tried to escape. The men followed him and kept up their attack. They were moving slowly in the direction of the Ministry of Finance building. When the accused got to a shipping container close to the old Parliament house, a man on a motorcycle came and took the accused away, heading west along the lagoon-side road. Aorabu then went and caught a bus back home.
- [35] In cross-examination, Aorabu said that the accused had neither a knife nor a bag.
- [36] That concluded the defence case.

- [37] 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.
- [38] In order to convict the accused of the offence of murder, I must be satisfied to the required standard of each of the following elements:
- that Bauro Teetan is dead;
 - that the accused caused Bauro's death by an unlawful act or omission;
 - that he did so with malice aforethought, as that expression is defined in section 194 of the Penal Code.
- [39] There can be no doubt that Bauro is dead; that much is conceded, so the first element has been established.
- [40] Did the accused cause Bauro's death? The evidence of all those who claimed to be eyewitnesses is impossible to reconcile. This is perhaps understandable, given the chaos that ensued that morning. In such a situation, it is inevitable that the various accounts will differ. However, it is hard to know where the truth lies. On the whole, I was impressed by the accused and the other defence witnesses, not so much by the witnesses for the prosecution, but it is not a competition. In the end, I find the scenario put forward by the prosecution simply strains credibility. That a man who left the house that morning to go to church and do some shopping would end up in the middle of a fatal knife fight with a group of strangers while on his way to the bank just does not make sense. Having listened carefully to all of the witnesses, I am left with some doubt that it was the accused who stabbed Bauro that morning. The accused is entitled to the benefit of that doubt.
- [41] On a full consideration of the evidence in this case, I find that I cannot be satisfied to the necessary standard that the accused killed Bauro. As such, with the second of the 3 elements not proven, I must find the accused not guilty. He is accordingly acquitted and discharged.


Lambourne J
Judge of the High Court

