



## HIGH COURT OF KIRIBATI

*Criminal Case N° 25/2019*

### **THE REPUBLIC**

**v**

### **TIOTI KABWEBWENIBEIA**

*Tewia Tawiita for the Republic  
Angitonu David for the prisoner*

*Date of sentencing: 21 October 2019*

### **SENTENCE**

- [1] Tioti Kabwebwenibeia has pleaded guilty to 1 count of assault occasioning actual bodily harm, contrary to section 238 of the *Penal Code* (Cap.67).
- [2] The offence was committed on 17 February 2019 at Tabwakea village on Kiritimati. That afternoon the prisoner and complainant were attending a meeting of elders of the Church of Christ. The complainant was the church treasurer. In the course of the meeting, the prisoner asked that church funds be used for a particular purpose. The complainant did not agree. The prisoner then accused the complainant of misusing the church funds. The discussion grew heated. The prisoner approached the complainant and a struggle ensued, during which the complainant received a scratch to his nose and lost a tooth (his last remaining upper tooth).
- [3] An information was filed on 18 July, charging the prisoner with causing grievous harm. When the matter was mentioned on 16 October, counsel for the prisoner advised that her client would be pleading not guilty, and it was agreed that the trial would commence the following day. At the start of the trial, counsel for the prosecution applied to amend the information to replace the original charge with the present one. Counsel for the prisoner did not object, and advised that her client would now be pleading guilty.
- [4] Ordinarily, as the loss of a tooth results in permanent disfigurement, such an injury would give rise to a charge of causing grievous harm. The prosecution accepts that the complainant's tooth was already loose and, while there is no

doubt that it was lost in the course of the struggle, it is not entirely clear how the tooth came to fall out. The plea to the lesser charge is accepted by counsel for the prosecution on that basis.

- [5] The prisoner is 54 years of age. He is married, and he and his wife have adopted 2 children, aged 6 and 11 years. He works as a security guard at the local branch of Punjas (Kiribati) Ltd. He has no previous convictions.
- [6] The complainant has provided a letter to the Court, asking that the prisoner not be prosecuted. He has accepted the prisoner's apology and they have reconciled. As I made clear to counsel, in Kiribati offenders are prosecuted by the Attorney-General on behalf of the Republic, not by the victim of the crime. The Republic has an interest in ensuring that a wrong-doer is punished, even if the complainant does not want that. While the desire of a particular complainant that his assailant not be punished is a matter that may properly be taken into account in determining an appropriate sentence, it is not a relevant consideration in deciding whether or not to proceed with the case at all.
- [7] The maximum penalty for the offence of assault occasioning actual bodily harm is 5 years' imprisonment. In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.<sup>1</sup>
- [8] Counsel for the prosecution submits that, despite the relatively minor nature of the complainant's injuries, a custodial sentence is warranted. In a recent case, after reviewing a number of comparable cases, I said that I considered a sentence of 6 months' imprisonment to be an appropriate starting point on a charge of assault occasioning actual bodily harm.<sup>2</sup> I see no reason to depart from that approach in this case.
- [9] The prisoner is a mature man, well-regarded in his community. As such, this was disgraceful conduct from someone who should have known better. He should be capable of resolving a dispute without resorting to brawling. Despite this, I am satisfied that there are no particular aggravating features to the prisoner's offending that have not already been considered in arriving at the starting point.
- [10] As far as mitigating factors are concerned, the prisoner is of previous good character and has pleaded guilty at the earliest possible opportunity. I accept that he is genuinely remorseful for his actions. For these matters I will reduce his sentence by 2 months.

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<sup>1</sup> *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

<sup>2</sup> *Riiti Timon v Republic* [2019] KIHIC 25, at [10].

- [11] Taking the above matters into account, I am of the view that the sentence in this case should be one of imprisonment for a period of 4 months.
- [12] As such a sentence falls within the scope of section 44 of the *Penal Code*, I turn to consider whether the circumstances of the offence and the prisoner's personal circumstances warrant suspension of his sentence.
- [13] The prisoner is not a young man, but I am satisfied that this offending was out of character for him. He has a good job and family responsibilities. A representative from Punjas informed the Court of their willingness to continue to employ the prisoner, despite his conviction for this offence, as long as he is not sentenced to an immediate term of imprisonment. Were he to be required to serve his sentence now, he would lose his job. In the circumstances I am prepared to suspend his sentence so that this does not happen.
- [14] The prisoner is convicted on his plea of guilty. He is sentenced to 4 months' imprisonment. However I order that the sentence is not to take effect unless, within 1 year from today, the prisoner commits another offence punishable with imprisonment. If such an offence is committed, it will be a matter for the court to decide whether this sentence should then take effect.

  
**Lambourne J**  
Judge of the High Court

