HIGH COURT OF KIRIBATI

Miscellaneous Application Nº 146/2019
arising from Criminal Case Nº 28/2019

THE REPUBLIC

v

TEBWEBWE TERAAKA

Eweata Maata for the Republic
Taoing Taoaba for the accused

ORDER

[1]   By information filed on 17 July 2019, the accused is charged with 2 counts of false pretences, contrary to section 301(a) of the *Penal Code* (Cap.67), and 1 count of obtaining money on a forged document, contrary to section 338(a) of the *Penal Code*.

[2]   The accused is yet to be arraigned, but her counsel has informed the Court that she will be pleading not guilty to the charges. Today was to have been the first day of the trial, having been adjourned from 1 October. However, counsel for the accused has filed an application that I recuse myself from the hearing of this case. Counsel for the prosecution does not oppose the recusal application.

[3]   The basis for the application is that I have previously heard a matter involving the accused, during which I made an adverse finding as to her credibility. Her counsel advises that the issue of the accused's credibility will be central to the matters in dispute in this trial. While there is no suggestion of actual bias, counsel submits that there is a real possibility that my earlier finding as to the accused's credibility may give rise to the perception that I will be unable to put that finding to one side when I come to consider her credibility in this case.

[4]   It has been said that it is "of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done".[1]

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[1]   *R* v *Sussex Justices;* ex parte *McCarthy* [1924] 1 KB 256, at p.259.

On that basis I will therefore recuse myself from any further involvement in this matter. The trial will have to be heard by the Chief Justice.

[5]   This matter is adjourned for mention to 9:30am on Wednesday, 30 October 2019, before the Chief Justice. The accused, not having applied for bail on these charges, is remanded in custody.

Dated 28 October 2019.

Lambourne J
Judge of the High Court