



HIGH COURT OF KIRIBATI

Criminal Case No 21/2017

THE REPUBLIC

v

TAINIMAKI AMBO

*Pauline Beiatou, Director of Public Prosecutions, for the Republic
Reiati Temaua for the accused*

Dates of hearing: 19-20 March 2019

Date of judgment: 22 March 2019

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] The offence is alleged to have occurred on 21 December 2013. An information was originally filed in this case on 11 January 2017. That information did not comply with section 70 of the *Criminal Procedure Code (Cap.17)*. On 1 August 2018 the Attorney-General rectified the defect by filing a fresh information (in the same terms) signed by her.
- [3] Three witnesses were called by the prosecution. The first was Nei Atinta Rakaiti. On the day in question she went to visit her husband at the prison in Bairiki. She was accompanied by her daughter, Tekaua, her daughter-in-law, Teebwa, and Teebwa's children, Rakaiti, Maunei and Taumaro. The visit concluded at 4:00pm, and they boarded a bus to return home to Temwaiku at approximately 4:30pm. The trip took about 1 hour and, by the time they arrived, they were the only passengers. It was still daylight. The accused was the driver of the bus; he was known to Atinta as he had previously worked with her son Mwake.
- [4] The bus stopped on the lagoon-side of the road, facing east. Atinta and the others got off the bus. Their house was across the road, on the ocean-side. Atinta had Maunei with her. They stayed and chatted with the accused and the fare collector for a little while. Atinta was standing at the open sliding door of the bus, while Teebwa was at the front passenger door. At one point Atinta asked Teebwa

where Maunei was, and she said, "He's here." Atinta saw Maunei with Teebwa, near the front of the bus. Teebwa was holding Maunei's hand.

- [5] After they finished chatting, the bus moved off. Atinta heard a bang. She asked Teebwa, "Where's your son?" Atinta ran to the front of the bus and saw Maunei on the ground near the front passenger-side tyre. He was lying on his left side on the edge of the road; the upper half of his body was on the road, while his legs were on the verge. She picked him up. There was an injury to the left side of Maunei's head, under his ear. Atinta described it as 'soft'. There was also an injury on Maunei's left shoulder. She saw no bleeding. Atinta boarded the bus with Maunei and told the accused to drive to the hospital. Maunei was having difficulty breathing. When they got to the hospital, the doctor who examined Maunei told Atinta that he was dead. She then returned home to Temwaiku with his body.
- [6] In cross-examination, Atinta agreed that the accused had been looking straight ahead immediately before she heard the sound of the collision. She had not seen what he did before driving off.
- [7] The second prosecution witness was Tekaeua Rakaiti. Maunei was her nephew. Tekaeua would have been only 12 or 13 at the time of the incident. She had gone with her mother, sister-in-law and nephews to the prison to visit her father; it was a Christmas gathering for the prisoners' families. On arrival in Temwaiku, Tekaeua stood on the side of the road while the others chatted. She heard her mother ask Teebwa if Maunei was with her, to which Teebwa responded, "Yes, I'm holding his hand." Tekaeua saw Maunei standing on his own a short distance away, close to a pandanus tree.
- [8] As the bus drove away, Tekaeua saw it swerve to the left, as if swinging wide to make a U-turn. She heard a bang, and then someone said, "Somebody has died." Atinta ran to the front passenger side of the bus. Tekaeua could see Maunei on the ground in front of the bus tyre. Atinta picked Maunei up and got on the bus. Tekaeua went to the house. Atinta returned with Maunei's body some time later.
- [9] The final prosecution witness was Maunei's mother, Nei Teebwa Maunei. Maunei was 2 years old at the time of his death. After the family returned to Temwaiku, Teebwa stood beside the bus, talking with the accused and the fare collector. She had the baby, Taumaro, in her arms, and Maunei was standing next to her. Teebwa then crossed the road in front of the bus, leaving Maunei with Atinta. Shortly after reaching the other side of the road, she heard a bang. When she turned around she saw Atinta holding Maunei in her arms. He was limp. Atinta boarded the bus with Maunei and told the accused to take them to the hospital.
- [10] In cross-examination, Teebwa accepted that she had not held Maunei's hand after they got off the bus.

- [11] The record of the police interview with the accused was tendered by consent. It was conducted on the day after Maunei's death. The accused accepted that his bus had collided with Maunei, but he said that, despite looking to the front of the bus before driving off, he had not seen the child.
- [12] That brought the prosecution case to a close. I formally found that the accused had a case to answer and informed him of his rights, as required by section 256(2) of the *Criminal Procedure Code*. Counsel for the accused advised that his client would not be giving evidence, nor would he be calling any witnesses.
- [13] 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.
- [14] Section 33(1) of the Traffic Act provides as follows:
- A person must not cause the death of another person by driving 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.
- [15] In the case of *Republic v Bwereata Kamoriki*,¹ 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."² He continued:
- 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".³
- [16] There is no dispute that the bus driven by the accused collided with Maunei and caused his death. The only issue is whether the accused can be said to have been driving without due care and attention at the time. Counsel for the prosecution submits that the collision was a consequence of the accused failing to keep a proper lookout before moving off. A reasonably prudent driver would have taken steps to ascertain the whereabouts of all of those close to the bus before putting the vehicle in motion. Counsel submits that the accused should have asked Atinta or the fare collector to make sure that the children were out of the way.
- [17] A difficulty confronting the prosecution is that none of the witnesses actually saw the collision occur. Although the evidence is only circumstantial, the Court can still be satisfied of the accused's guilt to the required standard. However, before

¹ High Court Criminal Case 2/2017

² [2010] SASC 21, at [17]

³ *ibid.*, citations removed

I can find the accused guilty, I must be satisfied that the only rational inference that can be drawn from the evidence is that he failed to drive as a reasonably prudent driver would have in the circumstances.

- [18] Had Maunei been struck by the bus while standing still on the side of the road, I would have little difficulty in convicting the accused. However, it is just as likely a scenario that Maunei ran into the path of the moving vehicle. As I remarked to counsel in the course of submissions, it is easy to picture the 2-year-old Maunei, having just seen his mother cross the road in front of the bus, taking off after her, oblivious to the dangers posed by the road and the accused's bus. In such a case, a collision would be almost impossible to avoid, and there is little a reasonably prudent driver could do about it.
- [19] Maunei's death in December 2013 was a tragedy for all who were close to him. Even now, more than 5 years later, it is clear that his family find the memory of the circumstances of his death deeply distressing. However, my role requires that I put emotion to one side. I remind myself that it is not inevitable that Maunei's death must be somebody's fault. There remains a distinct possibility that it was an unavoidable accident. As there is a reasonable hypothesis that is consistent with the accused's innocence, I must give him the benefit of the doubt and acquit.
- [20] On a full consideration of the evidence in this case, I find that I cannot be satisfied to the necessary standard that the accused's driving fell below the standard expected of a reasonably prudent driver. I therefore find the accused not guilty. He is acquitted and discharged.


Lambourne J
Judge of the High Court

