



HIGH COURT OF KIRIBATI

Criminal Case No 74/2017

THE REPUBLIC

v

TEIAKOBWA TEIAKOBWA

*Eweata Maata for the Republic
Reiati Temaua for the prisoner*

Date of sentencing: 3 April 2019

SENTENCE

- [1] Teiakobwa Teiakobwa has been convicted after a trial on a charge of assault occasioning actual bodily harm, contrary to section 238 of the *Penal Code* (Cap.67). The facts of the case are set out in my judgment, which was delivered on 1 April 2019.
- [2] The prisoner is now 24 years of age; he would have been 22 at the time of the offence. He leads a subsistence lifestyle. He is married with 2 children, aged 11 months and 5 years. He has no previous convictions.
- [3] This matter falls towards the lower end of the spectrum of cases of this kind. The prisoner was drunk and approached the complainant while she was bathing. It was a very foolish thing to do. The fact that they had previously had a sexual relationship does not make it any less foolish. When the complainant screamed he put his hand over her mouth, injuring her lower lip in the process.
- [4] The maximum penalty for assault occasioning actual bodily harm is imprisonment for 5 years. It is not unusual for such offending to result in a custodial sentence. However this is not such a case. The prisoner did not strike the complainant, and her injury was minor.
- [5] There are no matters that could be considered aggravating factors in this case. The only relevant mitigating factor is the prisoner's lack of previous convictions. The prisoner went to trial, as is his right, but, by doing so, he has foregone the reduction in sentence that he would have received had he pleaded guilty.

- [6] It has been almost 2 years since the commission of the offence. Counsel for the prisoner submits that such a delay is unacceptable, and should result in a modest reduction in his client's sentence.¹ Counsel argues that the Court of Appeal had (in *Li Jian Pei*) set a threshold of a year as being the point beyond which a delay becomes unacceptable. This misconstrues the decision of the Court of Appeal. In its judgment the Court remarked that a delay of nearly a year between the filing of the information and the first appearance of the appellants was unreasonable.² While each case should be assessed on its own facts, I consider that a period of less than 2 years from commission of the offence to final resolution of the matter will not ordinarily be considered an unacceptable delay justifying a reduction in sentence.
- [7] A non-custodial sentence is appropriate in this case, but sentencing options are limited. The prisoner does not have an income, so it is not appropriate to fine him. In the circumstances, I have decided that the prisoner should be released on his entering into a bond to keep the peace and be of good behaviour for a period of 1 year, under section 36(1) of the *Penal Code*.
- [8] If the prisoner is to honour his bond, it will be necessary for him to refrain from breaking the law. As he has shown himself to be capable of stupidity while under the influence of alcohol, it might be a good idea for him to stop drinking, at least for the period of the bond.
- [9] Before leaving Court today, the prisoner will be asked to sign an acknowledgment of the conditions of the bond and of the consequences of failing to comply with those conditions.


Lambourne J
Judge of the High Court



¹ *Attorney-General v Li Jian Pei & Taaitaiti Areke* [2015] KICA 5.

² *ibid.*, at [18].



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BOND

- [1] Teiakobwa Teiakobwa, you have been convicted of the offence of assault occasioning actual bodily harm, contrary to section 238 of the *Penal Code* (Cap.67). Instead of sentencing you at once to any punishment, the Court orders that you be released on this bond without punishment for a period of 1 year under section 36(1) of the *Penal Code*.
- [2] For the period of this bond you are to keep the peace and be of good behaviour.
- [3] If at any time the Court is satisfied that you have failed to observe the conditions of this bond, it may issue a warrant for your arrest, to be brought before the Court to be sentenced for the above offence.

Dated 3 April 2019.


Lambourne J
Judge of the High Court

The seal is circular with a red border. The outer ring contains the text "HIGH COURT OF KIRIBATI" at the top and "TE BOMI AE E RIETATA I KIRIBATI" at the bottom. In the center is the coat of arms of Kiribati, featuring a sun, waves, and a bird.

Acknowledgment

I agree to enter into this bond. I acknowledge that I fully understand its conditions, and I undertake to comply with those conditions. I also understand what will happen to me if I fail to do so.

Teiakobwa

Teiakobwa Teiakobwa