



HIGH COURT OF KIRIBATI

Criminal Case N° 45/2016

THE REPUBLIC

v

TEIKAUEA MORITI

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

Date of sentencing: 27 May 2019

SENTENCE

- [1] Teikauea Moriti has pleaded guilty to causing grievous harm with intent to cause grievous harm, contrary to section 218(a) of the *Penal Code* (Cap.67).
- [2] The offence was committed on 22 March 2015 at Buota village on Tabiteuea North. The prisoner, who had been drinking, returned home that evening and encountered the complainant, who was also quite intoxicated. They exchanged words, and the complainant swung at the prisoner with a knife, missing him. The prisoner then took the bush knife he had with him and struck the complainant repeatedly. The complainant tried to run away but the prisoner pursued him, continuing to strike him with the bush knife.
- [3] As a result, the complainant suffered many injuries, which are detailed in the provided medical report. The more serious wounds were as follows:
- a. a 5cm cut to the front of the scalp, down to the bone;
 - b. 4 cuts to the back of the head, each approximately 5cm in length and down to the bone; at least one of these resulted in damage to the skull;
 - c. a cut to the upper back, 5cm in length and 3cm in depth;
 - d. a cut to the upper left arm, 4cm long and 3cm deep;
 - e. the middle and ring fingers of the right hand were severed;
 - f. a 7cm by 5cm cut to the left wrist, which severed the flexor tendon and broke the radius bone;

- g. a deep cut to the web between the ring and little fingers of the left hand, which separated the little finger from the hand;
- h. 'rugged' wounds to all fingers on the left hand, exposing the bones and tendons.

In addition, the complainant suffered superficial wounds to his face, neck, left ear, and upper back.

- [4] The complainant's wounds eventually healed, but he is left with significant scarring. The most serious of the lasting injuries are the loss of the fingers, together with deformity and permanent loss of function of the left hand. These are particularly significant given that the complainant leads a subsistence lifestyle on an outer island.
- [5] An information was originally filed on 1 April 2016. A second information (correcting an error) was filed on 12 May 2016. For reasons unclear, it was not until August 2018 that the case first came before the Court, and the prisoner did not make his first appearance until the following month. As neither information complied with section 70 of the *Criminal Procedure Code* (Cap.17), the Attorney-General filed a fresh information on 28 September 2018. The Court was informed that the prisoner would be pleading not guilty and the matter was fixed for trial. On 15 May 2019 (what was to have been the first day of the trial) counsel for the prisoner advised that his client would now be pleading guilty.
- [6] The prisoner is now 49 years of age, and was 45 at the time of the offence. He is married with 9 children, the youngest of whom is 5 months. The eldest child is aged 18 years. He supports his family through a subsistence lifestyle. He has no previous convictions.
- [7] The prisoner's offending was serious. Intoxication was clearly a contributing factor, although this in no way excuses his conduct. There was certainly provocation from the complainant, who was the initial aggressor. While it is admitted that there was pre-existing bad blood between the prisoner and the complainant, there is nothing to suggest that this offence was in any way premeditated.
- [8] Immediately after the incident, the prisoner and his family were banished from Tabiteuea North. They were forced to relocate to Tabiteuea South, where they have been able to stay with family. It is not clear whether this customary penalty is permanent or temporary. In any event it is significant.

- [9] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.¹ The maximum penalty for causing grievous harm with intent is imprisonment for life.
- [10] Counsel for the prosecution submits that a custodial sentence is warranted. The Court of Appeal has suggested² that a court, when sentencing for the offence of causing grievous harm with intent, may find assistance from the New Zealand Court of Appeal decision in *R v Taueki*.³
- [11] Applying the approach taken in *Taueki* to the circumstances of this case, the prisoner's conduct falls towards the lower end of band 2 (5-10 years). Relevant matters are: the use of a lethal weapon; the seriousness of the complainant's injuries, which resulted in permanent disability impacting on his quality of life; and the fact that the attack included several serious blows to the complainant's head. From these factors I would ordinarily conclude that this case sits in the middle of band 2, but the provocation from the complainant justifies a lower starting point.⁴ I am of the view that, had the prisoner been convicted after a trial, an appropriate starting point would be a sentence of 6 years' imprisonment.
- [12] I am satisfied that there are no particular aggravating features to the prisoner's offending that have not already been taken into consideration in arriving at the starting point.
- [13] As far as mitigating factors are concerned, the prisoner has no previous convictions. I accept that he is genuinely remorseful for his actions. The prisoner did plead guilty, but very late in the day, so the reduction for his plea will not be anything like the significant reduction in sentence to which he would have been entitled had his plea been a timely one. I also take into account that the prisoner spent 5 days in custody after his arrest. For these matters I reduce his sentence by 6 months.
- [14] It is relevant that the prisoner has also received a customary punishment for his crime. This is no small matter. The *unimwane* of Tabiteuea North have worked hard to reduce the rate of offending involving knives on their island. The bloodshed that was common 20 years ago is today mostly a memory, and the community is to be commended for this. The residents of Tabiteuea North

¹ *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

² See *Republic v Teuruba Teriao* [2013] KICA 12; also *Republic v Bwebwetaake Dan & Taniera Dan* [2014] KICA 4.

³ [2005] NZCA 174; [2005] 3 NZLR 372. Note that the equivalent offence under section 188(1) of the New Zealand *Crimes Act 1961* attracts a maximum penalty of only 14 years' imprisonment, so an adjustment would ordinarily need to be made to allow for the higher maximum penalty that applies here. It is not apparent from either judgment of the Court of Appeal that the Court was aware of the disparity between the maximum sentences in Kiribati and New Zealand.

⁴ *ibid.*, at [32].

know well the consequences of contravening the island's rules. However, a Court should have regard to any penalty imposed under custom when deciding the penalty to be imposed under law for the same conduct. To take account of the banishment of the prisoner and his family from their home island, I reduce his sentence by a further 6 months.

- [15] Finally, it has taken more than 4 years to conclude the prosecution of this case. That is an unacceptable delay; one of the worst I have seen. For the reasons discussed by the Court of Appeal in *Li Jian Pei*, the prisoner is entitled to a modest reduction in his sentence to compensate him for the breach of his constitutional right to be afforded a fair hearing within a reasonable time.⁵ I will reduce his sentence by another 6 months.
- [16] The prisoner is convicted on his plea of guilty. Taking all of the above matters into account, he is to be imprisoned for a period of 4 years and 6 months. The sentence is to run from today.


Lambourne J
Judge of the High Court



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