



HIGH COURT OF KIRIBATI

Criminal Case N° 5/2019

THE REPUBLIC

v

MOANIBA IEREBUKA

*Teanneki Nemta for the Republic
Teetua Tewera for the prisoner*

Date of sentencing: 17 June 2019

SENTENCE

- [1] Moaniba Ierebuka has pleaded guilty to 1 count of indecent assault, contrary to section 133(1) of the *Penal Code*.¹
- [2] The circumstances giving rise to this charge occurred at Teoraereke, South Tarawa, at around midday on 1 October 2018. The prisoner had come to South Tarawa from Marakei because his wife required medical treatment. They were staying at the same house as the complainant, who is the 22-year-old sister of the prisoner's brother's wife. On the day in question she was at home and had fallen asleep watching a movie. She awoke to find the prisoner attempting to undo the zip of her shorts. She tried to stand, but the prisoner got on top of her, pinning her arms with his legs. He was trying to remove the complainant's shorts, but she struggled. She called out for help, but no one came. The prisoner threatened to beat her if she called out again. Despite this she again called for help. When she shouted for the third time, the prisoner told her that he would get his knife if she kept shouting.
- [3] Eventually the complainant managed to free herself and stand up, but the prisoner then pulled her down, causing her to lose her balance. She fell into his lap. The prisoner was then able to remove her shorts. He was moving his face towards the complainant's genital area when someone came and asked the prisoner what he was doing. The complainant then managed to escape.

¹ Despite the repeal and replacement of section 133 by section 4 of the *Penal Code (Amendment) and the Criminal Procedure Code (Amendment) Act 2017*, which commenced on 23 February 2018, this case has proceeded under the *Penal Code* as it was in force on the date of the offence (as provided for under section 10(2) of the amending Act).

- [4] The information was filed on 11 March 2019, and the prisoner made his first appearance on 10 May. On 31 May counsel for the prisoner advised that his client would be pleading guilty.
- [5] The prisoner is 46 years of age. He is married with 6 children, aged between 9 and 16. He leads a subsistence lifestyle on Marakei. He has no previous convictions. Counsel for the prisoner offers no explanation for his client's conduct, other than to say that he was intoxicated at the time of the offence. When questioned by police, he chose to remain silent.
- [6] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.² The offence of indecent assault carries a maximum penalty of 5 years' imprisonment.³
- [7] As in the case of *Rouben Baitau*,⁴ I am satisfied that the prisoner's conduct falls towards the lower end of the spectrum. There was no actual contact with the complainant's genital area, and her underwear was not removed. An appropriate starting point is a sentence of imprisonment for 6 months.
- [8] The following are the aggravating features of this case:
- a. the prisoner threatened to beat and stab the complainant;
 - b. the difference in ages between the prisoner and the complainant is significant.
- For these matters I increase the prisoner's sentence by 1½ months.
- [9] As far as mitigating factors are concerned, the prisoner has no previous convictions. He pleaded guilty at the earliest possible opportunity. For these matters I will deduct 2½ months.
- [10] It is not suggested that there has been an unacceptable delay in the prosecution of this case, and there was no period of pre-sentence custody.
- [11] Taking all of the above matters into account, the prisoner is convicted and sentenced to be imprisoned for a period of 5 months. While it is open to me to suspend such a sentence under section 44 of the *Penal Code*, I see no reason to do so in this case. The sentence is to run from today.


Lambourne J
 Judge of the High Court



² *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

³ Parliament recently increased the maximum penalty for indecent assault to imprisonment for 7 years, so an offence committed on or after 23 February 2018 should attract a higher sentence.

⁴ *Republic v Rouben Baitau* [2019] KHC 7.