



HIGH COURT OF KIRIBATI

Criminal Case N° 53/2017

THE REPUBLIC

v

ANTEREA BARANIKO

*Manrongo Kararaonnang for the Republic
Raweita Beniata for the accused*

Date of sentencing: 17 January 2020

SENTENCE

- [1] Anterea Baraniko has been found guilty following a trial on 5 counts of defilement of a girl under the age of 13 years.¹ The facts of the case are set out in my judgment, which was delivered on 13 December 2019.
- [2] The offences were committed in 2010 and 2011. The complainant was, at the time, the prisoner's stepdaughter, and she was then aged 10 or 11 years. This is yet another case where a person in a position of trust has exploited that position to gratify his sexual feelings with a young family member. I have not been provided with a victim impact statement from the complainant, but it is not difficult to imagine the physical and emotional trauma she must have experienced as a result of the prisoner's offending. Despite this, I was impressed by the complainant's courage and resilience as she testified in the trial. I hope that she will find a way to ensure that these events do not rule her life, and she will be able to live something resembling a normal life.

¹ Section 134(1), *Penal Code* (Cap.67). Despite the repeal and replacement of section 134 by the *Penal Code (Amendment) and the Criminal Procedure Code (Amendment) Act 2017*, with effect from 23 February 2018, this case has proceeded under the *Penal Code* as it was in force on the date of the alleged offences (as provided for under section 10(2) of the amending Act).


- [3] The prisoner is now 55 years of age; he would have been about 46 or 47 at the time of the offences. He has previously worked as a village warden in Abaokoro, and has been an elected member of the Eutan Tarawa Council; it is clear that he was once highly regarded by his community. He ceased to be the village warden in 2014 and now leads a subsistence lifestyle. He has 4 adult children and a granddaughter at secondary school, for whom he provides financial support. He has no previous convictions.
- [4] The offence of defilement carries a maximum penalty of imprisonment for life. In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.²
- [5] In order to avoid what might otherwise be a crushing sentence were I to treat each offence separately, I will apply the totality principle, and impose a single sentence in respect of all counts that I consider meets the gravity of the prisoner's offending.
- [6] The Court of Appeal has held that an appropriate starting point in a contested case on a single charge of defilement is imprisonment for 5 years.³ I consider the following matters to be aggravating factors in this case:
- a. as the complainant's stepfather, the prisoner was in a position of trust, and his offending constitutes a grave breach of that trust;
 - b. the offending occurred on multiple occasions;
 - c. while no physical force was used, there were threats from the prisoner of consequences for the complainant if she told anyone what he had been doing;
 - d. the complainant was very young, and the difference in ages between the prisoner and the complainant is significant;
 - e. the prisoner did not use a condom, thereby exposing the complainant to the risk of sexually-transmitted infection.

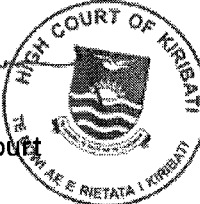
These matters, in particular the multiple offending, warrant a steep increase from the starting point. I increase the prisoner's sentence by 5 years.

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

³ *Republic v Uriano Arawaia* [2013] KICA 11, at [18].

- [7] 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.
- [8] The prisoner has demonstrated no remorse for his actions, and there is little if anything to be said in mitigation, save that he has no previous convictions. For these matters I will reduce his sentence by 3 months.
- [9] There has been an unacceptable delay in the prosecution of this case. The prisoner's offending was reported to police in September 2011, over 8 years ago. It is not clear why it has taken so long to conclude this matter. In an earlier case I said that I considered the 7-year delay there to be an appalling violation of the offender's constitutional right to be afforded a fair hearing within a reasonable time.⁴ This is worse. For the reasons discussed by the Court of Appeal in *Li Jian Pei*, the prisoner is entitled to a reduction in his sentence to compensate him for this breach.⁵ I will reduce his sentence by a further 12 months.
- [10] Taking all of the above matters into account, the prisoner is sentenced to be imprisoned for a period of 8 years and 9 months. Under section 28(2) of the *Penal Code*, I order that the prisoner's sentence is to run from 13 December 2019, being the day on which he was first remanded into custody on these charges.


Lambourne J
Judge of the High Court



The seal of the High Court of Kiribati is circular. It features a central shield with a sun, a wave, and a palm tree. The text 'THE HIGH COURT OF KIRIBATI' is written around the top inner edge, and 'I KIRIBATI E RIETATA I KIRIBATI' is written around the bottom inner edge.

⁴ *Republic v Wangka Tion* [2019] KIHIC 89, at [13].

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