



HIGH COURT OF KIRIBATI

Criminal Case N° 47/2019

THE REPUBLIC

v

KAITE TEKAITI

*Teanneki Nemta for the Republic
Raweita Beniata for the prisoner*

Date of sentencing: 3 February 2020

SENTENCE

- [1] Kaite Tekaiti has pleaded guilty to offences of burglary and simple larceny.¹
- [2] The offences were committed in the early hours of 16 September 2019. The prisoner had been drinking fermented yeast and was somewhat intoxicated. He entered the Eita residence of Miku Nakayama by forcing open the kitchen door. He intended to steal items that could be pawned to get money for more drink. The prisoner did not know Ms Nakayama personally, but he had seen her around and knew that she lived alone. Ms Nakayama is a nurse and a citizen of Japan, and she was working in Kiribati under the Japanese volunteer development assistance program.
- [3] Once inside the house, the prisoner went into the room where Ms Nakayama was sleeping and stood beside her bed. She woke up and, on seeing him in her room, asked why he was there. He told her that he loved her and wanted to lie down next to her. Hearing a call from outside, the prisoner left the room. The complainant locked her bedroom door and called the police. By the time they arrived the prisoner had left the house, taking with him a bottle of rum and some fruit juice. I have not been told the value of the missing items, but it is

¹ Sections 292(a) and 254(1), *Penal Code* (Cap.67).

likely to be less than \$100. The prisoner was arrested the next day, having been identified by security guards from the petrol station across the road. On being questioned by police he made full admissions.

- [4] An information was filed on 24 September, and the prisoner first appeared before me on 8 November. On 6 December the prisoner failed to appear in court and a warrant was issued for his arrest. He was arrested on Maiana on 27 December and returned to South Tarawa. He has been in custody ever since. On 24 January counsel for the prisoner advised that his client would be pleading guilty to both charges.
- [5] The prisoner is unsure of his age, but he is probably around 22 years of age. His parents are both dead and, at the time of the offences, he was living with his paternal grandparents. His education stopped at Form 3. The prisoner does not have a job, but he would often go out fishing as his contribution to the household. He has no previous convictions. According to defence counsel, the prisoner was encouraged to commit the offences by an older friend, with whom he had been drinking that night.
- [6] The maximum penalty for burglary is imprisonment for life, while for simple larceny it is 5 years' imprisonment. In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.²
- [7] Counsel for the prosecution submits that a custodial sentence is warranted in this case. She suggests a starting point of 2 years. I agree that a sentence of imprisonment is the inevitable consequence of this kind of offending although, for reasons I will discuss later, I think that counsel's suggested starting point is too low. It is important to keep in mind something I said in an earlier case:
- It is said in Kiribati that the only crime worse than murder is theft. In a communal society, where security is non-existent, respect for the belongings of others is at the core of our need to maintain peace and harmony in our communities.³
- [8] To date, neither this Court nor the Court of Appeal has given any guidance as to an appropriate starting point when sentencing for burglary. The offence is

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

³ *Republic v Tioti Teweia* [2019] KIHC 31, at [11].

not one that comes before the High Court often, as it is a matter also within the jurisdiction of the Magistrates' Court.⁴

- [9] The crime of burglary can only be committed with respect to a dwelling-house. The offence must also be committed "in the night".⁵ As such, the chance of confrontation between offender and occupants is always high. These factors place burglary into the most serious category of offences, as indicated by the Parliament's decision to fix a sentence of imprisonment for life as the maximum penalty.
- [10] In an earlier burglary case, I fixed a starting point of 7 years.⁶ That offender was also being sentenced for several other similar dishonesty offences, committed over a period of several months. On reflection (and while I do not think that the sentence ultimately imposed in that case was wrong), in setting the starting point I perhaps took into account a number of matters that properly should have been considered as aggravating factors, rather than as being relevant to the determination of the starting point.
- [11] I have considered a number of other comparable cases from this Court,⁷ as well as cases involving the lesser offences of house-breaking with intent and entry of a dwelling-house in the night with intent.⁸ For a single offence of burglary I am of the view that an appropriate starting point in a contested case is a sentence of 4 years' imprisonment. I am conscious that this is somewhat higher than the starting point suggested by prosecuting counsel, but I consider that anything less fails to adequately address the seriousness of such offending. The sentence to be imposed must send a clear message to any like-minded individuals that such behaviour will not be tolerated.
- [12] There are several possible features of a particular instance of burglary that will increase the culpability of the offender and call for a significant increase from the starting point. These include:⁹
- a. the degree of planning and sophistication;

⁴ Despite the maximum penalty, jurisdiction over burglary matters is vested in the Magistrates' Court under item (ii)(b) of Schedule 2 to the *Magistrates' Courts Ordinance* (Cap.51).

⁵ Defined in section 4 of the *Penal Code* as being between 6:30pm and 6:30 the next morning.

⁶ *Tioti Teweia*, at [14].

⁷ *Republic v Takure Ioane* [2015] KHC 5, and the cases referred to there.

⁸ Sections 293 and 294(a), *Penal Code*.

⁹ *Senior v Police* (2000) 18 CRNZ 340.

- b. actual danger to or confrontation with occupants;
- c. the impact or potential impact upon occupants or owners of the house;
- d. whether the offence was committed in company;
- e. the extent of any damage done; and
- f. the kind and value of property stolen.


[13] I am satisfied that, in this case, the prisoner's offending was opportunistic. Furthermore, little damage was done to the house, and the items stolen were of little value. However, the fact that the prisoner broke into the house while the complainant was at home and confronted her in her bedroom as she slept is a significant aggravating factor. As a woman living alone the complainant was particularly vulnerable. For the prisoner to invade her privacy in this way is extremely serious. To reflect this additional culpability I will increase his sentence by 1 year from the starting point.

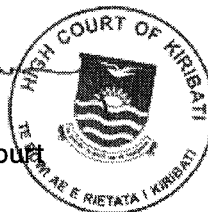
[14] As for mitigating factors, the prisoner co-operated with police and has no previous convictions. His youth and immaturity are also matters that warrant a modest reduction in sentence. For these matters I will reduce his sentence by 9 months.

[15] For his early pleas of guilty, the prisoner is entitled to receive a significant discount. For this his sentence will be further reduced by 1 year and 3 months. That brings the sentence on the burglary count down to 3 years.

[16] The larceny offence can be dealt with by imposing a short custodial sentence that will be served at the same time as the sentence for the principal offence.

[17] The prisoner is convicted on his pleas of guilty. On count 1 (burglary) he is sentenced to imprisonment for 3 years. On count 2 (larceny) he is sentenced to 3 months' imprisonment, to be served concurrently with the sentence imposed in respect of count 1. I order that the prisoner's sentence is to run from 27 December 2019, being the day on which he was taken into custody on these charges.¹⁰


Lambourne J
 Judge of the High Court



¹⁰ Under section 28(2) of the *Penal Code*.