



HIGH COURT OF KIRIBATI

Criminal Case N° 31/2019

THE REPUBLIC

v

TIIROKO ARAWATAU

*Tewia Tawiita for the Republic
Raweita Beniata for the prisoner*

Date of sentencing: 24 February 2020

SENTENCE

- [1] Tiiroko Arawatau has been convicted after a trial of having caused the death of Tabwai Tekaaï by driving without due care and attention.¹ He has also pleaded guilty to driving without a driver's licence.² The facts of the case are set out in my judgment, delivered on 17 February 2020.
- [2] Careless driving causing death is punishable by up to 5 years' imprisonment, a fine of not more than \$2500, or both. Driving without a driver's licence carries a mandatory minimum penalty of a \$500 fine, the maximum penalty being 2 years' imprisonment, a fine of \$1000, or both. I may have regard to all of the consequences of the prisoner's driving in determining the penalties to be imposed.³
- [3] The prisoner is 45 years of age. He is married, with 3 children aged between 11 and 26. He continues to be employed by Tokaraetina as a carpenter and is the sole provider for his family. He has not driven a motor vehicle since the day of the incident. He later apologised to his cousin Tekaaï, Tabwai's father.

¹ *Traffic Act 2017, section 35(1).*

² *Traffic Act 2017, section 20(1).*

³ *Traffic Act 2017, sections 20(2) and 35(4).*

Tekaai came to Court to confirm that he has forgiven the prisoner and to ask that leniency be extended to him. A letter from the Catholic catechist in Marenanuka was also provided to the Court, which makes it clear that the villagers hold the prisoner in high regard. He has no previous convictions.

[4] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.⁴

[5] I will first deal with the careless driving causing death charge. In the case of *Rereintetaake Kanooa*, the Court of Appeal agreed with a statement from the Chief Justice that an overall sentence within the range of 1 to 3 years' imprisonment is appropriate for offending of this nature.⁵ In that case, the Court refused to interfere with a sentence of imprisonment for 18 months. Speed was a factor in the offending and the appellant had entered an early plea of guilty.

[6] I am satisfied that the prisoner's offending sits towards the lower end of the spectrum of seriousness. I consider that an appropriate starting point is 15 months.

[7] I regard the following to be the aggravating features of this case:

- a. the deceased child was a particularly vulnerable road user;
- b. the prisoner ignored a clear warning from his passenger that immediate action was required to avoid colliding with the child;
- c. not only did the prisoner not have a driver's licence at the time, but the vehicle was of a class that required the driver to hold a special licence.⁶

For these matters I will increase his sentence by 5 months.

[8] As for mitigation, the prisoner's lack of prior driving experience is relevant, as is the assistance he rendered to Nei Tabwai at the scene of the collision. He has no prior convictions, and is a person of previous good character. The prisoner surrendered himself to the police soon after the incident and

⁴ *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

⁵ *Rereintetaake Kanooa v Republic* [2014] KICA 3, at [6]-[7].

⁶ *Traffic Act 2017*, section 25. The truck was a commercial vehicle. The prisoner could not have obtained a commercial licence until he had held an ordinary licence for at least 1 year. He would also have had to satisfy the licensing authority that he was competent to drive such a vehicle.

cooperated with the investigation. I accept that he is genuinely remorseful. For these matters I will reduce the prisoner's sentence by 2 months.

- [9] 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.
- [10] Taking all of the above matters into account, on count 1 the prisoner is to be sentenced to imprisonment for 1 year and 6 months. On count 2, the prisoner is sentenced to imprisonment for 7 days, to be served concurrently.
- [11] It is open to me to suspend such a sentence.⁷ Counsel for the prisoner submits that the sentence should be suspended. The question is whether the circumstances of the offences and the prisoner's personal circumstances warrant suspension of his sentence. There are some similarities between this case and that of *Rabuna Kokoria*.⁸ It is hard to resist the plea for leniency from Nei Tabwai's father. However, suspension of a sentence in one case does not necessarily mean that the sentence will be suspended in another, even if the facts of the 2 cases are similar. As I said in *Bwereata Kamoriki*, it will be a rare case where a person convicted for the offence of careless driving causing death receives anything other than an immediate sentence of imprisonment.⁹
- [12] The Court of Appeal¹⁰ has recommended the New Zealand case of *Petersen*¹¹ as a useful guide when considering whether to suspend a sentence. It is clear from that case that, primarily, the suspension of a prison sentence should have a direct benefit for an offender by providing some incentive to avoid reoffending. The purpose of suspension is not just to free a person who should otherwise be imprisoned. Suspension of a sentence will rarely be appropriate where the need for general deterrence is strong.¹²
- [13] I have no doubt that the prisoner is unlikely to reoffend. He is not a young man, and he does not need the incentive to avoid reoffending that suspension of his sentence will offer. I see no benefit to the prisoner if I were to suspend his sentence (other than the obvious benefit that he would not be in prison).

⁷ *Penal Code* (Cap.67), section 44.

⁸ *Republic v Rabuna Kokoria* [2018] KIHc 71.

⁹ *Republic v Bwereata Kamoriki* [2018] KIHc 52, at [6].

¹⁰ *Attorney-General v Katimango Kauriri* [2015] KICA 6, at [3].


¹¹ *R v Petersen* [1994] 2 NZLR 533.

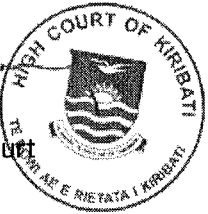
¹² *Republic v Bwebwetaake Dan & Taniera Dan* [2014] KICA 4, at [12].

Furthermore, the need to send a clear message to all drivers of the consequences of driving without due care and attention outweighs the factors in favour of suspension. I see no reason to suspend the prisoner's sentence in this case. His sentence will run from today.

[14] I turn to consider the issue of the disqualification of the prisoner from holding a driver's licence.¹³ As he does not hold a driver's licence, the provisions dealing with licence suspension and cancellation are not relevant. Under the previous legislation, cancellation and disqualification were the mandatory consequences of a conviction for a serious traffic offence. That is no longer the case under the new Act, where such orders are now discretionary. Despite this, in my view exceptional circumstances would need to be demonstrated before an offender in a case such as this could avoid disqualification. Counsel for the prisoner does not oppose the making of a disqualification order.

[15] I disqualify the prisoner from holding a driver licence for 3 years. The Land Transport Authority, as the licensing authority under the *Traffic Act*, is to be informed of the prisoner's disqualification.


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 bird, and a fish. The text 'HIGH COURT OF KIRIBATI' is written around the top inner edge, and 'TE KIRIBATI E RIEFATA I KIRIBATI' is written around the bottom inner edge.

¹³ *Traffic Act* 2017, section 62. The maximum disqualification period is 5 years.