HIGH COURT OF KIRIBATI

Criminal Case N° 41/2019

THE REPUBLIC

v

BEETA TEKEEU

Teanneki Nemta for the Republic
Raweita Beniata for the prisoner

Date of sentencing: 24 February 2020

SENTENCE

[1] Beeta Tekeeu has been convicted after a trial of engaging in unlawful sexual intercourse.[1] The facts of the case are set out in my judgment, which was delivered on 17 February 2020.

[2] The prisoner is 57 years of age. He is married with 3 children, the youngest of whom is aged 16. He has no previous convictions.

[3] In determining the appropriate sentence, I am mindful of the approach to sentencing recommended by the Court of Appeal.[2]

[4] As far as I am aware, this is the first time that a Court has been called on to sentence someone for engaging in unlawful sexual intercourse where the act involved the offender touching the genitals of the victim with his mouth. Before the amendment of the *Penal Code* on 23 February 2018,[3] such an act was punished as an indecent assault, with a maximum sentence of 5 years' imprisonment. The much broader definition of 'sexual intercourse' provided

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1 *Penal Code* (Cap.67), section 129(1) – carrying a maximum penalty of imprisonment for life.

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

3 By the *Penal Code (Amendment) and the Criminal Procedure Code (Amendment) Act* 2017.

for in the new section 127A means that a wider range of conduct now falls within the ambit of the expression. It no longer refers only to penetration of a woman's vagina by a man's penis. Penile penetration, anal penetration, digital penetration, penetration of the genitals or anus by an object, and oral sex are all now categorised as sexual intercourse. Both males and females can be victims or offenders.

[5] In the recent case of *Ibwebweki Takam*[4] I posed the question as to whether the Court should approach the task of sentencing for the offence of engaging in unlawful sexual intercourse by having regard to a hierarchy of offending. In answering that question I found considerable assistance from the decision of the New South Wales Court of Criminal Appeal in *Hibberd*.[5] I said:

> In New South Wales, as here, the concept of sexual intercourse under the law includes conduct that goes beyond what is ordinarily understood by the term. In a number of decisions now, the Court of Criminal Appeal has rejected the suggestion that one form of non-consensual sexual intercourse is inherently more or less serious than another. Price J, who gave the lead judgment in *Hibberd*, said:
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> > Relevant considerations in determining where on the scale of seriousness an offence contrary to section 611 of the *Crimes Act* lies include 'the degree of violence, the physical hurt inflicted, the form of forced intercourse and the circumstances of humiliation...' To those matters I would add the duration of the offence. Non-consensual sexual intercourse by digital penetration has *generally* been considered to be less serious than an offence of penile penetration, but each case will depend on its own facts. There is no canon of law which mandates a finding that digital penetration must be considered less serious than other non-consensual acts of sexual intercourse. Whilst the form of the forced intercourse is an important factor it is not to be regarded as the sole consideration.[6]
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> In sentencing for the offence of engaging in unlawful sexual intercourse, it is essential to consider the objective seriousness of the offending. The form that the sexual intercourse took is just one of the matters to be taken into account in undertaking this task.[7]

[6] In this case the prisoner was not violent towards the complainant. She was not injured. The act was of a relatively short duration. However, the removal of clothing and the degree of intimacy inherent in the act, which increases the

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4 *Republic* v *Ibwebweki Takam* [2019] KIHC 88.

5 *R* v *Stephen Eric Hibberd* [2009] NSWCCA 20, reported in (2010) 194 A Crim R 1.

6 *ibid.* at [56], omitting citations.

7 *Republic* v *Ibwebweki Takam* [2019] KIHC 88, at [7].

victim's humiliation, lead me to conclude that, in all of the circumstances of this case, an appropriate starting point is a sentence of 4 years.

[7] I consider the following matters to be aggravating factors:

a. as a result of her intoxicated state, the complainant was either asleep or unconscious, and therefore particularly vulnerable;

b. the complainant was young, and the difference in ages between the prisoner and the complainant is significant.

For these matters I increase the prisoner's sentence by 8 months.

[8] There is little to be said in mitigation, save that the prisoner has no previous convictions. For that I will reduce his sentence by 2 months. I reject the submission of defence counsel that his client was of previous good character. Despite the prisoner's denials, he was clearly in the business of selling *kaokioki* to school students, some of whom were even younger than the complainant. That is not something that a man of good character does.

[9] I accept that the prisoner's offending was somewhat opportunistic, although he must have had something in mind by the time he ordered Marewea out of the car in Bikenibeu. I also accept that the prisoner stopped when the complainant asked him to. However, the prisoner has demonstrated no remorse for his actions. He 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, the prisoner is sentenced to be imprisoned for a period of 4 years and 6 months. I order that the prisoner's sentence is to run from 17 February 2020, being the day on which he was taken into custody on this charge.[8]

Lambourne J
Judge of the High Court

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[8] Under section 28(2) of the *Penal Code*.