

IN THE KIRIBATI COURT OF APPEAL ]  
CRIMINAL JURISDICTION ]  
HELD AT BETIO ]  
REPUBLIC OF KIRIBATI ]

Criminal Appeal No. 1 of 2011

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**BETWEEN**                      **BABANE IUTA**                                      **APPELLANT**

**AND**                              **THE REPUBLIC**    **RESPONDENT**

**Before:**                      Paterson JA  
   Williams JA  
   Barker JA

**Counsel:**                      *Banuera Berina* for appellant  
   *Pauline Beiafau* for respondent

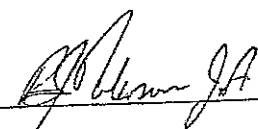
**Date of Hearing:**                      25 August 2011  
**Date of Judgment:**                      31 August 2011


## **JUDGMENT OF THE COURT**

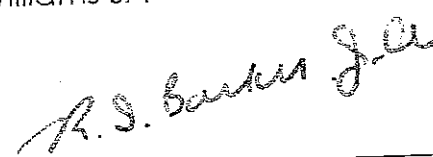
1. This is an appeal against sentence. Leave to appeal was granted at the commencement of the hearing.
2. During the period from 1989 until late in 2008 the appellant was employed by the Bank of Kiribati on Kiritimati Island. For at least the last few years of this employment, the appellant and two other bank officers were each creating false loan accounts and using the money for their own individual purposes. The total amount misappropriated by the appellant was \$23,906.00.

3. The appellant pleaded guilty to five charges being two counts of fraudulent falsification of accounts, one count of forgery, one count of obtaining money on a forged document and one count of larceny. Although the three former bank officers were separately charged with different offences, each of them was aware of the dishonesty of the others. On 8 December 2010 the High Court sentenced the appellant to 18 months' imprisonment on each count with the terms to be served concurrently.
4. The appellant contends that the sentence is manifestly excessive in the circumstances.
5. With the consent of the prosecutor upon this appeal, counsel for the appellant tendered an affidavit of the appellant sworn on 21 December 2010 which disclosed an arrangement between the appellant's brother Timon and the Bank whereby Timon borrowed upon security from the Bank the amount necessary to discharge the appellant's liability to the Bank. This arrangement is evidenced by a letter dated 23 September 2010 from the Bank to Timon, which discloses that the purpose of the loan to Timon is "To refinance sister's fraud loan". In her affidavit the appellant acknowledges Timon's action as being "a big sacrifice for me so that the Court would have mercy on me".
6. During submissions for the purpose of sentencing the Chief Justice was informed that the appellant had repaid \$695 to the Bank and had rented out her house on Kiritimati in an effort to find money to repay the Bank. The arrangement which Timon subsequently made with the Bank was not disclosed to His Honour.

7. As a mitigating factor, the appellant's counsel now puts at the forefront of his submission the fact that the appellant's liability to the Bank had been extinguished by Timon's action. The appellant herself has only contributed \$695 towards the restitution. The Bank is no longer out of pocket and the appellant should receive some credit for what has been done by Timon on her behalf. However, her offending must still be treated as serious and the sentence must reflect the need for general deterrence.
8. As at December 2010 the appellant was aged 42 and married with four children. She has no previous convictions but in view of her course of criminal conduct over an extended period her previous good record is not of great significance. The guilty plea must have weight. Nevertheless, the sentence which was imposed is modest.
9. Bringing all these matters to account (including the fact of restitution) the sentence imposed by the Chief Justice cannot be characterised as being manifestly excessive. Therefore this Court is not entitled to interfere with the sentence.
10. The appeal will be dismissed.

  
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Paterson JA

  
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Williams JA

  
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Barker JA