

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

Criminal Appeal No. 8 of 2017

BETWEEN THE REPUBLIC APPELLANT

AND TERATOKA BUATARA RESPONDENT

Before: Blanchard JA
Handley JA
Hansen JA

Counsel: *Tewia Tawiita* for appellant
Reiati Temaua for respondent

Date of Hearing: 10 August 2017

Date of Judgment: 16 August 2017

JUDGMENT OF THE COURT

[1] On 6 February 2013 criminal charges of incest, contrary to s.156 of the *Penal Code*, Cap 67 and indecent assault, contrary to s.133(1) of the *Code*, were brought against the respondent, Teratoka Buatara. But when the case came for hearing on 23 August 2016 objection was taken by Mr Temaua, for the accused, that the bringing of the charge of incest had not been sanctioned by the Attorney-General before it was brought, as required by s.159, which reads:

“No prosecution for an offence under section 156 or 158 shall be commenced without the sanction of the Attorney General”.

[2] That requirement can be met either by an endorsement signed by the Attorney-General on the charge sheet or by production of a separate document containing the sanction and so signed.

[3] No endorsement had been made on the charge sheet. Taking the view that s.159 required that any separate document containing a sanction must be filed with the charge sheet, which had not occurred, Zehurikize J struck out the case because it had been, in his view, commenced without the requisite sanction, notwithstanding advice from counsel for the prosecution that a document containing a sanction was in existence, though not to be found on the Court file.

[4] The Attorney-General appeals against that decision and has produced to the Court a document sanctioning the prosecution of the respondent under s.156(1) dated 31 January 2013.

[5] As Mr Temaua now realistically accepts, the appeal must therefore be allowed. Section 159 requires only that the written sanction is given by the Attorney-General before the prosecution is commenced, which occurs when the charge sheet is filed in the High Court. Though it is better practice for the sanction to be endorsed on the charge sheet or to accompany it, that is not mandated by s.159.

[6] As the sanction was signed before the filing of the charge sheet on 6 February 2013, s.159 was complied with, the prosecution was validly brought. The charge must be reinstated.

[7] The Judge appears also to have overlooked the indecent assault charge, which did not require any sanction. It is unclear whether he in fact meant to strike out that charge as well when he said only that “the case is struck out”. On the basis that he did so, that charge too is reinstated.


[8] The appeal is allowed and the case in respect of both charges is remitted to the High Court for trial.



Blanchard JA



Handley JA



Hansen JA