IN THE KIRIBATI COURT OF APPEAL] **CRIMINAL JURISDICTION]** **HELD AT BETIO]** **REPUBLIC OF KIRIBATI]**	**Criminal Appeal No. 3 of 2017**

BETWEEN	**TEANGIRAOI TABWEWA**	**APPELLANT**
AND	**THE REPUBLIC**	**RESPONDENT**

Before: Blanchard JA
Handley JA
Hansen JA

Counsel: *Raweita Beniata* for appellant
Tewia Tawiita for respondent

Date of Hearing: 10 August 2017
Date of Judgment: 16 August 2017

JUDGMENT OF THE COURT

[1] Mr Tabwewa was convicted in the Beru Magistrates' Court of an offence relating to judicial proceedings, contrary to s.115(1) of the *Penal Code*, Cap 67 and sentenced to three weeks' community service. His appeal against conviction and sentence was dismissed by the High Court. He now appeals both to this Court. Section 21(1) of the *Court of Appeal Act 1980* restricts him to raising a ground of appeal which involves a question of law only (not including the severity of sentence). So his appeal against sentence must be dismissed.

The facts

[2] The charge was brought in respect of an incident that occurred immediately after a panel of lay magistrates delivered a decision in a land case and before that Court had adjourned. So it occurred in the courtroom before the hearing concluded. Mr Tabwewa's uncle had brought a case to the court and the magistrates decided it adversely to him. Mr Tabwewa was present as a supporter of his uncle. Both he and his uncle were most unhappy about the result of the case. He chose to express his feelings to the court in very strong terms. Regrettably one of the panel of magistrates chose to respond to Mr Tabwewa's remarks and there was a heated argument before the chairperson of the panel brought it to an end by adjourning the Court.

[3] Subsequently Mr Tabwewa was charged under s.115(1)(a) which reads:

> **"Any person who –**
> **(a) within the premises in which any judicial proceedings is being had or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being had or taken;**
> **.....**
> **shall be guilty of an offence, and shall be liable to imprisonment for 3 months."**

[4] A Single Magistrate with no previous involvement was brought to Beru to hear the case. Unfortunately the judgment of the Single Magistrate does not record exactly what he found the appellant said to the panel of magistrates but does describe him as having "done very rude behaviour in which he has contempt the Court". Although the appellant had claimed in giving evidence

in his own defence that one of the magistrates had provoked him, and thereby started the heated argument, by appearing to comment on the failure of an application by the appellant to be appointed a lay magistrate, that assertion was either rejected or it was considered not to have justified Mr Tabwewa's reaction.

[5] The Single Magistrate's finding that the case against the appellant was proved beyond reasonable doubt has been upheld by the High Court. Zehurikize J said:

> **"The accused challenged their authority by arguing against the decision of the Court. He delved into the merits and demerits of their decision. He was just arrogantly contemptuous."**

The grounds of appeal

[6] As we have said, upon this second appeal the appellant is confined to questions of law. The first ground put forward is that the prosecution failed to prove its case beyond reasonable doubt. In other words, it is said that the decision of the Single Magistrate was not open to him having regard to all the evidence: *R v Owen* [2007] NZSC 102; [2008] 2 NZLR 37.

[7] It is doubtful that this raises an issue of law rather than one of fact because plainly this is not a situation in which it could ever be said that there was simply no evidence that could establish guilt. In any event, when the evidence is examined it is apparent that there was ample evidence of disrespect to the panel of magistrates. Even the appellant's uncle admitted that there was a "noisy discussion". It got so out of hand that the presiding magistrate thought it necessary to call for a police officer to control the

appellant, though the appellant left the courtroom before the officer arrived. Mr Beniata submitted to us that the evidence was merely of disrespect (he called it "insulting comments") to the magistrates personally and not to the Court but we cannot accept that distinction when the events occurred in the courtroom and involved a protest about a decision just delivered. The first ground of appeal fails.

[8] The second ground of appeal is that s.115(1)(a) is confined to behaviour relating to judicial proceedings. It is contended that, because the events in respect of which the appellant was convicted took place after the decision of the court was delivered, there was no hindrance to any judicial proceeding. The case was over. The magistrates were not being improperly influenced. The appellant was a member of the public and entitled to express his opinion even if his remarks were offensive to the magistrates as individuals.

[9] We have no hesitation in rejecting this argument. Section 115(1)(a) makes it an offence within premises in which judicial proceedings are being had or taken, or within the precincts of the same, to show disrespect, in speech or manner, to or with reference to the proceeding or any person before whom the proceeding is being had or taken. The appellant accepts he was within the premises (the courtroom). We have already confirmed the findings of both courts below that there was behaviour amounting to disrespect of the magistrates. The only remaining element is whether the proceedings were still, post judgment, "being had or taken". As the court had not been adjourned, plainly they were. A hearing does not end until the court adjourns, which did not happen in this case until after the police officer was called for. The integrity of the court system would be adversely affected if litigants and others were free to argue with and insult the magistrates in the courtroom

after delivery of judgment. Moreover, s.115(1)(a) does not require proof that any proceedings were hindered by the defendant's conduct.

[10] The third and final ground of appeal is that the Single Magistrate did not give the appellant a reasonable time to put forward mitigating factors and thus acted in breach of natural justice. This ground was framed with reference to the attempt to appeal against sentence, and therefore we have no jurisdiction to deal with it. But we observe that Zehurikize J pointed out that the trial record of the proceedings before the Single Magistrate shows that on the second day of the trial the appellant, who was representing himself, gave evidence in his own defence and called defence evidence from his uncle. He closed his defence and the case was adjourned until 9.00 am the next day for closing submissions and judgment. The appellant chose not to be present the next day when he must have known that sentencing would occur immediately if he was convicted, as is normal practice.

Result

[11] The appeal is dismissed.

Blanchard JA

Handley JA

Hansen JA