

IN THE HIGH COURT OF KIRIBATI)
CRIMINAL JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

CRIMINAL CASE NO. 6 OF 2000

THE REPUBLIC
V.
EMMY TIBUA

FOR THE REPUBLIC:
FOR THE ACCUSED:

MR KIRATA KOMWENGA
MR NEIL ALLEN

DATE OF HEARING:

12 & 13 DECEMBER 2000

J U D G M E N T
(Ex Tempore)

There is no point in dwelling on the aim: I should give a decision immediately.

At the close of the prosecution Mr Neil Allen has submitted that his client has no case to answer: Prosecution must prove fraud but there is no evidence of dishonesty on the part of his client. He pointed me to the evidence of Mr Toomi Mweretaka, the auditor who went through the books. Mr Mweretaka had explained to me what the discrepancies were and how he traced them - \$453.80 in the first instance and \$550.83 in the second. In cross examination he said - I use my notes:-

Ex P4 - treasurer entered wrong figure into cash book - not sure if a mistake or not: this employee quite familiar with her duties. (Other documents) correctly filled out: not consistent with someone wanting to take money from Council. A mistake may be explanation for the first count.

Although I have no note and am going on recollection, Mr Allen assures me that Toomi agreed that mistake could be the explanation for the second discrepancy as well and I accept Mr Allen's assurance.

That being so – when the chief prosecution witness, the expert, says he is not sure if the discrepancies were a result of a mistake or not – how could I not have a reasonable doubt?

I put that question to the prosecutor, Mr Komwenga and he could not do other than point to all the circumstances of the case. I agree with Mr Komwenga: there is a probability that it was deliberate, not a mistake, but when the main prosecution witness says it may have been a mistake, I must have a reasonable doubt about guilt and must give the accused the benefit of it.

I find the accused has no case to answer on either count or on the alternative count.

Accordingly I find her not guilty on all counts.

A handwritten signature in blue ink that reads "Robin Millhouse". The signature is written in a cursive style with a horizontal line underneath the name.

THE HON ROBIN MILLHOUSE QC
CHIEF JUSTICE