

IN THE HIGH COURT OF KIRIBATI) HIGH COURT CRIMINAL CASE No. 69 OF 2004
CRIMINAL JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

THE REPUBLIC
VS
TOANI TAKAIO

FOR THE REPUBLIC: MR DAVID LAMBOURNE/Ms EWEATA MAATA
FOR THE ACCUSED: MR KATARAKE TEBWEAO

DATE OF HEARING: 28 FEBRUARY & 1 MARCH 2005

J U D G M E N T

The accused, a special sergeant of police on North Tarawa is charged with forgery and uttering.

The forgery:-

On a date unknown between the 5th day of June 2003 and the 12th day of June 2003, at a place unknown in the Republic of Kiribati, Toani Takaio forged a document purporting to establish proof of service of a summons upon one Ueanteraoi Boia, with intent to defraud, such document being one upon which, by the usage at the time in force, the Magistrates' Court for North Tarawa might act.

Uttering:-

On a date unknown between the 5th day of June 2003 and the 12th day of June 2003, at Abaokoro, North Tarawa in the Republic of Kiribati, Toani Takaio knowingly uttered a forged document purporting to establish

proof of service of a summons upon Ueanteraoi Boia, with intent to defraud.

The sections of the Penal Code under which the accused has been charged are respectively:-

S.330(3)(f):-

- (3) Forgery of any of the following documents, if committed with intent to defraud or deceive, is a felony, and punishable with imprisonment for 7 years -
- (f) any document made or issued by a head of a Government department or the Attorney General, or any document upon which, by the law or usage at the time in force, any court of justice or any officer might act.

And S.336(1): Any person who knowingly and with intent to deceive or defraud utters any forged document, seal or die is guilty of an offence of the like degree (whether felony or misdemeanour) and shall be liable to the same punishment as if he himself had forged the document, seal or die.

The words "of the like degree (whether felony or misdemeanour)" in S. 336(1) are puzzling but for the purposes of a decision in this trial need not concern the Court.

The accused, Toani, had been a special constable on North Tarawa since 2001: when he was promoted to sergeant is not known. On 7 April 2003 during the later morning he and special constable Ngatau saw Ueanteraoi Boia riding his bike on the road in Marenanuka village: the bike had no bell. The constables "booked" him: he was charged with an offence under the Traffic Ordinance: a summons was issued: he was to come to court on 12 June to answer the charge. Special sergeant Toani had the duty of serving the summons. What he should have done was to seek out Ueanteraoi and hand the summons to him personally. Toani did not do that. He has admitted he did not even look for Ueanteraoi. Instead he wrote on the duplicate summons (Exhibit P1) these words:-

Serve on the 6/06/03
0905 hrs

Ueanteraoi

S/sgt. 1

A person reading the words would assume that special sergeant Toani ("S/sgt.1") had served the summons personally and that Ueanteraoi had signed an acknowledgement that he had been served.

Toani also wrote a letter purporting to be from Ueanteraoi pleading guilty.

One does not need special training to know that it is morally wrong to forge a signature or write a letter in someone else's name without his or her knowledge or consent. Everyone should know these acts are wrong even if not knowing they are also against the law.

Toani took the duplicate summons and the letter to Constable Maritino Kaben, the OCS at Abaokoro. Constable Maritino, prosecuting on 12 June, gave the proof of service and the letter to the magistrates. The bench accepted them, convicted Ueanteraoi, fined him \$2 to be paid within a week and in default a week's imprisonment.

Ueanteraoi had known nothing of any of this. He was in Betio on 12 June. When he found out he complained to Constable Maritino.

Toani came to Ueanteraoi to apologise, said he was sorry for the action he had committed in regard to the court document.

Mr Tebweao's cross-examination foreshadowed a defence that Toani was acting under Maritino's instructions: these instructions had been given generally to three special constables, Toani, Ngatau and one other, between August and December 2002 after Maritino took charge at Abaokoro.

Constable Maritino in examination in chief said he had given instructions that on service of a summons the defendant was to sign an acknowledgement of receipt. What one would expect, the proper and usual procedure. In cross-examination Maritino denied having told the special constables to act as Toani did.

The accused in his evidence said that he and the special constables did what the OCS told them. Constable Maritino "told me to deal with cases - sign the summons and write out a guilty plea he's my boss. I didn't question him".

Special constable Ngatau gave evidence for the defence. He heard Maritino tell Toani "that he could easily make guilty plea letters and sign them". Ngatau thought nothing of it.

I suggested to Mr Tebweao that the defence he was putting may be relevant to penalty but could not help his client avoid a conviction. Acting under instructions in the commission of an offence is no defence.

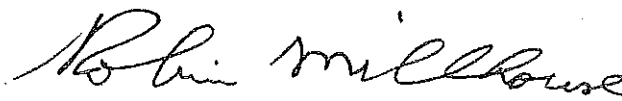
Constable Maritino was a credible witness and I accept his evidence beyond reasonable doubt. Apart from believing that he was telling the truth, it was unthinkable that any police officer would advise as a matter of course the forging of signatures acknowledging receipt of a summons and of letters pleading guilty.

The Solicitor General suggested that Toani was too lazy to bother to go and serve Ueanteraoi: it was easier to write Ueanteraoi's signature on the duplicate summons and the letter pleading guilty in Ueanteraoi's name. That may well be the reason. Perhaps as well, Toani knew Ueanteraoi had been riding a bike without a bell and it was not a serious offence: the accused thought it would not matter if he pleaded guilty for Ueanteraoi.

Be that as it may, the accused acknowledged directly all elements of the offence except the intent to defraud or deceive. Actions speak louder than words. The accused gave the false documents to Maritino who was to prosecute and so deceived Maritino. He knew Maritino would give them to the court and mislead the magistrates. I find beyond reasonable doubt the accused had the intention to deceive.

All elements of the charges are proved beyond reasonable doubt. The accused is guilty both of forgery and of uttering.

Dated the 4th day March 2005



THE HON ROBIN MILLHOUSE QC
Chief Justice