

IN THE HIGH COURT OF KIRIBATI] HIGH COURT CRIMINAL APPEAL 13 OF 2008
CRIMINAL JURISDICTION]
HELD AT BETIO]
REPUBLIC OF KIRIBATI]

BETWEEN: THE REPUBLIC APPELLANT

AND: TIARE MURDOCH RESPONDENT

FOR THE APPELLANT: MS TAIRA TIMEON
FOR THE RESPONDENT: MR GILES O'BRIEN-HARTCHER

DATE OF HEARING: 5 MAY 2009

JUDGMENT **(EX TEMPORE)**

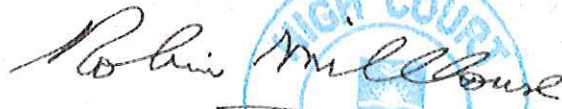
The respondent was charged with criminal trespass. Several times he did not turn up for the hearing and it was adjourned. On 22 May 2008 he was present but the prosecutor said he had a conflict of interest and could not prosecute. What the conflict was is not known but I assume it to have been for a valid reason. However the Single Magistrate's patience had run out. She exercised her discretion to dismiss the charge for want of prosecution.

The prosecution has appealed.

It is always difficult to succeed in an appeal against the exercise of discretion. A court on appeal will only quash the exercise of a discretion if it has been exercised in a way in which no judicial officer should reasonably have exercised it. I am not sure I would have exercised the discretion in the way in which the Single Magistrate did but I cannot say she exercised her discretion in a way in which no judicial officer should have exercised it. The appeal must fail.

In conclusion I make it clear that it is the responsibility of the prosecution always to be ready to go ahead, to have a person present to prosecute who is ready and able to take the case. If there

is no such person present the prosecution runs the risk, as happened here, of the charge being dismissed.



Robin Millhouse

THE HON ROBIN MILLHOUSE QC
Chief Justice

