

IN THE HIGH COURT OF KIRIBATI 2012

CRIMINAL REVIEW NO. 8 OF 2011

[THE REPUBLIC  
[  
BETWEEN [AND  
[  
[NAKANGERI KAKOROA  
APPLICANT  
RESPONDENT

Before: Hon Chief Justice Sir John Muria

14 September 2012

Mr Taburuea Rubetaake for Applicant  
Mr Banuera Berina for Respondent

**JUDGMENT**

**Muria CJ:** This is an application for review brought by the Republic against the decision of the Magistrates' Court in Bairiki in Crim. Case No. 164/2011 in which the Magistrates' Court dismissed the charges against the respondent.

It appears that the respondent was previously charged with one count of Theft contrary to section 254(1) of the *Penal Code* and one count of Criminal Trespass contrary to section 182(2) of the *Penal Code*. The case came as far as the High Court and was sent back to the Magistrates' Court. The case was fixed for 8 March 2011 for hearing. On that date, the respondent turned up but the police prosecutor and the complainant did

not attend. The Single Magistrate then heard the respondent's application to dismiss the case for non appearance of the police prosecutor and the complainant and dismissed the charges.

The Applicant said that the Single Magistrate was wrong to dismiss the case. Mr Rubetaake of Counsel for the applicant argued that the Single Magistrate should have enquired as to the reasons for the police prosecutor's absence.

I accept that the reason for the police prosecutor's failure to attend the hearing on 8 March 2011 was due to the changing of the hearing date from 8 March 2011 to 7 March 2011. There was no Court sitting on 7 March 2011 because it was a public holiday. That explains why there was no answer from the Court when the police prosecutor rang in the morning of 7 March 2011 to confirm if the case was still on. The case was however dealt with on 8 March 2011. There was no evidence to show that the police prosecutor knew of the change of date, once again, back to 8 March 2011.

Despite the strong submission by Mr Berina of Counsel for the respondent on the conduct of the police prosecutor and that the case now came before the Court for the second time, following a retrial ordered by the High Court, the failure cannot be wholly on the prosecutor. The Court official contributed largely to the confusion in the dates for hearing of the case. At the very least the Single Magistrate should have adjourned the case to a new date, a notice of which should be given to both parties.

This is not a case of the prosecution knowing the hearing date but failed to turn up for no good reasons. This is a case where, owing to the change of hearing dates, the prosecution was not notified of the change, and so

did not attend. The record shows that both the police prosecutor and defence counsel were not present on 8 March 2011, although the respondent himself was present.

The circumstances of this case justify an order that the decision of the Single Magistrate dismissing the charges against the respondent on 8 March 2011 should be set aside and the case be sent back to the Magistrates' Court to fix a date and hear the case.

Dated the 17<sup>th</sup> day of September 2012



**SIR JOHN MURIA**  
Chief Justice