

IN THE HIGH COURT OF KIRIBATI 2018

CRIMINAL CASE NO. 20 OF 2017

	[THE REPUBLIC	PROSECUTOR
	[
BETWEEN	[AND	
	[
	[TEIORA MWAIO	ACCUSED

Before: The Hon Chief Justice Sir John Muria

1 August 2018

Ms Pauline Beiatou for the Prosecutor
Mr Reiati Temaua for the Accused

JUDGMENT

Muria, CJ: This is an application brought by the accused challenging the legality of the information laid by the prosecution, charging the accused with the offence of rape. The charge preferred against the accused was signed by an officer, Ms Pauline Beiatou, in the Attorney General's Office on 10 January 2017 and filed in the High Court on 11 January 2017.

2. The case was first called on 27 February 2018. After three adjournments the accused took his plea on 11 April 2018. The accused pleaded Not Guilty to the charge of rape brought against him. The case was adjourned for trial.

3. On 1 August 2018, before the trial was to commence, Mr Temaua of Counsel for the accused took formal objection to the charge. Counsel asked that the charge be struck out as being improperly laid in Court against the accused.

05/09/18

Reliance was placed by Mr Temaua on sections 69, 70 and 237 of the *Criminal Procedure Code* (CPC).

4. Let me first, for the record, set out the charge preferred against the accused. It states as follows:

“In the High Court of Kiribati

R –v- Teiora Mwaio

Charge

Teiora Mwaio is charged as follows:

Count 1

Rape contrary to section 129 of the Penal Code Cap 67.

Teiora Mwaio on the 9 August 2015 at Taborio Village, South Tarawa Island in the Republic of Kiribati, had an unlawful sexual intercourse with a girl namely Botoua Kiratabwebwe without her consent.

Dated 10/1/17

(Signed)

Pauline Beiatau

for the Attorney General”

5. As I have already stated, it is the above charge to which the accused had pleaded Not Guilty on 11 April 2018. It is that same charge against which the objection is now taken by the defence.

6. I feel it would also be useful to set out the provision of the *Criminal Procedure Code* relied upon by Counsel in this objection. Sections 69, 70 and 237 as amended are as follows:

“S.69(1) The Attorney General may order in writing that all or any of the powers vested in him under this Code, other than those in section 70,

be vested for the time being in any public officer by the Attorney General.

Provided under this section”.

.....

S.70(1) Notwithstanding anything in this Code contained, if –

(a) an inquiry in accordance with section 209 or 210 in respect of an offence triable before the High Court –

(i) **has not been held**; or

(ii) has been held and the person accused has been discharged;

and

(b) the Attorney General is of the opinion –

(i) from a reasonable and probable cause that an offence has been committed by that person; and

(ii) that it is in the public interest that that person should be tried upon an information before the High Court,

the Attorney General may cause an information to be drawn up in accordance with the provisions of this Code, charging that person with that offence.

(2) When signed by the Attorney General, an information drawn up pursuant to subsection (1) shall be filed in the registry of the High Court, and shall for all purposes be **treated as if it were an information drawn up in pursuance of section 232**”.

S.237(1) All informations shall be in the name of the Attorney General and, subject to section 69, shall be signed by him.

- (2) Subject to section 241 and 242, an information duly drawn up in pursuance of section 232 and signed by the Attorney General shall be valid and effectual and may be proceeded with accordingly”.

ARGUMENTS ON BEHALF OF ACCUSED AND PROSECUTION

7. For the accused, the argument, as put by Mr Temaua, is that the charge brought against the accused is defective in that it was laid before the Court contrary to sections 69, 70 and 237 of the *Criminal Procedure Code*. Counsel submitted that all information before the High Court charging the accused with a criminal offence must be drawn up and signed by the Attorney General as required by section 237, unless the power to do so has been delegated in writing to other public officers in the Attorney General’s Office under section 69.

8. Counsel submitted that the charge which is to be treated as an information in the High Court has not been signed by the Attorney General. In fact the charge was signed by Pauline Beiatau which, Counsel argued, is in breach of section 69 of the *Criminal Procedure Code* unless the prosecution can establish by evidence that the Attorney General has given written authority to the officer to do so.

9. Ms Beiatau of Counsel for the prosecution conceded that the Attorney General has, by law, the only authority to sign information, charging an accused person with an offence. Counsel, however, submitted that the situation has now been remedied and that written delegation has been given by the Attorney General to officers in her office to draw up and sign information or charge laid against the accused in the High Court.

10. In support of the prosecution argument, a written delegation has been produced signed by the Attorney General. The written authority had been issued and signed by the Attorney General on 20 July 2018, vesting all the Attorney

General's powers under section 69(1) of the *Criminal Procedure Code* to all Attorneys in the Attorney General's Office. That having now been done, the Court will, of course, accept that as of 20 July 2018, the power to draw up and sign information or charge laid before the High Court against an accused person has been delegated and vested in all Attorneys in the Attorney General's Office.

11. Not only that the delegation of authority has been made by the Attorney General, but a new information has now been signed by the Attorney General herself on 8 August 2018 and laid before the High Court on 13 August 2018, charging the accused with rape. The new information is clearly meant to remedy the prosecution's position in the case.

DETERMINATION

12. Since the prosecution conceded the issue on the lack of authority to sign information, I need not consider the point any further. The Attorney General has taken remedial action putting beyond question that the Attorney General's powers on drawing up and signing information has now been delegated pursuant to section 69(1) of the *Criminal Procedure Code* and contained in the written "**Delegation of Power by Attorney General**" issued on 20 July 2018.

13. The position with the charge brought against the accused for rape and dated 10 January 2017 is clearly not properly brought before the Court. It was signed by an Attorney in the Attorney General's office who at the time did not possess the authority to sign that charge. The charge was bad in law and it is struck out.

14. What is the position of the accused, now that the charge has been struck out? In the Court's view, the charge brought against the accused on 10 January 2017 was incompetent. The accused had pleaded to an incompetent charge. There has been no charge competently brought against him on

10 January 2017 and so could not properly pleaded to a charge that does not exist in law. The plea that he had made on 11 April 2018 amounts to no plea at all since he pleaded Not Guilty to a charge that does not competently exist in law. No trial can proceed on the charge dated 10 January 2017 and to which the accused had pleaded Not Guilty.

15. The position has now been remedied. A new Information charging the accused with rape has been drawn up and signed by the Attorney General. That is the Information which is now competently before the Court.

16. If the prosecution still wishes to proceed with the charge against the accused, they will have to do so under the new Information filed on 13 August 2018. That is the Information to which the accused will have to be arraigned on.

17. In the circumstances of the present case, the accused will have to be discharged on the incompetent charge dated 10 January 2017 brought against him. As with the new Information dated 8 August 2018 and filed on 13 August 2018, the accused can only be arraigned on that new charge once the accused has been properly notified of that charge in accordance with the usual procedure. Until that is done, the accused stands discharged.

Dated the 31st day of August 2018

