



HIGH COURT OF KIRIBATI

Criminal Case N° 27/2019

THE REPUBLIC

v

TEBOUAKI TEBAKOTA

*Tewia Tawiita for the Republic
Reiati Temaua for the prisoner*

Date of sentencing: 18 October 2019

SENTENCE

- [1] Tebouaki Tebakota has pleaded guilty to causing grievous harm, contrary to section 220 of the *Penal Code* (Cap.67).
- [2] The offence was committed in the early hours of 3 June 2017 at Ronton village on Kiritimati. The prisoner was drunk. He saw his female cousin in the company of several other women, including the complainant. He thought that the women were assaulting his cousin. In a misguided effort to assist his cousin, he punched the complainant in the face, knocking out one of her front teeth. The complainant's upper lip was cut and swollen as a consequence of the punch. While the injuries sustained by the complainant were relatively minor, the loss of a tooth has resulted in permanent disfigurement.
- [3] An information was originally filed on 19 July, charging the prisoner with causing grievous harm with intent. When the matter came on before the Court on 16 October, the charge was amended to the present one, and the prisoner pleaded guilty.
- [4] The prisoner is now 22 years of age, and was 20 at the time of the offence. He is married, and is stepfather to his wife's child. He generally leads a subsistence lifestyle, but has been offered employment as a labourer on a construction project, with the work to commence next week.
- [5] The prisoner has been previously convicted. In 2013 (when he would have been aged 15) he was fined \$20 for shouting in town and an offence under

the *Liquor Ordinance* (Cap.50). In 2015, at the age of 18, he was sentenced to 2 years' imprisonment for theft, damaging property and criminal trespass.

- [6] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.¹ The maximum penalty for causing grievous harm is 7 years' imprisonment.
- [7] Counsel for the prosecution submits that, despite the relatively minor nature of the complainant's injuries, a custodial sentence is warranted. In the case of *Teekua Kamauti*, I reviewed a number of previous sentences imposed for causing grievous harm.² In that case I took the starting point to be between 18 months and 2 years. Teekua's case involved the use of a knife, and the use of such a weapon will almost inevitably lead to a higher starting point. This case falls very much at the lower end of the spectrum of seriousness. In such a case, I consider an appropriate starting point to be imprisonment for 1 year.
- [8] I am satisfied that there are no particular aggravating features to the prisoner's offending that have not already been taken into consideration in arriving at the starting point.
- [9] As far as mitigating factors are concerned, the prisoner has pleaded guilty at the earliest possible opportunity. I accept that he is genuinely remorseful for his actions. While he cannot be said to be of previous good character, he has no previous convictions for offences of violence. For these matters I reduce his sentence by 4 months.
- [10] It has taken more than 2 years to conclude the prosecution of this case. That is an unacceptable delay. For the reasons discussed by the Court of Appeal in *Li Jian Pei*, the prisoner is entitled to a modest reduction in his sentence to compensate him for the breach of his constitutional right to be afforded a fair hearing within a reasonable time.³ I will reduce his sentence by another month.
- [11] Taking all of these matters into account, I am of the view that the sentence in this case should be one of imprisonment for a period of 7 months.
- [12] As such a sentence falls within the scope of section 44 of the *Penal Code*, I turn to consider whether the circumstances of the offence and the prisoner's personal circumstances warrant suspension of his sentence.
- [13] The prisoner is still a young man, with family responsibilities and an offer of paid employment. If he is required to serve his sentence now, he would lose

¹ *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

² *Republic v Teekua Kamauti* [2018] KIHc 48, at [15]-[17].

³ *Attorney-General v Li Jian Pei & Taaiteti Areke* [2015] KICA 5.

that job. As I have said before, the suspension of a sentence of imprisonment should have some direct benefit for the offender by providing an incentive to avoid reoffending.⁴ I consider that the prisoner will benefit by having such an incentive. I will suspend his sentence.

- [14] The only condition attached to the suspension of a sentence of imprisonment under section 44 is that the prisoner must not commit an offence punishable with imprisonment during the operational period. If I had the power to impose other conditions I would likely order that the prisoner not consume alcohol during the period of the suspension. While I cannot do that, I encourage the prisoner to refrain from drinking alcohol during the operational period. If he were to do that, his chances of not committing any further offences would be significantly reduced.
- [15] The prisoner is convicted on his plea of guilty. He is sentenced to 7 months' imprisonment. However I order that the sentence is not to take effect unless, within 1 year from today, the prisoner commits another offence punishable with imprisonment. If such an offence is committed, it will be a matter for the court to decide whether this sentence should then take effect.


Lambourne J
Judge of the High Court



⁴ For example, in *Republic v Tebwairiti Tebabuti and Ritite Kamoti* [2019] KIHC 29, at [20].