



HIGH COURT OF KIRIBATI

Criminal Case N° 36/2019

THE REPUBLIC

v

UAKEIA ARON

*Ateti Tekawa for the Republic
Reiati Temaua for the prisoner*

Date of sentencing: 21 October 2019

SENTENCE

- [1] Uakeia Aron has pleaded guilty to 1 count of causing grievous harm, contrary to section 220 of the *Penal Code* (Cap.67).
- [2] The prisoner is a special constable for Poland village on Kiritimati. Poland is also served by a sworn police officer, Boborau Kaeba. In the early hours of 12 May 2018, Boborau sought the prisoner's assistance in dealing with the complainant, who was drunk and causing trouble. Boborau attempted to restrain the complainant, but was having some difficulty. Some bystanders came to assist Boborau, but the complainant continued to struggle. The prisoner then hit the complainant in the face with his torch, causing him to fall to the ground. As a result of the blow the complainant lost 2 teeth and sustained a cut to his lower lip. While the complainant's injuries were relatively minor, the loss of 2 teeth has resulted in permanent disfigurement.
- [3] An information was originally filed on 26 August, charging the prisoner with causing grievous harm with intent. When the matter came on before the Court on 16 October, counsel for the prosecution advised that she would be amending the charge to one of causing grievous harm *simpliciter*. The matter was adjourned to allow the prisoner to obtain legal representation. When the case resumed the next day the prisoner was arraigned and pleaded guilty to the amended charge.

- [4] The prisoner is 28 years of age, and is married. He and his wife have 3 children aged between 2 and 14 years. He has no previous convictions. I am informed that the prisoner continues in his role as special constable for Poland village.
- [5] The prisoner's conduct on the night in question fell far below the standard expected of a member of the Police Service, whether they be a sworn officer or a special constable. Police officers play a crucial role in maintaining peace and harmony in the communities they serve, but they must take great care to ensure that they do not abuse their powers. They must never allow their frustrations to get the better of them, as happened in this case. A member of the Police Service will inevitably be held to a higher standard than that expected of a civilian. Use of excessive force is unequivocally condemned. Having said that, I was surprised to learn that the prisoner has received no training as to his duties and responsibilities as a special constable. This is unacceptable. It should be mandatory for special constables to receive at least some basic training prior to appointment. Without such training, we should not be surprised if a special constable goes too far in attempting to carry out his or her functions. I strongly recommend that the Commissioner of Police consider implementing a training program for members of the special constabulary.
- [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 is of previous good character and he has pleaded guilty at the earliest possible opportunity. I accept that he is genuinely remorseful for his actions. For these matters I reduce his sentence by 4 months.

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

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

- [10] Taking the above matters into account, I am of the view that the sentence in this case should be one of imprisonment for a period of 8 months.
- [11] 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.
- [12] I note that, under section 44A of the *Penal Code*, I cannot suspend a sentence for an offence involving the use of a weapon. For the reasons discussed in the case of *Tibwere Maiawa*, I am satisfied that the prisoner's torch should not be considered a weapon for the purposes of that section.³ A torch is not a weapon *per se*, so it could only be considered a weapon (as that term is used in section 44A) if the prisoner had been carrying it with the intention to use it to inflict or threaten injury. I am not prevented from suspending the prisoner's sentence.
- [13] The prisoner is still a relatively young man. In deciding whether or not to suspend his sentence, it is a relevant consideration that this was not some random act of violence. I accept that the prisoner was motivated by a sincere desire to do his job and assist Boborau in arresting the complainant – he just went too far. I have some sympathy for his plight, particularly given the fact that he had received no training at all to prepare him for the situation in which he found himself. In all the circumstances I am prepared to suspend his sentence.
- [14] Whether or not the prisoner remains a special constable following his conviction for this offence will be a matter for the Commissioner of Police. I therefore direct that a copy of these sentencing remarks be given to the Commissioner, for his information.
- [15] The prisoner is convicted on his plea of guilty. He is sentenced to 8 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



³ *Republic v Tibwere Maiawa* [2019] KIHIC 40, at [16].