



HIGH COURT OF KIRIBATI

Criminal Case No 31/2016

THE REPUBLIC

v

MIKAERE TOOMA

*Pauline Beiatou, Director of Public Prosecutions, for the Republic
Raweita Beniata for the accused*

Date of ruling: 18 February 2019

RULING ON FACTUAL MATTERS

- [1] Mikaere Tooma has pleaded guilty to 1 charge of causing grievous harm, contrary to section 220 of the *Penal Code* (Cap.67).
- [2] An agreed summary of facts has been provided to the court. The complainant Nei Tiania lobwarau is the wife of the prisoner. The offence was committed on 5 January 2016 at the home of Nei Tiania and the prisoner in Rawannawi village on Marakei. That morning, in the course of a disagreement, the prisoner struck Nei Tiania several times with a bush knife, causing very serious injuries to her right hand, her left forearm, her right lower leg and her scalp.
- [3] The court heard submissions on sentence from both counsel. Among the matters in mitigation put forward by counsel for the prisoner, it was submitted that, at the time, the prisoner was unaware that he was wielding a bush knife – he believed that he was striking Nei Tiania with a stick. Furthermore, counsel submitted that the prisoner had been provoked by Nei Tiania, such that he was out of control at the time of the attack. I advised counsel for the prisoner that I was not prepared to act on either of those assertions without first hearing evidence.
- [4] Section 269 of the *Criminal Procedure Code* (Cap.17) provides as follows:

The court may, before passing sentence, receive such evidence as it thinks fit, in order to inform itself as to the sentence proper to be passed.

- [5] As these matters, if established, would favour the prisoner, likely resulting in a reduced sentence, it is for him to prove them on the balance of probabilities.¹
- [6] The prisoner was the only witness called. He testified that, in January 2016, he was living in Rawannawi with his wife, their young daughter, and his wife's grandmother, Nei Taun. The prisoner's relationship with his wife seemed to have been quite turbulent. He described an occasion where his wife had mocked him about the size of his penis, comparing him (unfavourably) to an ex-boyfriend of hers. The prisoner admitted that he was a jealous man; he said that they were both prone to jealousy. He said that there were many things that his wife did that fuelled his jealousy. The prisoner often thought that his wife might be having an affair. He was particularly suspicious about a man named Tekabu. He had once caught him 'peeping' at his wife.
- [7] In late 2015 the prisoner had gone to Abaiang alone. While there, he heard from some people who had recently returned from Marakei that his wife had been seen at a kava session, serving up kava to the men. He was upset about this because he believed that it was not something that a married woman should do.
- [8] The prisoner returned to Marakei before Christmas in 2015. He confronted his wife with what he had heard. She told him that she had thought that he was never coming back from Abaiang. The prisoner told his wife that she was not permitted to go to the kava sessions again.
- [9] On the night of 4 January 2016, the prisoner went out fishing. When he returned, Nei Tiana was not home. Nei Taun said that Tiana had gone to the *mwaneaba* to watch movies. The prisoner went to the *mwaneaba* but could not find his wife. He was angry with Nei Tiana, because she had agreed that she would tell him if she was going anywhere. He assumed that she had gone to another kava session. He returned home and went to sleep on their *kiakia*, alone.
- [10] When the prisoner woke the next morning, he was still upset. Nei Tiana was on their *buia*. He asked her to prepare him some breakfast, as he was expected to go and work on the causeway that day with other men from the village. She told him to come and get it himself. He responded by saying, "Okay then, I won't eat anything." He told Nei Tiana that she was lazy.
- [11] Sometime later the prisoner saw Tiana preparing her sewing bag. She looked like she was getting ready to go somewhere. He asked Tiana where she was going, and she said that she was meeting with her sewing group. He told her that she was not to go. The prisoner took her sewing bag from her and lay down on the *kiakia*, using the bag as a pillow. He was looking up at the roof of the *kiakia*; his

¹ *Republic v Amberoti Tawanga (Ruling on factual matters)*, High Court Criminal Case 45/2017, at [7].

thoughts were in turmoil and his head was spinning. He was thinking that he should leave Nei Tiana.

- [12] As the prisoner lay there, stewing, Nei Tiana came and grabbed the sewing bag out from under his head. His head hit the floor of the *kiakia*. The prisoner was surprised. He got off the *kiakia* and chased Nei Tiana. He said to her, "You're mocking me. And now I'm going to hit you." He chased Tiana around the *kiakia*. She fell down. The prisoner looked for something with which to hit her. He wanted to hit her arms and legs, so that she would not run away. He said that he did not want to use his hands or feet because he did not want to hurt her.
- [13] The prisoner said that he saw what he believed to be a stick, slid under the floor of the *kiakia*. He grabbed it and began striking Nei Tiana. He hit her perhaps 4 or 5 times, over the course of 30 seconds. He said that only with the final blow, which sliced open Tiana's right calf from ankle to knee, did he realise that he had been using their bush knife. It had all happened very quickly.
- [14] According to the report prepared by the Medical Assistant on Marakei, Nei Tiana had the following injuries when brought to the clinic at 1:20pm on 5 January:
- a. to the right parietal region of the scalp, a wound 10cm long and 2.5cm deep;
 - b. on the back of the head, just above the nape of the neck, a wound 2.5cm long and 2.5cm deep;
 - c. the left forearm was fractured, with a wound 5cm long, down to the bone;
 - d. on the right hand, a 15cm wound that sliced down through the palm to the wrist, separating the thumb from the fingers;
 - e. on the right calf, a wound 25cm long and 5 to 7.5cm deep.
- [15] Nei Tiana was on the ground and the prisoner was standing over her. He apologised to her. He did not help her, because he feared that there would be trouble from her family. He felt that it was better for him to go and hand himself in to the police.
- [16] The prisoner was shown a bush knife, which he admitted was the one he had used to strike Nei Tiana. It was tendered as an exhibit. The original handle of the knife had been replaced with a handle that appeared to have been fashioned from 2 pieces of wood, screwed together and bound with green string. The blade of the knife is 38cm long, with a 21cm handle. It is quite heavy.
- [17] The prisoner said that the bush knife belonged to Nei Taun. He admitted having used the knife before, but he said that he had never seen it kept under the floor of the *kiakia*. In the brief period that the prisoner had been using it to strike

Nei Tiana, he was not conscious of the string tied around the handle. In evidence he said, "It was like my brain was affected."

- [18] Under cross-examination, the prisoner admitted that he had used the bush knife regularly before the incident. He was the one who had made the new handle, although the string that he had used originally did not last, and someone else had bound it with the green string that was on the handle that day. He did not know who had put the knife under the floor of the *kiakia*. It was normally kept under the floor of their *buia*. The prisoner conceded that he had used the knife recently in building the *kiakia*. It was the only big knife that they had.
- [19] The prisoner denied aiming for Nei Tiana's head when striking her. He said that he was aiming for her hands. He had not noticed any blood after the initial strikes. The only time that he noticed any blood was after the final slicing blow to Tiana's right leg.
- [20] The prisoner accepted that he had not confronted Nei Tiana about where she had been the night before. He said that he saw no point, as he did not expect her to tell him the truth anyway.
- [21] In answer to a question from the court, the prisoner said that there were 4 things that his wife had done that led him to lose control and attack her: she had not been home the night before; she had refused to get him breakfast; she had wanted to go and attend her sewing group; and she had roughly pulled her bag out from under his head.
- [22] Having carefully considered the evidence of the prisoner, and keeping in mind that I need only be satisfied of the matters he asserts on the balance of probabilities, I have reached the following conclusions.
- [23] I accept that the prisoner was in a heightened emotional state that day. He was not thinking clearly; he was acting irrationally. However, it cannot be said that the things Nei Tiana said and did in the lead up to the prisoner's attack on her were sufficient to justify his state of mind. He was not truly provoked. The prisoner's agitation came from his own imaginings. Instead of discussing matters with his wife maturely, his behaviour that morning was childish and immature. The issues that led to his anger and irrational behaviour were petty and trivial. The prisoner's anger stemmed from his own jealousy and desire to control his wife. While it is true that his fears about his wife's infidelity were later confirmed, he had nothing but vague suspicions at the time he attacked her. There is nothing here that warrants a reduction in the prisoner's sentence.
- [24] I do not accept that the prisoner honestly believed that he was striking Nei Tiana with a stick. Even in his agitated state of mind, there is nothing about the bush knife that would lead him to think that he was wielding a stick. His familiarity with the knife, its heft, and the nature of the handle, with the screws and string

binding, mean that he could not possibly have mistaken it for a stick. That it was out of place under the floor of the *kiakia* is not enough. A mere stick would not have been slid in under the floor like that. I reject the prisoner's assertion that he believed that the bush knife was a stick, and I will sentence him on the basis that he knew the true nature of the weapon he was wielding.

[25] I will hear further submissions from counsel as to the appropriate sentence for the prisoner in light of my findings.


Lambourne J
Judge of the High Court

The seal of the High Court of Kiribati is circular, featuring a central shield with a sun, a bird, and waves. The text "HIGH COURT OF KIRIBATI" is written around the top inner edge, and "TEL NI AE E RIETATA I KIRIBATI" is written around the bottom inner edge.