



HIGH COURT OF KIRIBATI

Criminal Case N° 57/2019

THE REPUBLIC

v

ROTEKATA IOANE

*Nenebati Tawita Tainimaki for the Republic
Banuera Berina for the prisoner*

Date of sentencing: 20 December 2019

SENTENCE

- [1] Rotekata Ioane has pleaded guilty to the offence of filming others engaged in a private act without consent.¹
- [2] Early in the morning of 15 July 2018 the prisoner was drinking with others at a house in Teoraereke. One of his companions began to have sexual intercourse with a woman who had also been drinking with them. The woman appeared to be asleep.² The prisoner used the mobile phone of another of his companions to film the act before returning the phone to its owner.
- [3] As so often happens with recordings of this kind, the video file was shared with others and was then circulated widely over the internet. The video came to the attention of the woman's husband, who showed it to her. I have no doubt that she was extremely humiliated on learning of its existence.
- [4] I am told that the prisoner filmed the act because he wanted to tease the man involved. Clearly his judgment was impaired by alcohol. It was a foolish thing to do, and showed an absolute lack of respect for the people involved. Mobile

¹ Contrary to section 135B, *Penal Code* (Cap.67).

² A man has been charged with engaging in unlawful sexual intercourse with the woman and is presently awaiting trial.

phones that are capable of recording audio and video are now commonplace, and people must take care not to use that capability to violate the privacy of others.

- [5] To my knowledge, this is the first prosecution for filming someone engaged in a private act since the offence was added to the *Penal Code* in February last year. With the creation of this offence, the Maneaba ni Maungatabu has sent a clear message that any such invasion of privacy will result in a significant punishment being imposed. The offence carries a maximum penalty of imprisonment for 3 years. It is also open to the sentencing court to impose a fine in addition to, or instead of, imprisonment.³
- [6] An information was filed on 24 October 2019. The prisoner made his first appearance in Court on 8 November. On 6 December counsel for the prisoner informed the Court that his client would be pleading guilty to the charge.
- [7] The prisoner is 31 years of age and is married, with 3 children aged between 3 and 7 years. He is employed as an Assistant Accountant with the Ministry of Finance and Economic Development, a position he has held since 2013. He has no previous convictions.
- [8] The prisoner is not a young man – he should have known better. It does not reflect well on him that, when questioned by the police about the incident, he chose to lie and deny any involvement. This failure to accept responsibility for his actions is disappointing, and undermines his claim to be genuinely remorseful. On the other hand, it is to the prisoner's credit that he is now willing to assist the prosecution by testifying at the trial of the man he filmed.
- [9] It is a relevant consideration that the prisoner may lose his job as a result of his conviction for this offence. He will not be able to avoid it coming to the attention of his employer, as the Chief Registrar is obliged to report the matter to both the Secretary for Finance and Economic Development and the Secretary for the Public Service Office.⁴
- [10] The Court must send a clear message of deterrence to anyone who might think to take pleasure in humiliating others by filming intimate acts that

³ Section 26, *Penal Code*. There is no limit to the amount of the fine that may be imposed, but it must not be excessive (section 28(a)).

⁴ Clause D.24 of the National Conditions of Service.

should remain private. I accept that the prisoner was not responsible for later circulating the video file. Had there been any evidence that the prisoner shared copies of the video with others, and thereby facilitated its wider circulation, I would have had no hesitation in sending him to prison.

[11] In the circumstances, the prisoner's early plea of guilty, his willingness to assist the prosecution and his lower culpability are enough to convince me not to impose a custodial sentence in this case. Counsel for the prisoner informs me that his client has the means to pay a moderate fine.

[12] The prisoner is convicted on his plea of guilty. Taking all of the above matters into account, he is fined the sum of \$1000, to be paid no later than 20 January 2020. In default of payment of the fine, the prisoner is to be imprisoned for 2 weeks.


Lambourne J
Judge of the High Court

The seal of the High Court of Kiribati is circular with a red border. The text "HIGH COURT OF KIRIBATI" is written in red capital letters along the top inner edge. The bottom inner edge contains the Kiribati motto "TE KIRI AE E RIETATA I KIRIBATI" in red capital letters. In the center of the seal is the national flag of Kiribati, which features a red field with a white sunburst, a blue field with a white wave, and a red field with a white wave.