



HIGH COURT OF KIRIBATI

Criminal Case No 61/2016

THE REPUBLIC

v

TABANGA KAIETARO

*Pauline Beiatau, Director of Public Prosecutions, for the Republic
Ryan West for the prisoner*

Date of sentencing: 7 March 2019

SENTENCE

- [1] The prisoner has been convicted following a trial on 1 count of unlawful wounding and 1 count of criminal trespass. The facts of the case are set out in my judgment, which was delivered on 15 February 2019.
- [2] The prisoner is now 28 years of age; he was 22 at the time of the offences. He is a single man, and leads a subsistence lifestyle. He has a minor conviction from 2017 that is of no significance for present purposes.
- [3] 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 the offence of unlawful wounding is 5 years' imprisonment, while the maximum sentence for criminal trespass is imprisonment for 1 year. Applying the totality principle, I will impose a single sentence in respect of both counts that I consider meets the gravity of the prisoner's conduct.
- [4] This offending falls at the lower end of the spectrum for unlawful wounding, as it involved no positive act on the part of the prisoner, and the wound was minor. However, the prisoner's offending sits at the upper end of the spectrum for criminal trespass. To enter a house occupied by a woman and a child, at night and armed with a knife, is a very serious matter. As I remarked to counsel for the prosecution during submissions, I was surprised that the prisoner was not charged with burglary. In any event, I must sentence him for the offences of

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

which he has been convicted. I am of the view that an appropriate starting point is a sentence of imprisonment for 1 year.

- [5] I consider that there are no particular aggravating features to this offending that have not already been taken into consideration in arriving at the starting point.
- [6] As regards mitigating factors, the prisoner has no previous convictions. For this I will reduce his sentence by 2 months.
- [7] The prisoner has demonstrated no remorse for his actions. He went to trial, as is his right, but, by doing so, he has foregone the reduction in sentence that he would have received had he pleaded guilty.
- [8] The prisoner has spent 84 days in custody prior to sentence. On a short sentence, taking into account the remission ordinarily allowed under section 56(1) of the *Prisons Ordinance* (Cap.76) for “industry and good conduct”, that is equivalent to having served a 4 month sentence. I therefore reduce the prisoner’s sentence by a further 4 months.
- [9] It has taken almost 6 years to prosecute this case. Such a delay is scandalous. For the reasons discussed by the Court of Appeal in *Li Jian Pei*, the prisoner is entitled to a modest reduction in sentence to compensate him for the breach of his constitutional right to be afforded a fair hearing within a reasonable time.² I will reduce his sentence by another 2 months.
- [10] Taking all of the above matters into account, the prisoner is sentenced to be imprisoned for a period of 4 months. I gave some consideration to suspending this sentence, but decided against doing so. The minimum operational period provided for under section 44(1) of the *Penal Code* is 1 year. I suspect that the burden of a comparatively long operational period would be more onerous for the prisoner than completing a short sentence and being released with nothing more to serve. The sentence will not be suspended and is to run from today.


Lambourne J
 Judge of the High Court



² *Attorney-General v Li Jian Pei & Taaiteti Areke* [2015] KICA 5