



## HIGH COURT OF KIRIBATI

*Criminal Case N° 10/2018*

**THE REPUBLIC**

**v**

**TOUM TAAKE**

*Eweata Maata for the Republic  
Raweita Beniata for the prisoner*

*Date of sentencing: 20 May 2019*

### **SENTENCE**

- [1] Toum Taake has been convicted after a trial on a charge of attempted murder, contrary to section 208(a) of the *Penal Code* (Cap.67). The facts of the case are set out in my judgment, which was delivered on 13 May 2019.
- [2] The prisoner is now 28 years of age; he would have been 26 at the time of the offence. He leads a subsistence lifestyle and is now in a relationship with another woman, with whom he has a 9-month-old daughter. He has no previous convictions. Very little has been said as to why the prisoner behaved as he did, other than to refer to his intoxication and his anger at what he believed to be the complainant's infidelity.
- [3] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.<sup>1</sup> The maximum penalty for attempted murder is imprisonment for life.
- [4] I am only aware of 2 previous cases of attempted murder coming before this Court for sentence – *Tiito Matakite* and *Tabuarerewa Oben*.<sup>2</sup>
- [5] *Tiito Matakite* was convicted after a trial on charges of attempted murder and attempted rape. He pleaded guilty to further charges of disabling in order to commit a felony and causing grievous harm. *Tiito* was aged 19 or 20, and

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<sup>1</sup> *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

<sup>2</sup> *Republic v Tiito Matakite* [2002] KHC 62; *Republic v Tabuarerewa Oben* [2015] KHC 69.

the victim was his 18-year-old former girlfriend. She resisted his attempt to rape her so he cut her throat twice, inflicting very serious injuries. She had to be taken to New Zealand for treatment. Tiito was sentenced to imprisonment for 9 years for the attempted murder, with lesser, concurrent, terms for the other charges.

- [6] Tabuarerewa Oben pleaded guilty to charges of murder and attempted murder, after stabbing a woman and her daughter as they slept. The mother died. He received a life sentence for murder and was sentenced to 8 years' imprisonment for attempted murder.
- [7] The facts in both of these cases are objectively more serious than in the present case, although I am of the view that both Tiito and Tabuarerewa received sentences that insufficiently reflect the gravity of their respective offending. Attempted murder is an extremely serious offence, and I consider an appropriate starting point to be a sentence of imprisonment for 9 years. Matters such as the severity of the victim's injuries and the use of a weapon will ordinarily result in a starting point somewhat higher than that.
- [8] This was a savage and unprovoked attack. Although Eretiata did spend almost a month in hospital, she is perhaps fortunate to have sustained no lasting physical damage. Despite this, her experience was clearly a traumatic one.
- [9] 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.
- [10] As far as mitigating factors are concerned, the prisoner has no previous convictions. I also take into account that the prisoner has spent 9 days in pre-sentence custody – 2 days immediately after his arrest, and the 7 days since his conviction. For these matters I deduct 6 months.
- [11] The fact that this violence occurred in a domestic situation does not in any way reduce its seriousness. Family violence is a major problem in Kiribati. By passage of *Te Rau n Te Mweenga Act 2014*, the Maneaba ni Maungatabu has sent a clear signal that violence within the family will not be tolerated, and is a matter of grave concern for all of us.
- [12] Counsel for the prisoner submits that I should consider a customary apology, offered on the prisoner's behalf by his mother to Eretiata and her father, as evidence of remorse. I am ordinarily fairly sceptical of apologies; they tend to be more an expression of regret rather than of remorse. There is no reason to think otherwise in this case. The prisoner remained silent when interviewed by police, and went to trial. In doing so he was exercising his constitutional

