



HIGH COURT OF KIRIBATI

Criminal Case N° 39/2017

THE REPUBLIC

v

TEBWEBWE TERAACA

Teanneki Nemta for the Republic
Taoing Taoaba for the accused

Dates of hearing: 18-21 June, 24 June, 22 July 2019
Date of judgment: 12 August 2019

JUDGMENT

- [1] Tebwebwe Teraaka is charged with 2 counts of false pretences, contrary to section 301(a) of the *Penal Code*, and 1 count of fraudulent falsification of accounts, contrary to section 299(1) of the *Penal Code*.
- [2] The original information in this matter, containing a single count of embezzlement as a clerk, was filed on 11 May 2017. As that information did not comply with section 70 of the *Criminal Procedure Code*, on 1 August 2018 the Attorney-General filed a fresh information (in identical terms). A further information was filed on 23 November 2018, charging false pretences, larceny as a clerk and forgery. Five days later a fourth information was filed, charging false pretences, fraudulent falsification of accounts and simple larceny. The present information was filed on 6 December 2018, with the Attorney-General entering a *nolle prosequi* with respect to all previous informations. On 14 December the matter was set down for trial. On 18 June the accused entered pleas of not guilty to all charges and the trial began.
- [3] Counsel for the prosecution called 6 witnesses. The first of these was Terabata Uorotaa, an Assistant Postal Officer with the Post Office at Bairiki. She is 23 years of age, and has been working at the Post Office since August 2016. Among her responsibilities is the processing of telegraphic money orders, or Telmos, by which a person can transfer funds to a recipient on another island. A person on an outer island wishing to send money to someone on South Tarawa would deposit the funds with an officer of the

Island Council. A telegram is then sent to the Post Office in Bairiki (through ATHKL, the phone company), advising the amount transferred and the names of the sender and recipient. The officer on the outer island assigns a unique identifier to the Telmo ("the Telmo number"). If the sum transferred is less than \$500, the recipient attends at the Post Office and the cash is handed over. For Telmos over \$500, a form known as a PF27 is issued and attached to the telegram. Both documents are then given to the recipient, who presents them to the Ministry of Finance for processing and payment.

- [4] Terabata recalled issuing a PF27 on 21 October 2016, concerning a Telmo for \$8000 sent on 30 September by Taveti group on Nikunau to Tekaa'i Mikaere. The Telmo number was 961625; the PF27 number was 3183. The PF27 was attached to the telegram and both documents were given to Tekaa'i's wife.
- [5] Five days later, on 26 October, the accused came to the Post Office and asked Terabata to issue a duplicate PF27 for Tekaa'i's Telmo, as the original had been lost. The accused told Terabata that Tekaa'i had come to collect his money, but could not be paid because of the lack of supporting documents. Terabata did not know the accused well, but knew that she worked at the Ministry of Finance. The accused produced a duplicate copy of the telegram, which appeared legitimate, having been stamped by ATHKL earlier that day. As she had no reason to doubt what she had been told, Terabata issued a duplicate of the PF27 (also numbered 3183). The details of the PF27 were the same as those on the one Terabata had issued 5 days earlier, save that the date was now shown as 26 October. She returned the telegram to the accused, with the duplicate PF27 attached. In the course of her testimony, Terabata identified the original telegram and the duplicate, as well as the original and duplicate PF27 forms. All documents were tendered as exhibits (exhibits 1-4).
- [6] Under cross-examination, Terabata testified that she was the only officer at the Bairiki Post Office responsible for the issue of PF27 forms. She explained that, usually, Telmo telegrams were delivered to the Post Office by ATHKL employees. Occasionally, a recipient anxious to receive their money would collect the telegram and bring it to the Post Office themselves. It was ordinarily the responsibility of a Telmo recipient to collect the telegram and PF27 from the Post Office and take them to the Ministry of Finance. She described a register in which the details of all PF27 forms were entered (along with the name of each person collecting a PF27). In this case however, as the duplicate PF27 had the same number as the original, she had not recorded the fact of its issue in that register. At the end of the financial year, any telegrams and PF27 forms left uncollected would be sent to the Ministry for processing.

- [7] Terabata rejected the proposition that someone other than the accused had brought the duplicate telegram for Tekai's Telmo to the Post Office on 26 October. She did not accept the suggestion that only 1 officer from the Ministry of Finance – a male colleague of the accused named Itaia – was authorised to collect Telmo documents from the Post Office. It was put to Terabata that Itaia had often come to the Post Office to collect duplicate PF27 forms in circumstances where the original documents had been lost. She said that, to her knowledge, that had never happened. She denied that uncollected Telmo documents would be sent to the Ministry at times other than the end of the financial year.
- [8] The second prosecution witness was Reetina Tebwaoti. She has been employed at the Ministry of Finance and Economic Development since 2009. In 2016 she was acting as Assistant Accountant. She was the manager of the Examination Unit at the Ministry, which was responsible for dealing with the returns from the Island Council treasurers, including Telmo returns. The Examination Unit had 5 staff, 1 of whom was the accused. Reetina detailed the procedures that are followed on receipt of a PF27 form. The information on the form is checked against the attached telegram and entered into a computer database. The software then generates a payment voucher. The database does not permit duplication of a Telmo number, so that any attempt to generate a payment voucher for a Telmo that had already been the subject of a payment voucher would fail. The officer who enters the data then prints and signs the payment voucher and submits it to the Senior Accountant for authorisation. After that, the payments section (a different division of the Finance Ministry) raises a cheque for collection by the recipient.
- [9] Reetina was shown payment voucher 1890/16, dated 24 October 2016, for payment of \$8000 to Tekai Mikaere for Telmo number 961625 from Nikunau (exhibit 5). She identified the signature of the accused in 2 places on the payment voucher – under “certified correct” in the upper left of the page, and under “Entered in VOTE LEDGER” at the bottom. Based on that, Reetina said that it was the accused who had entered the Telmo data in the database and generated the payment voucher. The payment voucher had also been signed by the Senior Accountant as the accountable officer, as well as by an officer from the cash office in the lower right-hand corner. The signature appearing on the payment voucher above “Name of Receiver” would have been made by the person collecting the cheque.
- [10] Reetina was then shown a further document, which she said was a report from the Telmo database (exhibit 6). She testified that the report shows that the data with respect to payment voucher number 1890/16 had been altered, so that the Telmo number now read 961625a. The alteration must have been made after the payment voucher was generated and printed on 24 October. There was no way of telling precisely when the alteration had been made.

Unfortunately the database software did not lock an entry once a payment voucher had been printed – subsequent alteration of any detail was possible.

- [11] The report also showed that a payment voucher number 1910/16 had been generated using almost identical information to payment voucher 1890/16. It would not have been possible to generate payment voucher 1910/16 without first altering the Telmo number that had been used to generate payment voucher 1890/16. Reetina was shown payment voucher 1910/16 (exhibit 7), which she said had also been prepared by the accused, and signed by her on 26 October.
- [12] Under cross-examination, Reetina agreed that the signature above “Name of Receiver” on payment voucher 1910/16 did not appear to be that of the accused. It was put to Reetina that, just because the accused had signed the payment vouchers, she was not necessarily the one who prepared them. She rejected the proposition and explained that the process required the person generating the payment voucher to be the one who certified it as correct. Reetina testified that the dates in the database were not automatically generated – whoever entered the data was also responsible for entering the relevant dates. This explained why the report appeared to show that payment voucher 1910/16 had been paid on 25 October, the day before the relevant PF27 had been issued by the Post Office.
- [13] Reetina was referred to an earlier entry on the database report, for payment voucher 1056/16. She was asked to explain why the Telmo number for that payment voucher also had the letter ‘a’ at the end. She testified that Telmo numbers were assigned by the officer on the outer island according to a receipt book that was issued by the Ministry of Finance. These numbers were supposed to be unique, but there had been a mistake where receipt books with the same series of numbers had been issued. As the database software prevented a payment voucher being generated if 2 Telmos had the same number, on the occasions when a duplicate occurred, the letter ‘a’ would be added to the number of the second Telmo, thereby circumventing the restriction. Reetina said that this was not the same as the duplicate Telmo payments for Tekaa. In the other cases, while the Telmo numbers would be the same, the Telmos would have been sent from different islands, and all of the other details would be different. Reetina testified that, as far as she was aware, other than the duplicate payments of \$8000 to Tekaa in October 2016, there had never been a time when the same Telmo had been paid twice.
- [14] The third prosecution witness was Tokareita Beero. She has been an Accounts Officer since 2010. In October 2016 she was working at the Ministry of Finance’s Posting Unit. Her responsibilities included entering data from processed payment vouchers into the Ministry’s Attaché database (this was a different database to the one used by the Examination Unit to generate

payment vouchers). On 27 October she encountered an error as she attempted to enter the data for payment voucher 1910/16. Tokareita realised that the Telmo number to which that payment voucher referred had been used before. As with the database in the Examination Unit, the Attaché software did not allow the entry of duplicate Telmo numbers. She investigated further, and realised that the same Telmo had already been paid out a few days earlier, on payment voucher 1890/16. Screenshots from the Attaché database were produced to show the double payment (exhibit 8). She reviewed both payment vouchers and reported her findings to the Senior Accountant, Tiebane Merimeri.

- [15] Under cross-examination, Tokareita said that she had never seen a double payment like that before, and she has not seen one since.
- [16] The next prosecution witness was Beiauea Taake. She has been an Accounts Officer since August 2015. In October 2016 she was working at the Ministry of Public Works and Utilities in Betio. At lunchtime on 27 October a boy came to Beiauea at her office. He asked her to come outside, as the accused wanted to talk to her. The accused was in a white mini-bus. Beiauea knew the accused well as they had previously worked together. The accused asked Beiauea to accompany her to the bank, as she wanted Beiauea to cash a cheque for her. Beiauea boarded the mini-bus and they went to the bank's Betio branch. Beiauea went into the bank with the cheque, which was made out to cash in the amount of \$8000, and queued for a teller. The accused remained in the mini-bus outside.
- [17] When Beiauea was served, the teller remarked to her that the cheque was for a large sum. She asked Beiauea whose cheque it was. Beiauea told the teller that the cheque belonged to the accused, who was waiting outside. The teller instructed Beiauea to sign the back of the cheque and write down her account number. She did as she was instructed. Beiauea was shown a copy of a cheque, and identified it as being a copy of the cheque she had cashed that day (exhibit 9). She confirmed her signature and account number on the back of the cheque.
- [18] Beiauea received \$8000 from the bank teller. She took the cash outside and counted it in the presence of the accused. Beiauea gave the money to the accused, who then returned \$100 to her. The accused said something like, "I'm showing off, giving away Taeboi's money." Beiauea knew that Taeboi was the husband of the accused. Beiauea understood the accused's comment to mean that the money belonged to Taeboi.
- [19] Under cross-examination, Beiauea explained that she and the accused had worked together at the Ministry of Public Works and Utilities until the

accused had taken maternity leave. After maternity leave the accused did not return to her old job, as she had been assigned to the Ministry of Finance.

- [20] Beiauea was asked if she had visited the accused at the Ministry of Finance in Bairiki. She said that she had seen the accused at the Finance Ministry on the occasions that her responsibilities had taken her there. A scenario was put to Beiauea as follows:

Beiauea went to see the accused to ask for help with a money problem. She told the accused that the auditors would be examining her accounts in 3 or 4 days' time, and they would discover a shortfall in some money that had been allocated for a seawall project. The accused said that she knew of a duplicate payment voucher that had been passed for payment to the payments section, and the officers there might be able to help Beiauea with her problem. Beiauea told the accused that, if she was able to get the cheque and cash it, she would give the accused the balance of any money left after making good the shortfall in the seawall project funds. Beiauea subsequently obtained the cheque and cashed it, later visiting the accused at her house to give her \$5600. On that occasion the accused gave Beiauea a lift home in a grey Nissan saloon car.

- [21] Beiauea unequivocally rejected the scenario put forward by counsel for the accused. She insisted that the first time she had seen the cheque was when the accused had given it to her on the mini-bus, and that all of the \$8000, save for \$100, had been taken by the accused.

- [22] Beiauea testified that she was not aware of any deception regarding the cheque until she was called in to see the Senior Accountant, Tiebane. When Tiebane asked Beiauea about the cheque, she admitted to having cashed it. She also admitted having signed her name on the back. Tiebane asked how she had come to be in possession of the cheque, and Beiauea told her that the accused had given it to her. Beiauea later wrote a letter to Tiebane, in which she said that she had not been suspicious about the cheque because she thought that the money was a payment from the Teinainano Urban Council, to which the accused had recently been elected.

- [23] It was put to Beiauea that she had gone to the house of the accused twice while the investigation was ongoing. Beiauea insisted that she had only gone once, in the company of another accounts officer named Atamakin. She took with her a letter she had written in an attempt to clear her name, hoping that the accused would sign it. Once at the house, the accused read the letter and signed it. Atamakin then wrote a note at the foot of the letter confirming the circumstances in which it had been signed by the accused. The letter was tendered in evidence by counsel for the accused (exhibit A). The accused later resigned from her position with the Ministry of Finance. Finally, Beiauea denied ever having met the husband of the accused.

- [24] The fifth prosecution witness was Tiebane Merimeri. In 2016 Tiebane was a Senior Accountant with the Ministry of Finance, but she is now the Deputy

Accountant General. She testified that, on 3 November 2016, Tokareita reported to her the apparent duplication of a payment voucher, resulting in the same Telmo being paid twice. Tiebane called for the hard copies of the payment vouchers. She then asked to see the accused, who she knew to be responsible for processing Telmos. Tiebane did not have authority over the Examination Unit, but the relevant Senior Accountant was away at the time. The accused did not say anything of consequence, and Tiebane asked her to look into the possibility of a double payment to Tekaaai.

- [25] Tiebane then asked the bank to provide copies of the 2 cheques. The first was for \$10,000, combining the \$8000 under payment voucher 1890/16 and a second payment to Tekaaai for \$2000. On examining the cheque, Tiebane was satisfied that it had been cashed by an employee of Tekaaai. She saw that the second cheque had been cashed by Beiauea. Tiebane did not see the accused after that. She later saw a letter of resignation from the accused to the Secretary for Finance, dated 9 November 2016 (exhibit 10). The accused gave her recent election to the Teinainano Urban Council as the reason for her resignation.
- [26] Under cross-examination, Tiebane agreed that she had told the accused that she should try to recover the over-payment from Tekaaai. She also agreed that she told the accused that, if she was unsuccessful in recovering the money, she would be required to pay it back herself. Tiebane was asked if she was aware of any other instances where Telmos had been paid twice. She conceded that there had been occasions in the past where this had happened, but that had been when Telmos were being processed manually, prior to adoption of the computer database by the Examination Unit.
- [27] The final prosecution witness was Dr Ieete Rouatu. Ieete is engaged as an adviser by the Ministry of Finance, and he had been responsible for creating the database used by the Examination Unit to process Telmos (which was developed using Microsoft Access software). He explained that, for the database, the Telmo number is what is known as a 'primary key'. It cannot be duplicated. If an operator tried to enter a Telmo number that had been used previously, an error message would appear. He conceded however that there was nothing to prevent a Telmo number in the database from being subsequently altered. He also conceded that the database was not password-protected, and all of the officers of the Examination Unit had access to the database. Any of them could have entered data, and any of them could alter the data.
- [28] Before closing her case, counsel for the prosecution applied to amend the particulars of counts 2 and 3 on the information. The particulars for both counts had alleged that the offences occurred on 26 October 2016. Counsel sought to alter the particulars for both counts to instead read "On or about

26 October 2016". Against the objection of counsel for the accused, I allowed the application, on the basis that the amendments would not in any way prejudice the accused. Section 241(2) of the *Criminal Procedure Code* permits amendment of a defective information at any stage of the trial, as long as the amendments can be made without injustice.¹ Defence counsel conceded that she would not have conducted her case any differently had the particulars been as amended from the outset. She declined an opportunity to further cross-examine any of the prosecution witnesses. The amendments were made and counsel for the prosecution closed her case.

[29] Counsel for the accused then submitted that her client had no case to answer with respect to counts 2 and 3. She made her application by reference to section 195 of the *Criminal Procedure Code*. I pointed out to counsel that section 195 applies only to trials in the Magistrates' Courts, and reminded her that the test to be applied in the High Court is as set out in section 256(1) of the *Criminal Procedure Code*.²

[30] As I said in *Bitiauoki Temeria*:

a submission of 'no case' can only succeed if there is no evidence at all that the accused committed the offence. This determination should be made by taking the evidence from the prosecution witnesses 'at its highest', and putting to one side any concerns I may have regarding the veracity of any or all of the witnesses.³

[31] On count 2, defence counsel contended that there was no evidence that it had been the accused who collected the cheque, whereas on count 3 there was uncontested evidence that anyone within the Examination Unit could have made the alteration to the entry on the database. This was countered by counsel for the prosecution who pointed to Beiauea's evidence that the accused had given her the cheque. Even though there was no direct evidence as to how the accused had come into possession of the cheque, there was circumstantial evidence that her acquisition of it had occurred as a consequence of her false representations that the original Telmo documents had been lost. She also knew that the generation of payment voucher 1910/16 was unwarranted. With respect to count 3, prosecution counsel submitted that there was evidence that the database entry had been altered after payment voucher 1890/16 had been generated. The only reason such an alteration would be required was to circumvent the safeguards, and thereby generate payment voucher 1910/16. The only logical inference to be drawn is that whoever entered the data in respect of the duplicate Telmo documents also altered the database entry for payment voucher 1890/16.

¹ *Republic v Kautunamakin Mantaia* [2019] KIHC 55, at [13], citing *R v Pople* [1951] 1 KB 53, at 54.

² *Republic v Bitiauoki Temeria* [2018] KIHC 31, at [20].

³ *ibid.*

- [32] I was satisfied that the accused had a case to answer in respect of all counts, and informed her of her rights, as required by section 256(2) of the *Criminal Procedure Code*. Defence counsel advised that her client would be giving evidence, and 4 other witnesses would be called.
- [33] The accused is now 28 years of age. She is an elected councillor for the Teinainano Urban Council. In 2016 she was working as an Accounts Officer with the Examination Unit of the Ministry of Finance. There was a total of 5 staff in the Unit. The accused was dealing with Telmos from the outer islands. Recipients would bring the Telmo documents to the Unit, although on occasion the documents would be delivered by the Post Office. The accused would enter the Telmo information into the database and raise a payment voucher. She was not the only one in the Unit who could do this.
- [34] The accused knew nothing of the duplicate payment vouchers for Tekai's Telmo until she was informed by Reetina. The duplication had been identified through a check that had been made at the end of the week. Such mistakes were a frequent occurrence, and action would be taken to cancel the second payment voucher. In the case of Tekai's Telmo, the error was discovered before the cheque had been raised, and Reetina told the accused to ensure that the duplicate payment voucher was cancelled. The accused did not do as she was instructed.
- [35] The next day, the accused was visited at the office by Beiauea. Beiauea told her that she was in trouble. She said that she had lost money that was in her care. Some of the missing money was from the tolls collected on the Nippon causeway, while the rest was supposed to have been used for the wages of labourers working on a seawall. Beiauea did not tell the accused how much had been lost.
- [36] The accused recalled the duplicate payment voucher, and told Beiauea about it. She said to Beiauea that the cash office might help her to get the cheque. The accused told Beiauea that, if she was able to get the cheque, she should bring the money to her (the accused), and she would arrange for it to be repaid. The accused said that the use of government funds in this way was a common occurrence among accounts officers, as long as the money was repaid. On being told of the cheque's existence, Beiauea said "Okay" and left.
- [37] That night, Beiauea came to the house of the accused. She told the accused that she had got the money, and she gave the accused \$5600, being the remainder. The husband of the accused was at the house during Beiauea's visit, as well as his friend and a woman named Ruaua. Beiauea counted out the money while they were on the *buia*. The others observed the transaction. Beiauea then asked if she could be given a lift back to Betio, and a car was borrowed from a neighbour named Mareko to do this.

- [38] Sometime later, after Tiebane had learned of the double payment, Beiauea again visited the accused at home. She told the accused that she could not afford to lose her job, as she had her family to support. The accused told Beiauea that she did not want to be the only person blamed but, because she had just been elected to the Council (and therefore had other income), she (the accused) would take the blame for the double payment and resign. One or 2 days after that visit, Beiauea again came to the house of the accused, this time accompanied by a colleague named Atamakin. Beiauea had brought a letter for the accused to sign. The accused signed the letter, but did not see Atamakin sign it. Shortly after that, the accused submitted her resignation.
- [39] The accused claimed to have never met Terabata from the Post Office. She denied having collected the PF27, and said that another of her colleagues – Itaia – was responsible for liaising with the Post Office. Itaia would deal with customers complaining about missing Telmo payments. Where it was discovered that Telmo documents had been misplaced, Itaia would go and get a duplicate PF27 from the Post Office. This had happened from time to time.
- [40] The accused accepted that she had signed payment vouchers 1890/16 and 1910/16, but said that she had been responsible for entering the data with respect to only the second of these. She had encountered no issues when entering the Telmo number into the database for payment voucher 1910/16. The accused denied having been the one who entered the information for payment voucher 1890/16. She explained that Telmo information would usually be entered in batches – maybe 40 at a time. All the payment vouchers would be printed at the end of the process, possibly by someone other than the person who had entered the data, and maybe even the next day. Whoever printed the payment vouchers would then attach the supporting documents and certify the payment vouchers as correct, before taking them to the Senior Accountant for authorisation. After that, an officer from the payments section would collect the payment vouchers so that cheques could be raised.
- [41] The accused denied altering the information contained in the database with respect to payment voucher 1890/16. At first she denied even knowing that this was possible, but later acknowledged that it could be done. She said that, in her experience, if the database refused to allow the entry of a Telmo number, the matter was to be raised with the Unit supervisor, who could authorise the addition of a letter ‘a’ at the end of the Telmo number. This practice was well-known within the Ministry, and a Senior Accountant would know, on seeing a letter used in this way, that there had been a problem with duplication of the Telmo number.
- [42] Under cross-examination, the accused maintained that she had not been responsible for entering the data with respect to payment voucher 1890/16.

She admitted having certified the correctness of the payment voucher on 24 October 2016. When the accused entered the data on 26 October for payment voucher 1910/16, she said that she had no recollection of the earlier payment voucher with the same details from 2 days previously. This was due to the sheer volume of payment vouchers that were processed each day.

- [43] The accused denied that her signature appeared on payment voucher 1910/16 as recipient of the payment.
- [44] The accused maintained that Beiauea had visited her house on 3 occasions after the duplicate payment voucher had been issued. It was on the final visit that she brought a letter for the accused to sign. The accused did not read the letter prior to signing it.
- [45] The accused denied giving the cheque to Beiauea to cash. She acknowledged having received \$5600 from Beiauea, but said that Beiauea was supposed to have given her the full sum of \$8000. The accused had not wanted to make a partial repayment to the Ministry, so she was waiting for Beiauea to come back with the rest of the money. Beiauea never returned. At the same time, the accused was being approached by a number of former colleagues, who wanted to borrow money. She gave them money out of the \$5600 that Beiauea had given her, but none of the loans were ever repaid. After this there was nothing left from which she could repay the Ministry of Finance.
- [46] The accused was pressed on why she had not cancelled the payment voucher when instructed to do so by Reetina. She testified that the instruction had been given at the end of the day, and she had planned to attend to it the following morning. The next day the accused had come into work late, as she had to breastfeed her baby, and did not arrive until about 9:00am. On arrival, there had been customers with whom she had to deal. Beiauea had come to see her at about 10:00am, before she had had a chance to cancel the payment voucher. Once the accused had suggested to Beiauea that the duplicate payment voucher might be a way out of her predicament, she no longer had reason to cancel it.
- [47] The accused rejected Beiauea's version of events regarding the cashing of the cheque when it was put to her by counsel for the prosecution.
- [48] When asked why she had not simply given Tiebane her explanation for what had happened, the accused said that her only thought was to speak with Beiauea. The accused testified that Tiebane had told her that, if the money could not be recovered, it would be deducted from her salary. She said that is what would have happened had she stayed in the position. She denied that her resignation was submitted in an effort to avoid being disciplined.

- [49] The accused testified that her resignation letter had been delivered on 9 November 2016. She had been elected to the Council in August that year.
- [50] In response to a request for clarification from the Court, the accused said that, when Beiauea had asked for her help that day, she had revealed the existence of the duplicate payment voucher, as well as all of the details of the payment. She had told Beiauea that she could use the money to cover the shortfall for the audit, but once the audit was complete the full amount of the cheque needed to be repaid. The accused had agreed to be responsible for returning the money to the Ministry of Finance. She planned to explain that this was the reimbursement of the double payment. She anticipated no difficulties with this approach as it was something that officers of the Ministry did often.
- [51] Counsel for the accused then called Ruaua Takaria. She is a 28-year-old teacher. She now lives at Bonriki, but in 2016 she was living at Bikenibeu, close to the house of the accused. Ruaua knew Beiauea, having previously met her at the Ministry of Public Works and Utilities. She recalled an occasion where she had gone to see the accused at her house. Beiauea was there, having arrived sometime earlier. The accused asked Ruaua to keep Beiauea company, as she needed to go to a meeting in the village. The accused was away for 1 or 2 hours. Beiauea waited with Ruaua. When the accused returned, the 3 of them went in Mareko's car to drop Beiauea at her house in Betio.
- [52] Under cross-examination, Ruaua said that these events had occurred on 27 October 2016. She had been with Beiauea on the *buia*, and there was a group of people under a nearby verandah, playing the game known as 'Sorry'. Ruaua went to the house of the accused at about 8:30pm, and it was almost midnight by the time the accused came back from her meeting. They walked to Mareko's house to ask if he could drive Beiauea to Betio.
- [53] Ruaua admitted that she was related to the accused. She regards the accused as a grandmother. She denied however that she was testifying to try and help the accused.
- [54] The final defence witness was Taeboi Botiko, the husband of the accused. He is 32 years of age and works on a fishing boat for Kiribati Fish Limited. Taeboi knew Beiauea, as she had worked with the accused at the Ministry of Public Works and Utilities. He recalled that Beiauea had twice visited them at their house in Bikenibeu. He could not be sure exactly when those visits occurred, but it was sometime after the accused had been elected to the Council. When Beiauea first came to the house she sat with the accused on the *buia*. Taeboi was playing 'Sorry' nearby. He saw Beiauea counting out some money and giving it to the accused. He did not know why Beiauea was giving money to his wife, and he does not know what happened to the money afterwards.

When asked if he knew Ruaua, Taeboi said that he thought that she was also there at that time. Later they went to drop Beiauea at her house.

- [55] Under cross-examination, Taeboi said that Beiauea's first visit to the house took place in the afternoon. He did not ask the accused what the money was for. There was no time when the accused left Beiauea and Ruaua alone together. He could not recall how long Beiauea was there, but it was night-time when she left.
- [56] The second visit occurred almost a week later. Beiauea brought something for the accused to sign. She came with another woman. Many people were at the house at the time of the second visit.
- [57] In answer to a question from the Court, Taeboi said that the money was in notes – \$100 and \$50 denominations. He could not be sure how much money Beiauea gave to his wife.
- [58] Despite earlier telling the Court that she intended to call 4 witnesses, counsel for the accused closed the defence case after Taeboi's testimony.
- [59] In considering the evidence in this case, I remind myself that it is not for the accused to prove her innocence. Her evidence is to be assessed like the evidence of any other witness. Even if I reject her evidence, and the testimony of her witnesses, I still need to be satisfied beyond reasonable doubt of the prosecution case before the accused can be convicted. The burden rests with the prosecution to prove, beyond reasonable doubt, each and every element of the offences charged.
- [60] In order to convict the accused of the offence of false pretences under section 301(a) of the *Penal Code*, I must be satisfied to the required standard of each of the following elements:
- a. the accused:
 - i. obtained from another person any chattel, money or valuable security; or
 - ii. caused or procured money to be paid, or a chattel or valuable security to be delivered, whether to the accused or another person;
 - b. the chattel, money or valuable security was obtained (or paid or delivered) by way of a false pretence, made by the accused with an intent to defraud.

- [61] In order to convict the accused of fraudulent falsification of accounts under section 299(1) of the *Penal Code*, in the circumstances of this case I must be satisfied to the required standard of each of the following elements:
- a. the accused was (or was employed or acting in the capacity of) a clerk, officer or servant;
 - b. the accused altered a book, paper, writing, valuable security or account belonging to, or in the possession of, her employer;
 - c. the alteration was made wilfully and with intent to defraud.
- [62] Section 300 of the *Penal Code* defines a false pretence as:
- any representation made by words, writing or conduct of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false, or does not believe to be true.
- [63] “Intent to defraud” means an intent to practise a fraud on another person, it being sufficient if anyone may be prejudiced by the fraud.⁴ If, therefore, there is an intention to deprive another person of a right or to cause him or her to act in any way to his or her detriment or prejudice or contrary to what would otherwise be his or her duty, an intent to defraud is established even if there is no intention to cause pecuniary or economic loss.
- [64] Assessment of the evidence is not a competition between the witnesses for the prosecution on the one hand, and the accused, and her witnesses on the other, nor is it a balancing act.
- [65] With respect to count 1, it is the prosecution case that the accused obtained a duplicate PF27 from Nei Terabata by falsely pretending that the original document had been lost. The accused says that Terabata is lying. She denies ever having met Terabata, and says that she did not go to the Post Office on the day in question. The accused has no idea how the duplicate PF27 came into existence.
- [66] For count 2 the prosecution says that, using the duplicate Telmo documents, the accused was able to generate a payment voucher (1910/16) that she knew to be false. She then used that false document to convince her colleagues at the Ministry of Finance to raise a cheque for \$8000. It is not known how the accused came to then get possession of the cheque, but Beiauea testified that the accused gave her the cheque the day after the payment voucher had been issued. The defence case is that, while the accused admits entering the data and generating payment voucher 1910/16, she did so unaware that payment voucher 1890/16 had been issued with respect to the same Telmo 2 days earlier. She only became aware of the duplicate payment voucher

⁴ *Welham v DPP* [1961] AC 103.

when she was told about it by Reetina. The accused failed to cancel the payment voucher as instructed and the next day she told Beiauea about the opportunity.

[67] The difficulty for the accused with respect to this count is that, on her own admissions, she could be said to have aided and abetted the commission of that same offence by Beiauea. Even if I rejected the evidence of Beiauea and accepted the evidence of the accused, it would appear open to me to convict her on that count.

[68] With respect to count 3, the prosecution says that the accused altered the entry in the database for payment voucher 1890/16 after the voucher had been printed and issued for payment. The prosecution relies on the fact that, when payment voucher 1890/16 was printed, there was no letter 'a' at the end of the Telmo number. The data must have been altered later to allow the person entering the data for payment voucher 1910/16 to circumvent the system safeguard that would otherwise have prevented the generation of a second payment voucher for the same Telmo. This was done deliberately, and with the intention of ensuring that payment voucher 1910/16 would be regarded as legitimate by those in the Ministry of Finance responsible for issuing the cheque by which payment would be made. The accused denies altering the entry and points to the fact that any of her colleagues in the Examination Unit had access to the database and could have made the change.

[69] In considering the evidence in this trial, I must say that I have great difficulty in accepting the evidence of the accused. This was not helped by the fact that much of her testimony, including what she had to say about the procedures followed in the processing of Telmo payments, was either not put to the prosecution witnesses or, if put, was unequivocally denied. What follows are some examples:

- a. the accused testified that Telmo documents were often lost, with the Post Office needing to then issue duplicate PF27 forms. She also said that Itaia was the only officer of the Examination Unit authorised to collect the duplicate PF27 forms from the Post Office. While these matters were put to (and denied by) Terabata, they were not put to Reetina, who was the supervisor of the Unit and would be expected to know whether or not this was the case;
- b. Reetina was not asked whether duplicate Telmo numbers were often encountered, as suggested by the accused, nor was she asked about the procedure, described by the accused, for seeking the supervisor's approval for the addition of a letter 'a' to the end of a Telmo number to bypass the restriction on the use of duplicate numbers;

- c. Reetina described a system where Telmos were processed individually; where the person who entered the information into the database also printed the payment voucher and certified it as correct. The accused testified that Telmos were processed in batches, with data entry on the one hand, and printing and certifying of payment vouchers on the other, possibly being undertaken by different people. This was not put to Reetina;
- d. the accused's assertion that Reetina had discovered the duplicate payment voucher prior to the cheque being raised (and therefore on the day that the payment voucher had been issued) was never put to Reetina;
- e. despite 4 prosecution witnesses being officers of the Ministry of Finance – 2 of whom with considerable experience – none were asked about the accused's claim that officers of the Ministry frequently resorted to using unclaimed payments (or other government funds) to cover up shortfalls in order to avoid an adverse audit outcome.

[70] It is clear that, of all the prosecution witnesses, the evidence of Terabata and Beiauea is of critical importance in establishing the case against the accused. Having observed both women closely as they testified, I found them to be impressive and credible. Terabata was confident and unshaken in her identification of the accused as being the person who convinced her to issue a second PF27 for Tekaa's Telmo. Similarly, Beiauea could not be shaken on cross-examination. She was suitably indignant at the suggestion that she was responsible for obtaining the cheque and using some of the proceeds for her own benefit. I cannot accept the suggestion from the accused that, knowing its provenance, Beiauea was willing to sign her name and write her account number on the back of the cheque. While she was perhaps somewhat naïve in agreeing to cash a cheque given to her by the accused without question, I am satisfied that she did so trusting someone she regarded as a friend.

[71] Conversely, while noting that the accused need not satisfy me of anything, I did not believe the evidence she gave to the Court. I found her testimony regarding why she would be the one to repay the money to the Ministry of Finance quite jarring. If the rest of her evidence was true, it makes no sense that she would willingly put herself in considerable jeopardy by agreeing to handle the proceeds of Beiauea's crime. This seriously undermined her credibility in my eyes. Several other aspects of her story did not ring true, particularly the circumstances surrounding her resignation, and the manner in which she claimed to have dealt with the money given to her by Beiauea.

[72] Similarly, I do not accept the testimony of either Taeboi or Ruaua. I found Taeboi to be evasive and cagey in his evidence, which was at odds with the

versions of events given by both the accused and Ruaua. Ruaua made no mention of any cash changing hands during the supposed visit by Beiauea to the house of the accused. Indeed, it is not clear what, if any, use is to be made of her evidence.

[73] With respect to count 1, I am satisfied beyond reasonable doubt that the accused obtained the duplicate PF27 form from Nei Terabata, by falsely pretending that the original form had been lost. There was a clear intention to defraud.

[74] With respect to count 2, I am satisfied beyond reasonable doubt that the accused obtained a cheque made out to cash in the amount of \$8000 by generating payment voucher 1910/16, a document she knew to be false, and submitting it for payment. It is not necessary for the prosecution to prove who was misled, as it is clear that whichever officer of the Ministry was responsible for raising the cheque would have been misled by the payment voucher. While there is no direct evidence as to how the accused came into possession of the cheque, there is sufficient circumstantial evidence, such that the only reasonable inferences that can be drawn are that the accused either retrieved it from the payments section herself, or procured someone to do so on her behalf. Either is sufficient. Again, there was a clear intention to defraud.

[75] With respect to count 3, I am satisfied beyond reasonable doubt that the accused altered the entry in the database for payment voucher 1890/16 by adding the letter 'a' to the end of the Telmo number. There is again no direct evidence that the accused did this, but I find that the only reasonable inference that can be drawn from the facts was that the person who entered the data for payment voucher 1910/16 was the same person who altered the data that had been entered for payment voucher 1890/16. Had the entry not been altered, payment voucher 1910/16 could not have been generated. While others within the Examination Unit had access to the database, only the accused had reason to alter the entry. The accused was an officer of the Ministry of Finance. She altered the database, which was an account belonging to her employer. She did so wilfully and with intent to defraud.

[76] Having carefully considered the evidence before me, I am satisfied of the guilt of the accused on each of counts 1, 2 and 3 beyond reasonable doubt. I find the accused guilty on each count and she is convicted accordingly.

[77] I will hear counsel as to sentence.


Lambourne J
 Judge of the High Court

