HIGH COURT OF KIRIBATI

Criminal Case Nº 2/2019

THE REPUBLIC

v

TENANAI OTEN

Pauling Beiatau, Director of Public Prosecutions, for the Republic
Maere Kirata for the accused

Date of sentencing: 30 August 2019

SENTENCE

[1] The prisoner has been convicted of murder following a trial. The facts of this case are set out in my judgment, which was delivered on 26 August 2019.

[2] I am obliged by law to impose a sentence of imprisonment for life. I do however have some discretion as regards the fixing of a non-parole period. Section 11(1A) of the *Parole Board Act* 1986 provides as follows:

> (1A) Where a court sentences an offender to imprisonment for life, it may, at the time of passing sentence, and having regard to the particular circumstances of the case, fix a period longer or shorter than the standard period of 10 years…

[3] The matters to be taken into consideration in the exercise of this discretion include both the circumstances of the offending as well as the personal circumstances of the prisoner.[1]

[4] The prisoner is 39 years of age, and is married with 1 child. He leads a subsistence lifestyle. He has no previous convictions.

[5] Counsel for the prisoner submits that a shorter non-parole period is justified. She says that I should be satisfied that the prisoner is genuinely remorseful, and points to an informal pre-trial offer to plead guilty to manslaughter (an offer rejected by counsel for the prosecution). A willingness to plead guilty to a lesser offence is really only significant if the prisoner is ultimately

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1 *Nakibae Tiiroo* v *Republic* [2009] KICA 20

acquitted of the more serious charge and convicted instead for that lesser offence. My sense of the prisoner's attitude during the course of his evidence in the trial is that, rather than feeling remorse for his victim, he regrets his predicament and feels sorry for himself. Unlike genuine remorse, which might, on occasion, warrant some reduction in sentence, a prisoner's self-pity and regret are not matters to be considered when determining the penalty to be imposed. I see no reason to reduce the prisoner's non-parole period on the basis put forward by his lawyer.

[6] Counsel for the prosecution submits that, despite the prisoner's previous good character, the following matters call for a non-parole period in this case longer than the standard period:

a. this was a particularly brutal murder, involving the use of a weapon;

b. the deceased was unarmed and vulnerable, and was attacked without regard for the several children who were with her at the time;

c. this was an act of family violence.

[7] I am of the view that these matters do warrant an increase in the non-parole period in this case. By passage of *Te Rau n Te Mwenga Act* 2014, the Maneaba ni Maungatabu has given notice of its utter condemnation of family violence. That is a matter that I should not ignore. Furthermore, the sheer savagery of the prisoner's attack on a defenceless person must be reflected in the sentence that he is required to serve. I will increase the prisoner's non-parole period by 2 years to reflect these matters.

[8] Having said that, I do intend to reduce the non-parole period to take account of time spent in custody prior to today. I reject the submission of counsel for the prosecution that there should be no reduction to reflect pre-sentence custody – the case on which she sought to rely[2] was decided under a different legislative regime and is not relevant to the situation in Kiribati. It is only fair that a sentencing court give due regard to any period during which a prisoner is detained prior to sentence.

[9] After his arrest, the prisoner spent almost a month in custody prior to his release on bail. He has been remanded in custody since his conviction on 26 August (a further 4 days). To take account of these periods of detention, I will reduce the prisoner's non-parole period by 1 month.

[10] I sentence the prisoner to imprisonment for life. Under section 11(1A) of the *Parole Board Act* I fix a non-parole period of 11 years and 11 months, after

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[2] *Mqabhi* v *State* [2014] ZAGPJHC 216 (a decision of the Gauteng Local Division of the South African High Court).

which the prisoner will become eligible for consideration for release on parole.

Lambourne J
Judge of the High Court