



## HIGH COURT OF KIRIBATI

*Criminal Case N° 1/2018*

**THE REPUBLIC**

**v**

**LI ZHAN HONG**

*Tewia Tawiita for the Republic  
Taoing Taoaba for the accused*

*Date of sentencing: 20 September 2019*

### **SENTENCE**

- [1] Li Zhan Hong has been convicted after a trial on a charge of careless driving causing death, contrary to section 33(1) of the *Traffic Act 2002*.<sup>1</sup> The facts of the case are set out in my judgment, delivered on 4 September 2019.
- [2] This offence is punishable by imprisonment for up to 5 years, a fine of not more than \$2000, or both. Under section 33(3) of the *Traffic Act* I may have regard to all of the consequences of the prisoner's driving in determining the penalty to be imposed. The prisoner's failure to drive with due care and attention on the night in question caused not only the death of Nei Ante, but also serious injuries to her companion and substantial property damage.<sup>2</sup>
- [3] The prisoner is now 30 years of age. He is a national of the People's Republic of China, and has been in Kiribati since October 2012. In 2016 the prisoner settled down with an I-Kiribati woman and together they have 2 children, aged 4 months and 2 years. He has no previous convictions.
- [4] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.<sup>3</sup>

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<sup>1</sup> Despite the repeal of the *Traffic Act 2002* by section 71(1) of the *Traffic Act 2017*, with effect from 5 June 2018, this case has proceeded under the law as it was in force on the date of the alleged offence (as provided for under section 71(2) of the 2017 Act).

<sup>2</sup> I understand that \$9000 has been paid to Kevin, the owner of the workshop into which the prisoner's car collided, to compensate him for the damage caused.

<sup>3</sup> *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

- [5] In the case of *Rereintetaake Kanooa*, the Court of Appeal agreed with a statement from the Chief Justice that a sentence within the range of 1 to 3 years' imprisonment is appropriate for offending of this nature.<sup>4</sup> In that case, the Court refused to interfere with a sentence of imprisonment for 18 months. Speed was a factor in the offending and the appellant had entered a timely plea of guilty.
- [6] I am satisfied that the prisoner's offending sits at the lower end of the spectrum of seriousness, for the following reasons:
- a. the offending involved a brief lapse of judgment;
  - b. no other breaches of the traffic law, such as speeding, are involved;
  - c. the prisoner was not intoxicated, nor was he driving while fatigued;
  - d. the prisoner had no prior knowledge of the mechanical defect that contributed to the offending, and reasonable diligence on his part would not have brought the defect to his attention beforehand.
- I consider that an appropriate starting point is imprisonment for 15 months.
- [7] There are no relevant aggravating features. As for mitigation, the prisoner has no prior convictions, and I accept that he is genuinely remorseful. For these matters I will reduce the prisoner's sentence by 1 month.
- [8] The prisoner 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.
- [9] I understand that, in addition to the compensation paid to the owner of the workshop for the damage caused, \$2500 was given to Nei Ante's family to assist with funeral expenses. When pressed, counsel for the prisoner conceded that the money for the payment to the family came from members of the Chinese community on Tarawa, not her client. This is not a matter relevant to determination of sentence.
- [10] The prisoner spent a total of 20 days in pre-sentence custody. On a short sentence, taking into account the remission ordinarily allowed for "industry and good conduct" under section 56(1) of the *Prisons Ordinance* (Cap.76), that is the equivalent of a 30-day sentence. I therefore reduce the prisoner's sentence by 1 month.
- [11] There has been an unacceptable delay in the prosecution of this case. The offence was committed almost 2 years and 8 months ago. Much of the delay has been caused by the difficulties in obtaining the services of a suitable interpreter. This is not the prisoner's fault. For the reasons discussed by the

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<sup>4</sup> *Rereintetaake Kanooa v Republic* [2014] KICA 3, at [6]-[7].

Court of Appeal in *Li Jian Pei*, he 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.<sup>5</sup> I will reduce his sentence by a further month.

- [12] Taking all of the above matters into account, the prisoner is to be sentenced to imprisonment for 1 year.
- [13] Counsel for the prisoner submits that this sentence should be suspended, relying on the case of *Rabuna Kokoria*.<sup>6</sup> I reminded counsel that the personal circumstances of an offender, considered along with the circumstances of the offending, determine whether it is appropriate for a custodial sentence to be suspended. Suspension of a sentence in one case will not necessarily mean that the sentence will be suspended in another, even if the facts of the 2 cases are similar. As I said in the case of *Bwereata Kamoriki*, it will be a rare case where a person convicted for the offence of careless driving causing death receives anything other than an immediate sentence of imprisonment.<sup>7</sup> I see no reason to suspend the prisoner's sentence in this case. The sentence will run from today.
- [14] The prisoner is not a citizen of Kiribati, and the offence for which he has been convicted is punishable by imprisonment. The question therefore arises as to whether I should, under section 4(6) of the *Deportation Ordinance* (Cap.25), recommend to the responsible Minister that a deportation order be made against the prisoner. In considering whether to exercise this discretion, it is a relevant matter that the prisoner was unlawfully present in Kiribati at the time of the offence. His permit to enter and reside, under which he had been working at Wishing Star Trading, expired on 19 October 2016. From that date, the prisoner was a prohibited immigrant under section 11(1) of the *Immigration Ordinance* (Cap.41). Wishing Star was directed by the authorities to repatriate the prisoner. For reasons unclear, Wishing Star failed to comply with that direction, and, at the time of the offence, the prisoner had been unlawfully in Kiribati for more than 3 months.
- [15] While the prisoner was subsequently given approval to remain in Kiribati until the conclusion of these proceedings, it is unlikely that he will be permitted to stay once he has served his sentence.
- [16] In the circumstances, I am not going to recommend that a deportation order be made against the prisoner. His offence is not such as to demonstrate a deficiency of character so serious as to render his continued presence here

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<sup>5</sup> *Attorney-General v Li Jian Pei & Taaiteti Areke* [2015] KICA 5.

<sup>6</sup> *Republic v Rabuna Kokoria*, High Court Criminal Case 19/2017.

<sup>7</sup> *Republic v Bwereata Kamoriki* [2018] KHC 52, at [6].

