



HIGH COURT OF KIRIBATI

Criminal Case N° 48/2019

THE REPUBLIC

v

RAUMOA KIRAREI

Tewia Tawiita for the Republic

Taaira Timeon for the accused

FILE NOTE

- [1] By information filed on 24 October 2019 the accused was charged with engaging in unlawful sexual intercourse, contrary to section 129(1) of the *Penal Code*. The offence is alleged to have been committed on 15 July 2018.
- [2] On 6 December, counsel for the accused advised that her client would be pleading not guilty to the charges, and the matter was fixed as the priority trial for the week commencing 17 February 2020.
- [3] Last week, in order to accommodate hearing dates for accused persons who had been remanded in custody, it became necessary to bump this matter down the list for this week. The other matters were resolved by yesterday afternoon, and counsel were advised that this trial would commence today.
- [4] This morning, counsel for the prosecution advised that she was not ready to proceed with the hearing. She had been assigned the file only yesterday, at which time she realised that no steps had been taken to prepare the matter for trial. When counsel sought to urgently interview her witnesses, it was discovered that a key witness is presently on an outer island. She asks that the matter be adjourned and for a new trial date to be allocated. At this stage, the earliest date available for a hearing is in late May.

- [5] Counsel for the accused comes to Court this morning ready to proceed. She objects to the application for an adjournment.
- [6] I am very disappointed at the failure of the Attorney-General and her officers to ensure that this matter is ready for trial. This is not an isolated example. I have repeatedly made clear to counsel my expectation that preparation for trial should begin as soon as a matter has been allocated a trial date. The hearing of this case was set down for this week over 2 months ago. That is when steps should have been taken to meet with witnesses and issue summonses where necessary. Had that happened, any issues regarding the availability of witnesses could have been identified early on and resolved.
- [7] This Court has frequently expressed its frustration at the apparent inability of prosecuting counsel to prepare matters for trial in a timely manner. Trial dates are usually allocated some months in advance, giving ample time for competent counsel to take all steps necessary to ensure that the trial can proceed without delay or interruption. Section 10(1) of the *Constitution* requires that a person charged with a criminal offence be given a fair hearing within a reasonable time. The Court, the prosecution and the defence each have a crucial role to play in ensuring that this happens. Far too often the ability of the legal system to deliver on this commitment is undermined by prosecutors who come to Court ill-prepared. This is unacceptable.
- [8] I am told today that the 3 lawyers at the Office of the Attorney-General assigned to prosecute criminal matters are over-stretched, and that the Attorney-General has rebuffed all requests for additional resources to be made available. If true, this is disappointing, particularly in light of the fact that her office has a total complement of 17 lawyers. The alternative is that prosecutors are not performing to the standard required of them, either through lack of ability or incompetence. Either way, it is incumbent on the Attorney-General to take steps to address this issue.
- [9] The Court has limited ability to punish prosecutorial shortcomings. The Court of Appeal has made it clear that the power to stay proceedings should not be exercised as a means of expressing disapproval of official conduct.¹ However, when adjourning a trial under section 249(1) of the *Criminal Procedure Code*,

¹ *Attorney-General v Li Jian Pei & Taaiteiti Areke* [2015] KICA 5, at [10] and [23], citing Lord Lowry in *R v Horseferry Road Magistrates' Court, ex parte Bennett* [1994] 1 AC 42 at 74.

the Court can impose “such terms as it thinks fit”. I have in the past used this power to order the Republic, through the Office of the Attorney-General, to pay an accused’s costs thrown away as a consequence of the adjournment. That has clearly not served as a sufficient deterrent. Unless urgent measures are taken to fix whatever is causing these problems I may, in the event of future prosecutorial failures, need to consider the imposition of additional sanctions.

[10] There is a compelling community interest in ensuring that, if at all possible, and while safeguarding the accused’s right to a fair trial, this case is determined according to its merits. Despite defence counsel’s objection to the application for an adjournment, I will grant the application, but the consequence of this is that the Republic will have to pay the accused’s costs thrown away.

[11] This matter is adjourned and will now be heard as the second trial for the week commencing 25 May 2020. The Republic, through the Office of the Attorney-General, is ordered to pay the accused’s costs fixed in the sum of \$100. Such sum is to be paid to counsel for the accused forthwith.

[12] I direct the Registry to take steps to ensure that this file note is brought to the personal attention of the Attorney-General.

Dated 18 February 2020.


Lambourne J
Judge of the High Court

