



HIGH COURT OF KIRIBATI

Criminal Case N° 33/2019

THE REPUBLIC

v

TEMWAMIRA TEREKE

*Tewia Tawiita for the Republic
Raweita Beniata for the prisoner*

Date of sentencing: 10 February 2020

SENTENCE

- [1] Temwamira Tereke has pleaded guilty to engaging in unlawful sexual intercourse¹ and indecent assault of a person under the age of 13 years.² The offences were committed at Nabeina on North Tarawa on 18 October 2018, and the victim of his offending was a 5-year-old girl from the village.
- [2] At around 10:00 or 11:00 that morning, the prisoner was with the complainant in a secluded area of mangroves. He was naked and she was wearing only underpants. The prisoner sucked the complainant's breast and then inserted his finger into her vagina as she sat on a mangrove root. He rubbed his penis with his other hand. They were interrupted by a boy from the village. The complainant was later medically examined and found to have scratches to her labia minora. The area was still red and tender a week after the incident.
- [3] An information was filed on 20 August 2019 containing 2 counts – engaging in unlawful sexual intercourse and engaging in sexual intercourse with a person under the age of 13 years. The prisoner first appeared in Court on 27 September. On 1 November the Attorney-General filed the present

¹ Section 129(1), *Penal Code* (Cap.67).

² Section 134(3), *Penal Code*.

information and a *nolle prosequi* was entered with respect to the original information. When the case was next mentioned the prisoner failed to appear and a warrant was issued for his arrest. That day, counsel for the prisoner advised the Court that his client intended to plead not guilty to the charges. The warrant was executed on 16 January, and 2 weeks later the prisoner's counsel informed the Court that his client would now be pleading guilty.

- [4] The prisoner is 65 years of age. He has never married and has no children. He leads a subsistence lifestyle. He is hard of hearing and has some mobility issues, requiring the assistance of a cane. He has no previous convictions. I am told that, shortly after the commission of the offences, the prisoner was badly beaten by the complainant's father.
- [5] The prosecutor has not obtained a victim impact statement. The Court has frequently reminded prosecuting counsel of the potential value of such statements, so it is disappointing to see how rarely they are relied upon.
- [6] This is an extremely serious case. Counsel for the prisoner conveyed his client's instructions that it had been the complainant who initiated the sexual conduct. I cannot accept that. This explanation, together with the fact that the prisoner lied to police when initially confronted about the matter, suggests that the prisoner lacks any insight into the gravity of his offending and is in no way remorseful.
- [7] The maximum penalty for engaging in unlawful sexual intercourse is imprisonment for life, while for indecent assault of a person under the age of 13 years it is 12 years' imprisonment. In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.³ I will deal first with count 1. That is by far the more serious of the 2 counts, and as both offences were committed in a single course of conduct, I intend to direct that the sentence for count 2 is to be served concurrently with the sentence for the first count.
- [8] In some recent comparable cases, I held that 3 years was an appropriate starting point for non-consensual digital penetration of the genitals involving

³ *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

the insertion of a single finger for a relatively brief period of time.⁴ I will adopt that approach in this case.

- [9] I consider the following matters to be aggravating features:
- a. the complainant was very young, and the difference in ages between the prisoner and the complainant is significant;
 - b. the complainant sustained injuries to her genitals, albeit minor;
 - c. the offending was accompanied by the prisoner exposing his penis and masturbating in the complainant's presence.


The very young age of the complainant is of particular concern. For these matters I increase the prisoner's sentence by 3 years, taking his sentence on count 1, before consideration of mitigating factors, to 6 years.

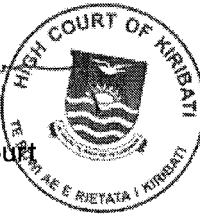
- [10] There is little to be said in mitigation, save that the prisoner has no previous convictions. I also take into account his medical issues, and the fact that he has been on the receiving end of some vigilante retribution. For these matters I will reduce his sentence by 4 months.
- [11] While the prisoner's pleas of guilty cannot be said to have been indicated at the earliest possible opportunity, he is still entitled to a reduction in his sentence. I will reduce his sentence by 1 year and 5 months, bringing the sentence on count 1 down to one of imprisonment for 4 years and 3 months.
- [12] I consider that a sentence of imprisonment for 1 year is appropriate for the indecent assault charge. As indicated earlier, this is to be served at the same time as the sentence for the principal offence.
- [13] The prisoner is convicted on his pleas of guilty. On count 1 (unlawful sexual intercourse) he is sentenced to imprisonment for 4 years and 3 months. On count 2 (indecent assault) he is sentenced to imprisonment for 1 year, to be served concurrently with the sentence imposed in respect of count 1. I order that the prisoner's sentence is to run from 5 February 2020, being the day on which he was taken into custody on these charges.⁵
- [14] I wish to make a final comment, for the benefit of the Parole Board. Although the prisoner will become eligible for release on parole after having served

⁴ *Republic v Ibwebweki Takam* [2019] KIH 88; *Republic v Kabora Tioro* [2019] KIH 90.

⁵ Under section 28(2) of the *Penal Code*.

half of his sentence, it is my strong recommendation to the Parole Board that the prisoner not be released from prison on parole unless the Board is satisfied that appropriate measures are in place to protect any young women and girls who will be living at or near the place at which the prisoner intends to reside on his release.


Lambourne J
Judge of the High Court



The seal of the High Court of Kiribati is circular. It features the national coat of arms of Kiribati in the center, which includes a shield with a sun, a bird, and waves. The text "HIGH COURT OF KIRIBATI" is written around the top inner edge of the seal, and "TE KIRIBATI AE E RIBETATA / KIRIBATI" is written around the bottom inner edge.