IN THE COURT OF APPEAL OF KIRIBATI
CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. 4 OF 1997

BETWEEN	KAKIABA TEKANENE TOANUEA ITINTARAWA ROUA TAMOAIETA MARAITI KATIA TEATA TEANGABURE Appellants
AND	THE REPUBLIC Respondent

Date of Hearing: 4 March 1998
Delivery of Judgment: 9 March 1998

Mr B Berina for the 1st, 2nd & 5th Appellants
Mr D Lambourne for the 4th Appellant
Mr I Read for the Respondent

JUDGMENT OF THE COURT
(Gibbs V.P., Connolly and Ryan JJ.A)

An appeal to this Court against conviction and sentence was filed by five persons who had been convicted of the offence of concurring in making a false entry in a book, and had been sentenced to 18 months' imprisonment.

One of the appellants, Roua Tamoaieta, died before the appeal was heard. Accordingly the proceedings initiated by him abated. Reg v Jefferies [1969] 1 QB120. At the hearing of the appeals, counsel for the four appellants informed us that the appeals against sentence were not being pursued.

The charge against the four appellants under section 299(1) of the *Penal Code* Cap. 67 was that on or about 13 December 1995 they had wilfully and with intent to defraud concurred in making a false entry in a book belonging to their employer whilst employed as magistrates of the South Tarawa Lands Court.

The principal witness called by the prosecution was one Nuea Tabuia. She gave evidence in chief that in December 1995 she was employed as a court clerk for civil and criminal matters at the Bairiki Magistrates' Court. She applied for a loan from the DBK, but was told that security for the loan was required. According to Nuea, she obtained the agreement of her mother Tebeta Tito to buy her land on Abemama, and the mother wrote a letter in which she stated that she would like to register Nuea's name as she was going to buy her land namely Temarenaua for the amount of $2,500. She had a discussion with the first appellant, Kakiaba Tekanene

about the loan, and he told her she could get a loan from the DBK with security from lands on the outer islands.

A court case was then held at which the five appellant magistrates were present. Kakiaba presided. The letter from the mother was presented by Nuea, and the magistrates approved the land sale. They all signed the minute which read that the Court confirmed the sale of land between Tebeta Tito and Nuea Tabuia and the Court certified the amount of $2,500. Nuea tore the original of the minute from the book in which it had been recorded by a court clerk Temoaa and took it to the bank. She received a loan in excess of $1,000. She said that the minute was not genuine, but was only to obtain a loan.

Nuea Tabuia had pleaded guilty to a charge under s.299(1) of the *Penal Code* arising out of these events and had served her sentence of imprisonment prior to the trial of the five magistrates. She was clearly an accomplice of the accused as counsel for the Republic admitted before this court. The ground of appeal against conviction by the appellants was that the conviction was unsafe and unsatisfactory in that the learned Chief Justice failed to warn himself of the danger of accepting Nuea's evidence, she being an accomplice in the case.

In Davies v DPP [1954] AC 378, it was stated in a unanimous judgment of the House of Lords that where a person who is an accomplice gives evidence on behalf of the prosecution it is the duty of the judge to warn the jury that, although they may convict on his evidence, it is dangerous to do so unless it is corroborated. This rule, although a rule of practice, now has the force of a rule of law, and where the judge fails to give due warning the conviction will be quashed, even if in fact there is ample corroboration, unless the appellate court can apply the proviso to what in Kiribati is s.22(1) of the *Court of Appeal Act.*

In the present case, the learned trial judge made no reference in his judgment to the fact that Nuea was an accomplice of the accused or to the rule as stated in Davies v DPP. It was submitted for the Republic that although the rule clearly applied in the case of a trial by jury, it was not necessary for a judge trying a case without a jury to refer to it. Reference was made to a statement by this Court that a judge sitting without a jury is not required to state in detail all the matters upon which, if sitting with a jury, he should direct the jury. Ikibete Inka & Barenaba Tokoro v The Republic, Criminal Appeal 4 of 1987. But in R v Connell (1985) 2 NZLR 233, which was referred to with approval in that case, it was said that there are cases where a point or argument

is of such importance that a Judge's failure to deal expressly with it in his reasons will lead a court of appeal to hold that there has been a miscarriage of justice. The rule in Davies v DPP is such a point, and the failure of the trial judge to refer to it must have the consequence that the conviction should be quashed unless the proviso to s.22(1) of the *Court of Appeal Act* can be applied.

In further evidence, Nuea said that Kakiaba knew that the minute was for her loan, because he told her that they had done it before for loans from the DBK. She said that there was a discussion by the magistrates of her case. The discussion was about the fact that her mother was not present and that the land was on the outer island. Some of the magistrates doubted whether they could approve the sale, but when they heard it was for her loan they signed the minute. In response to a question as to what the magistrates discussed about her loan during the hearing, she replied "I heard them say that as it was not a land on Tarawa but a land from the outer island they were questioning themselves if they could hear that case but then I don't quite remember who but one of the magistrates said it was something about my loan and as it had been something they also have been doing from before they all agreed that they would sign it".

Nuea said that she tore the original from the minute book because it was not a real case, but the magistrates had no knowledge she had done this.

Evidence was given by Temoaa Iaribwebwe, a probationary court clerk for civil and criminal matters at the Bairiki Magistrates' Court that in December 1995 she was working with Nuea Tabuia. She went to her room where criminal and civil cases were heard shortly before 9 am. Nuea and the five accused magistrates were there. She was told to take down the minutes. The minute book was open before her at the last page. A letter was produced. She said that she forgot to put a note that the plaintiff was not present. She read out the letter to the magistrates. They all discussed the letter, but she did not remember what they discussed. She said that she wrote her minutes on the last page of the minute book. Nobody told her to write the minutes there, but the book had already been opened for her. She admitted that she was mistaken when she put down in the minutes that the plaintiff said something. She forgot to mention that the plaintiff was absent and she produced the letter to the court. She said that the first accused, the presiding magistrate Kakiaba, told her to write down the contents of the letter.

Another court clerk, Tabokai Kanoua, was court clerk to the magistrates lands court in December 1995. At 9 am on 13 December a lands court was held. It finished quickly. After court finished, he received a telephone call which led him to go to a room where he saw that a court hearing was being held. The five magistrates of the lands court were there. These were the same magistrates as had earlier held the lands court, and he identified them as the five accused. Later he found the record of the proceedings in the room inside a minute book for criminal cases in the year 1994, at the last page of the book. That page had been torn off.

Cautioned statements by the five accused magistrates were tendered, but no evidence was given by them or on their behalf.

The learned trial judge stated that s.299(1) of the *Penal Code* required that he be satisfied beyond a reasonable doubt (a) that the accused had concurred in making a false entry in the record book; (b) that they had done so wilfully; and (c) they had done so with intent to defraud.

In relation to the first of these matters, the learned Chief Justice was satisfied that the entry in the minute book was false. He accepted the evidence of Nuea that the minute was not genuine, but was only to obtain a loan.

The evidence he accepted included her statement that the land was on Abemama. This evidence was not challenged. It followed that the minute signed by the magistrates was false, since it purported to approve a sale of land which was outside their jurisdiction. The minute was signed by the five magistrates, as they all acknowledged in their cautioned statements and as their counsel admitted at the trial. There is no reason to doubt that each of the appellants concurred in making an entry in a minute book which proved to be false.

The second question is whether when the magistrates signed the minute they knew it was false. In coming to a conclusion that they did, the learned Chief Justice relied on a number of matters which indicated that the proceedings were highly irregular. Although the minute recorded that the plaintiff was present at the hearing, this was not so. The minute gave the impression that the plaintiff gave evidence in person, but this was false. The minute did not record the subject land as being located on Abemama and hence outside the jurisdiction of the magistrates, although the magistrates were aware of this. A young, inexperienced clerk still in training was used to record the minute, though the experienced court clerk Tabokai who handled land cases was available. The hearing was conducted separately from the land cases

which had been heard shortly before in the appropriate room, and it was held in a different room.

The only one of these matters which depended on the evidence of Nuea was that the magistrates were aware that the land concerned was on the outer islands. Temoaa was unable to give evidence as to what was discussed by the magistrates. The learned Chief Justice accepted the evidence of Nuea on this point. The presence of the highly irregular features of the hearing gave strong support to her evidence. In addition, the risk attending reliance upon the evidence of an accomplice was diminished by the fact that the accomplice had pleaded guilty and had served her sentence. In the circumstances we consider that even if the learned Chief Justice had reminded himself of the danger of relying upon the evidence of Nuea, he would undoubtedly have accepted her evidence on this matter.

The learned Chief Justice stated that the only conclusion he could reach was that each of the accused knew that the entry in the minute book was not the record of a genuine case. That finding is clearly supported once the evidence of Nuea was accepted. So is the further finding that all the magistrates knew and intended that the false court minute would be used by Nuea to obtain a loan. Her evidence on this point was properly accepted as

providing the explanation for the magistrates in acting as they did.

In the circumstances we consider that there has been no substantial miscarriage of justice, and that the proviso to s22(1) of the *Court of Appeal Act* should be applied.

The appeals against conviction and sentence are dismissed.

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Vice President

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Judge of Appeal

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Judge of Appeal