IN THE KIRIBATI COURT OF APPEAL] **CRIMINAL JURISDICTION]** **HELD AT BETIO]** **REPUBLIC OF KIRIBATI]**	**Criminal Appeal No. 9 of 2017**

BETWEEN	**CHOE SOKJIN**	**APPELLANT**
AND	**THE REPUBLIC**	**RESPONDENT**

Before: Blanchard JA
Handley JA
Hansen JA

Counsel: *Banuera Berina* for appellant
Pauline Beiatau for respondent

Date of Hearing: 14 August 2017
Date of Judgment: 16 August 2017

JUDGMENT OF THE COURT

Introduction

[1] On 9 September 2016 the appellant was the master of FV Teraaka, a fishing vessel that arrived at Kiribati. On board were 48 bags of fertilizer soil (compost). After clearance by port officials who boarded the vessel (and who were not made aware of the presence of the soil) the appellant arranged for the bags to be transported to shore for delivery to a friend. The expedition was intercepted by the authorities, the bags seized and the appellant ultimately pleaded guilty to the following charges:

Count 1 - removing the soil from the vessel without the direction of a biosecurity officer contrary to s.21(4) Biosecurity Act (2/2011) (the Act). The maximum fine for this offence is $10,000.

Count 2 - failing to declare a regulated article contrary to s.14(1)(h) of the Act, maximum fine $5,000.

Count 3 - landing a cargo without obtaining biosecurity landing clearance contrary to s.15(6) of the Act, maximum fine $5,000.

Count 4 - failing to make the soil available for inspection at the port of entry contrary to s.23(1) of the Act, maximum fine $2,000.

Count 6 - importing a restricted import contrary to s.107, Schedule 8, item 6 of the Customs Act (2/2005), maximum fine $5,000.

[2] Zehurikize J imposed fines of $US5,000 for each of Counts 1, 2, 3 and 6 and a fine of $US2,000 on Count 4, a total of $US22,000. The appellant seeks leave to appeal out of time on the ground that the sentence is manifestly excessive.

[3] The delay being short and satisfactorily explained, we granted leave to appeal out of time.

Grounds of appeal

[4] For the appellant Mr Berina advanced two principal arguments. First, he submitted that in imposing fines in US dollars the Judge exceeded the maximum fine for each count except Count 1. Secondly, he argued that the aggregate of the fines imposed was excessive having regard to the totality of the offending.

Decision

[5] The appellant had deposited $US150,000 to secure the payment of fines, including a possible fine in relation to a fisheries offence which ultimately

did not proceed. An understanding that the fines would be paid from this money may have led the Judge to the view that the fines themselves should be imposed in US currency. Though not to be understood as encouraging the practice, there is no reason in principle why he could not do so subject to the maxima stipulated which, it is common ground, refer to Australian dollars. In the result, the fines imposed on Counts 2, 3, 4 and 6 each exceeded the permitted maximum.

[6] As submitted on behalf of the appellant, it is a fundamental principle of sentencing that the sentence imposed must reflect the totality of the offending. Care is required, when a single act or course of conduct involves the commission of multiple offences, to ensure that the aggregate of the sentences imposed does not exceed what is appropriate for the totality of the offending. For offending which attracts a prison sentence this will generally be achieved by imposing the final sentence for the most serious or lead offence and imposing lesser concurrent sentences for less serious related offences. When fines are to be imposed that approach will not work but the requirement to ensure that the aggregate of the fines reflects the overall gravity of the offending remains paramount.

[7] In this case aggregate fines of $US22,000, a sum vastly in excess of the maximum fine for the most serious offence ($10,000 for Count 1) is demonstrably excessive. We fully accept that infractions of biosecurity laws are rightly regarded as serious and, particularly in a maritime nation, a deterrent sentence is called for. However, the sentence must remain within the bounds set by the legislation and reflect any aggravating or mitigating factors. There are no particular aggravating factors of which we were made aware. There is nothing to show the offending was premeditated or for commercial gain; Count 1 acknowledges the soil was part of the ship's stores. On the other hand, the appellant is entitled to credit for pleading guilty at the

earliest opportunity and, it seems, for his previous good character, though not because he claimed not to have known he was committing an offence. That is effectively a claim that he was ignorant of the law, which is not a mitigating factor, and is, in any event, implausible.

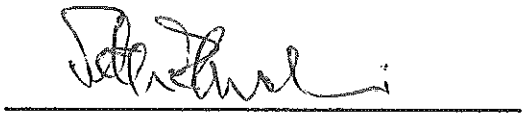
[8] Doing the best we can with the available information, we conclude that the fines appropriate to the offending are:

Count 1	$4,000
Count 2	$1,000
Count 3	$1,000
Count 4	$500
Count 5	$1,000

These amounts are of course in Australian dollars.

Result

[9] The appeal is allowed. The fines imposed in the High Court are quashed and replaced with the fines set out in paragraph [8] above. As agreed by the parties we order the payment out of the balance of the security after payment of the fines. The bags of fertilizer soil are forfeited to the Republic.



Blanchard JA

Handley JA

Hansen JA