IN THE KIRIBATI COURT OF APPEAL] **CRIMINAL JURISDICTION]** **HELD AT BETIO]** **REPUBLIC OF KIRIBATI]**	**Criminal Appeal No. 6 of 2017**

BETWEEN	**THE REPUBLIC**	**APPELLANT**
AND	**TERAETE TAKUIA**	**RESPONDENT**

Before: Blanchard JA
Handley JA
Hansen JA

Counsel: *Pauline Beiatau* for appellant
Teetua Tewera for respondent

Date of Hearing: 10 August 2017
Date of Judgment: 16 August 2017

JUDGMENT OF THE COURT

[1] This is an appeal by the Attorney-General against concurrent sentences imposed upon the respondent after she pleaded guilty to charges of killing an unborn child, contrary to s.214 of the *Penal Code*, Cap 67 and concealing the birth of a child, contrary to s.213 of the *Code*. The latter section expressly extends to a child who is not born alive. Zehurikize J sentenced the respondent to two years' imprisonment on the first charge and six months' imprisonment on the second. But the Judge suspended both sentences and placed the respondent on a good behaviour bond for five years. The appeal is directed only to the suspension of the sentences.

[2] The circumstances of the case are most unusual and the Judge's very merciful sentence for the serious offence of killing an unborn child, for which the maximum sentence is one of life imprisonment, has to be understood in light of those circumstances.

[3] This Court has been placed at some disadvantage because we have not had available to us the statement of facts on the basis of which the respondent entered her guilty plea. But as recorded in the written submission to the High Court of the prosecutor, Ms Beiatau, what had occurred was as follows:

> "The accused decided to stay away from anyone else on one islet of the island of North Tabiteuea. She knew she was in her 9th month of pregnancy. She knew she would give birth soon to a child. Whilst on the island, she worked hard by collecting sea-worm from the sea every day. She caused the death to a child who was capable to be born alive.
> .....
>
> Hard labour and living alone immediately before delivery showed that the accused did intend to destroy the life of an innocent child.
> .....
>
> She delivered a child. She claimed that the child died when she delivered it. She buried the body on the beach. She never told anyone about what happened.
> .....
>
> She stated in her caution statement that she was angry when the father of this child did not inform her father about her being pregnant

by him. She was afraid of her father so she went to this isolated islet to hide the birth of her child.

.....

A week after her delivery her father took her back to the main island. She never told her father about her child. She never told anyone on the island about her child".

[4] It was accepted by the respondent in pleading to the charge of killing her unborn child that she acted as she did with the intent that the child should not be born alive. That remains the position in this Court.

[5] The body of the child has never been found. The respondent was originally charged with murder, or alternatively infanticide, but the charges were subsequently amended when the prosecution appreciated that it would not be able to prove that the child had been born alive.

[6] For a defendant to face a charge under s.214 on facts such as these is unusual, indeed it may be unprecedented. There was no allegation that violence or the use of any substance caused or contributed to the death of the unborn child. Instead the respondent exerted herself in the gathering of sea-worm in a way which she believed would stress the foetus and cause its death by natural causes. It may be debateable whether s.214 was intended to encompass such a situation but, perhaps in view of the nature of the sentence, the respondent has not sought to resile from her plea in this Court.

[7] The prosecutor, as well as stressing the seriousness of the killing of an unborn child, has drawn attention to an aggravating factor, namely that the respondent has a prior conviction for infanticide in 2000, for which she

received a suspended sentence of two years' imprisonment. Zehurikize J, however, took express account of that prior conviction when sentencing her.

[8] Were it not for the unusual circumstances, we consider that the existence of that prior conviction would have strongly counted against any suspension of sentence. However those circumstances, and the fact that the respondent, at the time a 40 year old, is the single mother of three young children who are entirely dependent on her for their support, obviously influenced the Judge in the course he took. He said that "the peculiar circumstances of this case require more of counselling the convict rather than severe punishment which would seriously affect the innocent children". We consider that he was entitled to take that view.

[9] We are not persuaded that the Judge was in error in suspending the sentences. The appeal is dismissed.

Blanchard JA

Handley JA

Hansen JA