

IN THE HIGH COURT OF KIRIBATI )  
CRIMINAL JURISDICTION )  
HELD AT BETIO )  
REPUBLIC OF KIRIBATI )

HIGH COURT CRIMINAL CASE No. 19 OF 2004

THE REPUBLIC  
VS  
AMON BERENATO  
KAMWEAU UAATI

FOR THE REPUBLIC: MS RURIA ITERAERA  
FOR THE 1<sup>ST</sup> ACCUSED: MR AOMORO AMTEN  
FOR THE 2<sup>ND</sup> ACCUSED: MS JENNIFER TROUP

DATE OF HEARING: 17 MAY 2004

### J U D G M E N T

The accused are husband and wife. Until April 2003 they lived at Kuma village on Butaritari. They were members of the Catholic Church group, "Beterem". The husband, Amon, was the group cashier, the treasurer.

The two have been jointly charged with three counts of simple larceny - withdrawing \$200, \$150 and \$100 from the group monies held in a Bank of Kiribati account, on the 18<sup>th</sup> March, 20<sup>th</sup> March and 2<sup>nd</sup> April 2003 respectively. The monies were paid out to them by the Island Treasurer, Tuite Maritino. Tuite gave evidence that on the 18<sup>th</sup> March he paid the money to the wife, Kamweau: she signed the withdrawal slip on that day because her husband was drunk. On the 20<sup>th</sup> March and 2<sup>nd</sup> April he paid the money to the husband who had signed the withdrawal slips. The wife on the other hand says, although she signed the first withdrawal slip, she made all three withdrawals: once her husband went with her, twice she went alone. Each withdrawal, though, was made under the husband's authority. Kamweau gave Amon the money and did not know what he did with it.

It does not matter who made the withdrawals. It is common ground that the accused made them and for the three amounts I have mentioned.

The issues in contention are whether Amon had authority to make the withdrawals and what happened to the money once it had been withdrawn.

Besides Tuite, Ms Iteraera called three witnesses, Tubwea Tikaua, the present chairman of the group (but not chairman in March and April of last year), Teataio Bootiambo, a member of the church group but not of the committee and Tiribo Maeua, the catechist. I accept all three gentlemen as being truthful witnesses whose evidence I can accept and upon which I can rely. Their evidence was to the effect that authority to withdraw monies must be given either by the group as a whole, by the committee or by the chairman: no authority had been given to Amon to make any of these withdrawals. Although Amon, whom they trusted, held the pass book he could not make withdrawals without authority. Tiribo said the group had not received any of the monies withdrawn.

Amon to the contrary, in his evidence, asserted that the chairman had given him the authority for each withdrawal. Amon was vague as to what use was made of the monies. I have noted such words as, "in case anything was required by the church group", "we used it to pay debts", "used to support [visitors from another village]". In his caution statement he had said, "the total amount that I was withdrawing for community be paid off their debit".

Amon denied he used any of the money for himself. Unfortunately neither prosecution nor defendants called the then chairman Rurontaa. No explanation was given for not calling him. I am left to assess the evidence without what might have been the benefit of Rurontaa's evidence.

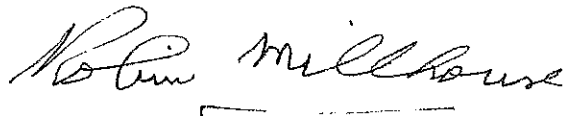
Despite Amon's assertions (and remembering that he had nothing to prove: the burden of proof was always on the prosecution), I accept beyond reasonable doubt the evidence of the prosecution that Amon had no authority to withdraw the money and that none of it ever came to be used for church purposes.

I have no reasonable doubt about Amon's guilt on those charges.

What of his wife, Kamweau? At first I thought it was a case of joint enterprise: they were both in it together. Yet Ms Troup put a doubt in my mind. She submitted that her client was merely the husband's agent. She did not know that he had no authority to make the withdrawals: she was entitled to assume that he had. As soon as Kamweau had drawn the money (whether it was one withdrawal or three) she gave it to her husband and did not know what he did with it. This could have been so: the doubt is a reasonable doubt. I must give Nei Kamweau the benefit of it.

I find Amon guilty as charged on all three counts. I find Nei Kamweau not guilty on all three counts.

Dated the 19<sup>th</sup> day of May 2004

A handwritten signature in cursive script that reads "Robin Millhouse". The signature is written in black ink and is positioned above a horizontal line.

THE HON ROBIN MILLHOUSE QC  
Chief Justice