

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

HIGH COURT CRIMINAL CASE No.16 OF 2004

THE REPUBLIC  
VS  
TOROMON ERITAI

FOR THE REPUBLIC:  
FOR THE ACCUSED:

MS RURIA ITERAERA  
MS JENNIFER TROUP

DATE OF HEARING: 2 JUNE 2004

### J U D G M E N T

The accused, Toromon Eritai, originally was charged with assault occasioning grievous bodily harm. The Republic did not proceed with that indictment but before he was asked to plead substituted assault occasioning actual bodily harm:-

Toromon Eritai, on or about the 7<sup>th</sup> November 2003, at Bairiki, Tarawa, assaulted Nei Betiata loane, thereby causing her actual bodily harm.

The accused pleaded not guilty.

The charge arises out of unhappy matrimonial differences. Early in November last year Toromon and his wife Nei Betiata were separating. They agreed to meet at the BKL bar in Betio to discuss the future of their child. Toromon was first at the bar. When Nei Betiata arrived he said she was drunk. She admitted in court that she had been drinking and was drunk before she got to the bar.

After some time the couple left Betio and went to Bairiki, to Matarena's Bar. They moved to the Waterside Bar nearer to the wharf. Nei Betiata

was hungry and wanted food. From the evidence of the accused and of the defence witness, Nei Tateke who works at the Waterside, Nei Betiata was making a thorough nuisance of herself to others in the restaurant. Toromon took her out of the bar. This is Nei Betiata's evidence:-

**I ran away towards Matarena's: he caught me. I slipped in water. Toromon hit me - aiming for my face. He kicked me as well, pushing head against brick. I couldn't see with right eye, swollen. Head swollen. Pulled me up by hair.**

Toromon brought her back to Betio and stayed with her overnight.

Nei Betiata's evidence of assault was corroborated. First by a 17 year old young woman, Nei Beebe Kaitangare:-

**....beside Matarena's. Saw him beat woman (Betiata). Hit her with fist. She fell down: kicked her face, punched twice.**

I accept Nei Beebe as a truthful and reliable witness.

Secondly Nei Betiata's evidence is corroborated by Dr Tiaon Tekanene who, four days later, examined her at the Central Hospital. From his report:-

**O/E - Ambulant - tender spot (Right) temporal region  
Swollen right lower eyelid with abrasion  
Bruised (Right) orbit with conjunctiva haemorrhage (injection)**

Dr Tekanene finished the report by expressing the opinion the injuries were consistent with assault four days earlier. In oral evidence he said the injuries would have cleared up in a few weeks: they would not interfere with day to day life.

The accused gave evidence and denied any assault:-

**I didn't kick or beat her ..... some injuries - scratch beside right eye, think bruises and scratches when she ran away. I never hit or kicked her ..... she slipped nearer to Housing. I got her up. She ran and I grabbed her, held her by dress. I saw (injuries) but only minor: only a minor scratch. From time to time she fell.**

The accused's description of the injuries is at odds with the description of Dr Tekanene whose evidence I accept without reservation. It is impossible to believe the injuries were caused by a fall. Nei Beebe's account of what she saw explains the injuries which Dr Tekanene described.

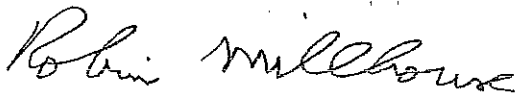
I have no reasonable doubt that the accused inflicted the injuries in the way both Betiata and Nei Beebe said and that he did so intentionally. If one punches and kicks another intention is easily inferred.

No doubt Toromon assaulted Nei Betiata. Did he cause her actual bodily harm?

“Bodily harm” has its ordinary meaning and includes any hurt or injury calculated to interfere with the health or comfort of the victim: such hurt or injury need not be permanent, but must be more than merely transient or trifling: .... (Archbold 2003 ed para 19-197). The injuries fit that description.

The accused is guilty of assault occasioning actual bodily harm.

Dated the 4<sup>th</sup> day of June 2004



THE HON ROBIN MILLHOUSE QC  
Chief Justice