

IN THE HIGH COURT OF KIRIBATI) HIGH COURT CRIMINAL CASE NO. 54 OF 2004
CRIMINAL JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

THE REPUBLIC
VS
FRED MURDOCH

FOR THE REPUBLIC: MR DAVID LAMBOURNE, SOLICITOR GENERAL
FOR THE ACCUSED: MR BANUERA BERINA

DATE OF HEARING: 15 DECEMBER 2004

SENTENCE

Fred Murdoch: you have pleaded guilty to negligent driving and to failure to report an accident. You are 30 years old, married with two children and a third on the way. Since 1999 you have been a pilot with Air Kiribati. These are your first convictions. On the second day of your trial the prosecution did not go on with an indictment charging dangerous driving causing death but you were charged instead with negligent driving and failing to report an accident. You straight away pleaded guilty. Although it was a plea late in the proceedings, you did, as Mr Berina pointed out, plead guilty at the first opportunity. I shall take into account in your favour when fixing penalty that these are your first offences and that you have pleaded guilty to them.

It was 31st July, a Saturday evening, probably about 10 o'clock. You have admitted through your lawyer that you were very tired. A drunken young man, also employed by Air Kiribati, asked you to take him home to Betio. You were then at the other end of South Tarawa, either Bonriki or Buota. You agreed. By the time you reached Tebunia you realized you could not go further. You lent over to speak to the drunken young man sitting next to you to tell him he would have to get home in some other way. Instead of

pulling over and stopping to tell him you kept on driving. Two ladies were walking on the ocean side of the road, going to buy some fish. They were to your left either both off the bitumen or one, Nei Tearei, may have been walking just on the bitumen ahead of you. You ran into Nei Tearei with the front of your car. She was thrown on to the bonnet, into the windscreen, on to the roof, carried some distance and fell off on to the roadway. She died of her injuries either instantly or soon after. The photo I saw shows your windscreen shattered. You did not stop. You drove on some considerable distance to your sister's house. You left your car at your sister's. You did not report the accident. The police found the car about a week later and were led to you as the registered owner.

The two ladies were there ahead of you to be seen. It happened near Neways Garage which is lit at night. In any case you had your own headlights and should have been driving at such a speed as to be able to see within their beam any one or anything in your path so that you could avoid them or it. Your driving was grossly negligent. Your not stopping and failing to report was very bad conduct.

The Solicitor General has argued strongly that I should, in fixing penalty, take into account the tragic consequences of your negligence. In an earlier case where I found a man charged with dangerous driving causing death guilty of driving without due care (HCCrC 35/2004 *Republic vs Kian Tokia*) I decided that the consequences of the driving without due care may not be taken into account in fixing penalty. The Solicitor General has argued that this is a more serious charge - negligent driving - so the principle is different, the serious injury or death of a person was a foreseeable consequence of negligence. I do not accept Mr Lambourne's argument: it is a matter of degree: negligent driving is simply a more serious example of the failure of the duty of care: the same principles apply to negligent driving as to driving without due care. I should not take the tragic consequences of your driving into account in fixing penalty. Parliament has fixed the penalty for negligent driving as either imprisonment for up to six months or a fine of up to \$300. Your driving was so bad that it deserves a term of imprisonment even though that means you lose your job and will have to apply for re-employment with Air Kiribati and you will lose your seniority and entitlement. I accept the Solicitor General's argument that a term of imprisonment is necessary as a deterrent to other people to emphasize that we must all take care when driving.

You will be imprisoned for four weeks to date from last Wednesday, 15 December when you went into custody.

Your driving on after the collision, not waiting to see what had happened to Nei Tearei, whether you could help or not and then not reporting the accident was dreadful conduct. For that you will be fined \$150.00.

Because of sections 4 and 6(1)(a) of the Traffic Act I must disqualify you from obtaining or holding a driver licence for not less than five years. You are disqualified for five years from today.

[Allowed four weeks from today to pay the fine of \$150.00. In default of payment imprisonment for two weeks.

The driver licence has been lost.]

Dated the 20th day of December 2004



THE HON ROBIN MILLHOUSE QC
Chief Justice