IN THE HIGH COURT OF KIRIBATI) HIGH COURT CRIMINAL CASE NO. 22 OF 2005
CRIMINAL JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

THE REPUBLIC
VS
URIAM MONIKETI

FOR THE REPUBLIC: MS RURIA ITERAERA
FOR THE ACCUSED: MR GLENN BOSWELL

DATE OF HEARING: 14 DECEMBER 2005

JUDGMENT

Uriam Moniketi is charged with arson:-

Particulars

On 28 January 2004 at Tannakoroa on Abemama island in the Republic of Kiribati, Uriam Moniketi wilfully and unlawfully set fire to a house belonging to the Kiribati Protestant Church, CICD school.

What Uriam did is not in dispute nor that it was unlawful. The defence is that he did not act "wilfully".

In January 2004 Uriam was an assistant teacher of building and navigation at the Christian Institute for Community Development on Abemama. He lived with his wife in a house belonging to the CICD. It was a house built of local material: wood and thatch. Pastor Teairi Toakai, Vice Principal of CICD, put its value at over $1,000.

On 28 January Uriam's wife was away on Tarawa but other relatives, spouses of his sons, were living in the house with him. About 6 o'clock in the evening he left the house for Tabiang village and returned an hour or so later. In that time he had four cups of sour toddy.

[There is no evidence of the size of the cups. Uriam admitted in cross-examination that he was "affected but not intoxicated". Mr Moritin Smith to whose house he went later in the evening said, "Uriam had been drinking". I conclude that Uriam was to an extent affected by what he had drunk but he was not intoxicated.]

When he got back to the house no one was there. He left again and was away about three hours. It was about 10 o'clock in the evening when he got back a second time. He denied having had anything more to drink. He did not know why his relatives were not at the house. He had had no disagreement with them "but may be they were afraid of me because I'd gone out drinking".

Uriam said he is afraid of the dark: he sees ghosts like people who have died: "I can't stay on my own at night".

He wanted his relatives to come home. Instead of going looking for them he tried to attract their attention by lighting a fire. First he tried to set fire to his lavalava which was hanging on a pole running between the house and cooking house. The wind was too strong and it wouldn't light.

Lit it - because afraid of ghosts. Provided illumination - expected relatives to return when they saw it. It didn't burn because wind too strong: wind killed fire. Didn't have any source of illumination: couldn't find torch because dark: no lantern. Electricity not on.

Next he went inside the house. The house was divided into two rooms by a wall of lashed coconut leaves. The floor of the sleeping room was gravel: the roof very high. They kept their clothes in that room. In the middle of the sleeping room he set fire to an unfinished mat. The wind inside was not as strong as outside and the mat caught fire and burned. It was still smoldering when he left the house again. After he left the fire spread from the mat and burnt the house (and two other buildings).

Those are facts from the evidence of the accused and that of Pastor Toakai and Moritin Smith.

Uriam's caution statement to the police was admitted by consent:-

I recalled clearly that day when I came back after drinking and there was nobody at home. I took my black lavalava, hang it on a stick which was attached from the raised floor house (kiakia) to the local kitchen and burn

it. I went inside, took a mat which was not yet finished from the room, put in in the lounge and burn it there so that when my house members saw the fire they will come back to the house. After that I left but I met Kourabi at the corner of the house. He asked me "are you going to burn our things", I said, "no" and then I went to the village. I did burn the lavalava because I was afraid of the dark.

No doubt about the facts but has the prosecution proved beyond reasonable doubt that the accused acted "wilfully"?

The accused is of unusual appearance, wearing his hair long, more in the style of a woman than of a man. My impression of unusualness was confirmed by his evidence, his demeanour and what he said. Yet he is not unintelligent. To the contrary I assessed him as an intelligent man: he has been a teacher of building and navigation.

Both counsel, Ms Iteraera prosecuting and Mr Boswell defending, referred to the authorities, the most relevant of which are the Queensland case of R v Lockwood, ex parte Attorney General ((1981) Qd. R 209) and the House of Lords decision R v G and another ((2003) 4 All ER 765).

I rely on Mr Boswell's most helpful written submission to discuss Lockwood's case:-

> 23. The Court of Criminal Appeal in R v Lockwood, ex parte Attorney-General [1981] Qd.R. 209 found that recklessness was an element that could be read into section. In the case of R v Webb; ex parte Attorney-General [1990] 2 Qd.R. 275, Chief Justice Macrossan summarised the decision in R v Lockwood as follows:
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> *'Wilfully' should be understood as meaning to refer to either an intended consequence or a consequence which is in mind as likely but is recklessly ignored. Such a meaning was established by this Court in R v Lockwood, ex parte Attorney-General [1981] Qd.R. 209. That was a case of willful and unlawful damage to property .... The meaning given to 'wilfully' is more extensive than would be conveyed by the word 'intentionally' which might be thought in some contexts to mean 'of one's own free will'. This meaning to be given to 'wilfully' should also embrace 'a result not positively desired but foreseen as a likely consequence of the relevant act' (per Lucas A.C.J. in Lockwood at 216A). The meaning fixed by the Court for 'wilfully' in Lockwood was arrived at after consideration of the meaning attributed to 'maliciously' and 'intentionally' in comparable contexts as, for example, may be seen in Kenny, Outlines of Criminal Law, (17th ed.) at p. 218, Vallance v The Queen (1961) 108 C.L.R. 56 and other authorities*

which are referred to in Lockwood. The suggestion made in Lockwood that the word 'wilfully' should bear the same meaning in the related sections which appear in Ch. XLVI of the Code should be acted upon".

24. The Court in Lockwood therefore framed 'wilfully' as including 'a result not positively desired but foreseen as a likely consequence of the relevant act'.

Section 1(1) of the UK Criminal Damage Act 1971 was considered by the House of Lords in R v G. Mr Boswell submitted that section 312 of the Kiribati Penal Code has its equivalent in section 1(1) of the Criminal Damage Act. I note, though, the difference in wording:-

312 Any person who wilfully and unlawfully sets fire to -

(a) any building or structure whatever, whether completed or not ...

is guilty of a felony and shall be liable to imprisonment for life.

Section 1(1) of the Criminal Damage Act:-

A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.

Their Lordships in R v G concluded that the test of whether an accused foresaw the result of his actions is a subjective one, not objective. I defer to that authority. Towards the end of Lord Bingham's speech he said (786g-j):

There is no reason to doubt the common sense which tribunals of fact bring to their task. In a contested case based on intention, the defendant rarely admits intending the injurious result in question, but the tribunal of fact will readily infer such an intention, in a proper case, from all the circumstances and probabilities and evidence of what the defendant did and said at the time. Similarly with recklessness: it is not to be supposed that the tribunal of fact will accept a defendant's assertion that he never thought of a certain risk when all the circumstances and probabilities and evidence of what he did and said at the time show that he did or must have done.

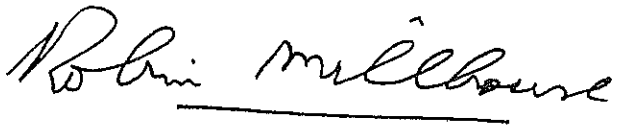
As the tribunal of fact, I must come to a conclusion about the accused's state of mind at the time he lit the fires. I have already assessed him as an unusual person but intelligent. We are in Kiribati. The fire burned down a local house.

Is there anyone in Kiribati who would not foresee the dreadful risk, the strong probability, that lighting a fire inside a local house would cause the house to burn down? The more so when the fire is left smoldering and unattended? I do not hesitate to answer the questions with an emphatic "No". Everyone (except I suppose very young children and those of feeble mind) must know that lighting a fire in this situation and leaving it unattended is likely to lead to the house burning down. Despite his unusual characteristics I do not except the accused. As a matter of common sense (to use Lord Bingham's phrase) he must have foreseen what happened as a likely consequence of his relevant act (to borrow the words of Lucas ACJ quoted by Macrossan CJ in Lockwood).

The prosecution has proved beyond reasonable doubt the only element in dispute of the offence of arson, that the accused acted wilfully.

The accused is guilty of arson.

Dated the 19th day of December 2005



THE HON ROBIN MILLHOUSE QC
Chief Justice