

IN THE HIGH COURT OF KIRIBATI) HIGH COURT CRIMINAL CASE 40 OF 2006
CRIMINAL JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

THE REPUBLIC
v
TERAKAU KABUAA
ERITIERA KOMERI
TEREREITI RAWATA

FOR THE REPUBLIC: Ms RURIA ITERAERA & Ms TERETIA TOKAM
FOR THE ACCUSED: MR KAROTU TIBA

DATE OF HEARING: 23 NOVEMBER 2006

JUDGMENT

Terakau Kabuua and Eritiera Komeri have pleaded not guilty to arson:-

Particulars of Offence

On 27 July 2004 at Rotima Village, Nonouti in the Republic of Kiribati Terakau Kabuua, Eritiera Komeri and Terereiti Rawata willfully and unlawfully set fire to a house belonging to Teiaa Inatio and a house-store belonging to Teaborua Smith.

On the instructions of the Attorney General, before arraignment, the prosecutor entered a nolle prosequi relating to Terereiti Rawata. I was told that Terereiti would give evidence for the prosecution. When he was called he did not appear.

The facts of the arson are not in dispute. Early in the morning on 27 July 2004 some men came to the houses and store of Teaborua Smith while he and his family were sleeping, threw stones, broke into

the store and set it on fire. A neighbour's house, Teiaa Inatio's, was also burnt down. The damage to Teaborua's premises is estimated at \$8,500.

Teaborua:-

They entered house – Terakau damaged door facing house – entered shop. Put cloth into motorbike benzene. Took cloth to shop – lit it with gas lighter. Took cargo outside. Shining torch on us. Identify accused Terakau, Eritiera. All houses burnt down. Kiahia also.

Saw his face – light of his fire and torch. Accompanied by some people. Eritiera beside him in shop.

The only issue at trial was the identity of those who committed this crime.

Teaborua and his wife, Nei Tebona Keangimawa, said they saw and recognized Terakau and Eritiera. It was full moonlight. They knew the two men.

Apart from this identification evidence, the prosecution produced evidence of an admission by Terakau. Some weeks after the fires Terakau and Eritiera were brought to the Nonouti Magistrates Court in custody. Teaborua was there. They were in the police office. An argument broke out between Teaborua and Terakau during which Terakau admitted that he had burnt the buildings down.

Teaborua:-

They were angry. Terakau said "I'm sorry it's myself that burnt down your house" – repeated many times.

Another witness, Tabooia Kanoo:-

Went to watch court case. Adjourned. Argued. Man in white (Terakau). I heard him say that he burnt down the house. Teaborua's house. Said that it was himself who burnt the house down. About 10m away. He said it to Teaborua. Talking loud. Not seen him before.

Xxmm: Know Teaborua well, close friends. Quarrel inside police office. I heard it with my own ears.

The defence was that at the time of the arson Terakau and Eritiera were sleeping blamelessly with their wives and families in the Maneaba. The first they knew of anything wrong was when they were disturbed between 2 and 3 o'clock in the morning by Teaborua coming into the Maneaba, causing a commotion and blaming and attacking them for what had been done.

The two accused and their wives all gave evidence to that effect. They all struck me as genuine: I could accept their evidence.

The two accused denied that Terakau had made an admission during the argument in the police office.

The fifth witness for the defence was Sgt Teraoi Ereata. He had had the job of separating the men when they had the argument at court:-

I met up with the three in Matang village at the police office. To attend court. Teaborua challenged Terakau to fight. Terakau said, "Why do you challenge me to fight? Why don't you go and fight the right people?" Teaborua said he owns many lands. Burning of Teaborua's house - didn't hear anything regarding burning of Teaborua's house. I was with them all the time of conversation/argument..... In relation to burning of house - nothing said by either about the burning of the house.

During addresses Ms Iteraera suggested that maybe there had been two occasions when the men had argued, that Sgt Ereata had been present only at one, that it was during the other that the admissions had been made.

There had been no suggestion in the evidence of two encounters and I doubt very much that there were. I accept without hesitation the sergeant's evidence that he heard nothing during the argument about the burning down of the buildings.

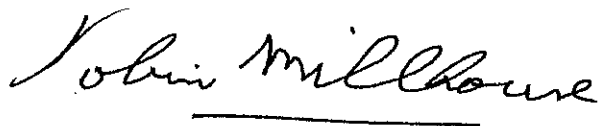
Besides it would surely be very strange for Terakau during a row to make such an admission. On every occasion of which there is evidence of what he has said, as well as his own evidence, Terakau has denied being responsible.

As for the identification evidence, courts have repeatedly said how risky it is to rely on evidence of identification, how easy it is for people to be mistaken. The more so when the identification is made at night, even in bright moonlight. To rely on identification may be unsatisfactory.

The prosecution has the burden of proof beyond reasonable doubt. Given the circumstances of the identification, the risk that Teaborua and Nei Tebone may be mistaken, the strong doubt I have that Terakau made any admission, I could not possibly find that the prosecution has discharged the onus of proof beyond reasonable doubt.

The accused are not guilty of arson.

Dated the 24th day of November 2006



THE HON ROBIN MILLHOUSE QC
Chief Justice