

IN THE HIGH COURT OF KIRIBATI) HIGH COURT CRIMINAL CASE No. 48 OF 2005
CRIMINAL JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

THE REPUBLIC
VS
ATERA ARI

FOR THE REPUBLIC: MS RURIA ITERAERA
FOR THE ACCUSED: MS BOTIKA MAITINNARA

DATE OF HEARING: 20 MARCH 2006

J U D G M E N T

[Before the accused was arraigned, Ms Maitinnara applied for a stay of proceedings, arguing that the delay of four years was “vexatious and an abuse of due process” and that her client’s defence had “been materially hindered” by the delay.

After hearing argument I concluded that, although the delay was getting close to being too long to countenance, in the circumstances it had not been so long as to justify staying the prosecution.]

Atera Ari is charged with an offence under section 46 of the *Development Bank of Kiribati Act*, disposing of property used as a security:-

On or about 1st October 2002 Atera Ari disposed of land known as Kabeaiti 263 e/1 at North Tarawa by sale to Banuera Berina, when the land had been pledged as security by the accused in 2001 to the Development Bank of Kiribati for a loan given to his wife, Tiberaiti Atera in the sum of \$9,469.00.

At the close of the prosecution case I pointed out to Ms Iteraera that the prosecution had not proved that it was the accused who pledged the land.

The land was owned by his mother, Nei Katiria Maeke and it was Nei Katiria who gave the land as security for a loan to Atera's wife, Nei Tiberaiti Atera. Finally I decided that proof of the accused having pledged the land as security was not essential to proof of the charge against him.

Section 46:-

Any person whodisposes of any property forming the whole or part of a security pledgedto the Bank, other than with the authority of the bank, commits an offence

The crucial elements are that the accused disposed of property - no matter whose - which had been pledged to the Bank and disposed of it without the authority of the Bank.

The Bank gave a loan to Nei Tiberaiti and took as security the land owned by Nei Katiria. On 13 March 2001 Nei Katiria and the Bank were before the North Tarawa Magistrates Court (Land). The transaction was approved:-

The land plot "Kabeaiti 263/e/1 will stand as a security to the loan of Tiberaiti Atera from DBK.

The name "Atera Ari" appears on the top left of the minute of 13 March. The significance of this is not clear but probably putting in the name Atera Ari means he represented his mother in court.

Most unfortunately and for reasons not explained, the encumbrance was not marked on the Land Register. If it had been much of what followed may not have happened.

Some time later Nei Katiria died. A large balance remained outstanding on the loan.

On 1 October 2002 Mr Banuera Berina, the well known lawyer and Atera Ari went before the North Tarawa Court. Mr Berina, according to the Minute explained to the Court that Nei Katiria had been anxious that he should have the land "after good friendship".

Decision: Registration of name is allowed/accepted. The name Banuera Berina will be registered on the land "Kabeaiti 263/e/1.

After they had been to Court Atera received \$2,000 from Banuera.

Atera and his wife Nei Tiberaiti gave evidence. Atera:-

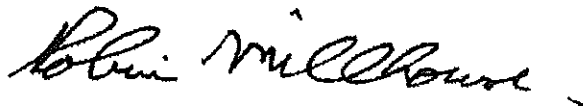
....my mother willed it to Banuera. I knew that my mother had pledged the land as security for a loan. After the death of our mother it is ours - myself and sisters. Banuera is registered: that was our mother's will I transferred the land to Banuera. I knew about the security to the DBK when I transferred it.

According to both Atera and Nei Tiberaiti, Tumeka who for a short time in 2002 was a contract Recovery Officer for the DBK had called in 2002. He told them that the deductions from their son's salary had stopped. They took it to mean the loan had been repaid. They heard nothing more about it, though, from the DBK. They were very surprised when in 2003 the DBK came and seized a bike, an ice box and a hand cart which were under a bill of sale given by Nei Tiberaiti.

I accept that Tumeka did tell them the deductions had stopped but even so the accused and his wife without more from the Bank nor themselves enquiring of the Bank, should not have assumed the loan had been paid off. The offence is absolute and the hard fact is that the accused did dispose of the land by sale when it had been pledged as security to the Bank.

I find the accused guilty.

Dated the 22nd day of March 2006



THE HON ROBIN MILLHOUSE QC
Chief Justice