



HIGH COURT OF KIRIBATI

Criminal Case No 36/2017

THE REPUBLIC

v

TEEKUA KAMAUTI

*Pauline Beiatau, Director of Public Prosecutions, for the Republic
Angitonu David for the accused*

Date of sentencing: 31 October 2018

SENTENCE

- [1] Teekua Kamauti has pleaded guilty to 1 charge of causing grievous harm, contrary to section 220 of the *Penal Code* (Cap.67). The maximum penalty is imprisonment for 7 years.
- [2] An information was originally filed on 15 May 2017, charging both the prisoner and her husband, Raviti Boitabu, with causing grievous harm with intent, contrary to section 218(a) of the Penal Code (although the charge mistakenly referred to section 134(1)). A second information (correcting the mistaken reference) was filed on 14 March 2018.
- [3] When the matter was mentioned before me on 18 July, the question was raised as to whether this information complied with section 70 of the *Criminal Procedure Code* (Cap.17). On 20 July the Attorney-General rectified the defect by filing a fresh information (in the same terms) signed by her. At a mention of this matter on 1 August, counsel for the prosecution applied to amend the charge, reducing it to causing grievous harm *simpliciter*. The amendments were made without objection. Counsel for the prisoner then advised that her client would plead guilty to the revised charge. Counsel for the co-accused advised that his client would be pleading not guilty, so the matter was fixed for trial.
- [4] On 30 October – what was to be the first day of the trial – the prosecution advised that they would not be offering any evidence against the prisoner’s co-accused. He was acquitted and discharged. With a further minor amendment to the information (to correct the year of the offence in the particulars), the prisoner was arraigned and pleaded guilty.

- [5] The incident giving rise to this charge occurred in March 2017, but the prisoner and the complainant have a history going back some years. They were neighbours in Taboiaki village on Nonouti. In 2015, when the prisoner was aged 28 years and the complainant was 15, the 2 had an illicit affair while the prisoner's husband was away on Tarawa. He learnt of the affair on his return. The affair ended, but the continuing close proximity of the complainant and prisoner meant that tensions between the 2 families, and between the prisoner and her husband, did not wane. The tensions were aggravated by the fact that the complainant often bragged of the affair to others in the small community. Whenever the prisoner's husband was reminded of the affair, he would beat the prisoner. She begged the complainant to stop talking about the affair, to no avail.
- [6] Early in the morning of 11 March 2017, the prisoner's husband returned from an all-night kava session. He was angry, as his wife's affair had again been a subject of discussion among his drinking companions. He confronted the prisoner, who went next-door to speak to the complainant. She took a kitchen knife with her. The prisoner says that she had no intention of using the knife; she simply planned to threaten him with it. She spoke with the complainant's parents and went to where he was sleeping. She tried to wake him, without success. The prisoner then stabbed the complainant once in his right chest with the knife. She says that she allowed her anger and frustration to get the better of her.
- [7] The complainant sustained a single wound, 2cm long and 2.5cm deep. The wound was stitched on Nonouti, and apparently healed without any complications, other than some scarring.
- [8] The prisoner was arrested by police officers later that day, and made full admissions when questioned. She spent 3 days in the police cell on Nonouti, before flying to Tarawa. She has not been back to Nonouti.
- [9] The prisoner is now 31 years of age. She is still with her husband, and they have 2 young children, aged 2 and 7. The prisoner's formal education ended in Form 3, and she leads a subsistence lifestyle. She has no previous convictions.
- [10] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal in *Kaere Tekaei v Republic*.¹ At the same time, I note that determining an appropriate sentence in any case is not a process that lends itself to precise mathematical calculation.
- [11] Counsel for the prosecution seeks a sentence of 2 years' imprisonment, followed by a residence order for a further year under section 37 of the Penal Code. Counsel for the prisoner submits that her client's circumstances do not warrant the imposition of an immediate sentence of imprisonment, and that a suspended sentence would be appropriate.

¹ Court of Appeal Criminal Appeal 1/2016, at [10].

- [12] I am satisfied that the offending in this case sits toward the lower end of the spectrum. The complainant's injury, though potentially serious, has had no lasting consequences. It was able to be treated locally. During submissions I questioned whether it truly amounted to grievous harm, or should more properly be dealt with as an offence of unlawful wounding. In the end the matter was not pursued by counsel for the prisoner, and we proceeded with the charge as is.
- [13] The prisoner has been at the receiving end of significant violence at the hands of her husband. The sexual relationship with the complainant was clearly a serious error of judgment, and it has had ongoing ramifications. I consider the repeated bragging by the complainant, particularly in the village context, to be significant provocation.
- [14] Against that, the prisoner attacked the complainant when he was asleep, and defenceless. She is perhaps fortunate that the consequences were not far more serious.
- [15] I have not found many previous cases of causing grievous harm *simpliciter* coming before this court. In *Republic v Atantaake laokiri*,² the prisoner, aged 42 years, pleaded guilty to causing grievous harm after stabbing a man in a fight. The single wound sustained in that case was more serious than in the case before me. He received a sentence of 16 months' imprisonment.
- [16] In *Republic v Tenneke Betero*,³ the prisoner inflicted numerous serious stab wounds on a member of his household after a drunken quarrel. He pleaded guilty, and the court accepted that there had been provocation from the complainant. He was sentenced to imprisonment for 6 months.
- [17] In *Republic v Ntiua Kabua*,⁴ the prisoner hit and kicked the complainant during a drunken fight, leaving the complainant in a coma for 3 days. He pleaded guilty and received a sentence of 18 months' imprisonment, suspended for 1 year.
- [18] I consider that an appropriate starting point in a contested case such as this one would be a sentence of imprisonment for 18 months to 2 years. The timely plea of guilty and the absence of previous convictions are significant mitigating factors. I am satisfied that the prisoner is remorseful for her actions. The violence inflicted upon the prisoner by her husband prior to the commission of the offence is also a relevant consideration.
- [19] The use of a knife, and the fact that the complainant was attacked when he was not in a position to defend himself are aggravating factors.

² High Court Criminal Case 25/2004

³ High Court Criminal Case 44/2004

⁴ High Court Criminal Case 25/2017

- [20] Taking all of these matters into account, I have reached the conclusion that an appropriate sentence in this case is one of imprisonment for a period of 1 year.
- [21] As this sentence falls within the scope of section 44 of the Penal Code, I turn to consider whether the prisoner's sentence should be suspended. It is of relevance here that the prisoner has young children who will be significantly impacted if their mother is sent to prison. While this is not ordinarily a relevant consideration in determining the overall sentence duration, it is material to the question of whether or not to suspend the sentence. In addition, I accept that it is extremely unlikely that the prisoner will reoffend.
- [22] I am therefore of the view that the personal circumstances of the prisoner outweigh the other considerations calling for imposition of an immediate custodial sentence. The sentence will be suspended.
- [23] I order, under section 44(1) of the Penal Code, that the sentence of 1 year's imprisonment referred to above is not to take effect unless, within the period of 2 years from today's date, the prisoner commits another offence punishable by imprisonment.
- [24] I see no reason to impose the residence order sought by counsel for the prosecution.


Lambourne J
Judge of the High Court

