



HIGH COURT OF KIRIBATI

Criminal Case No 86/2016

THE REPUBLIC

v

MICHAEL NATAUA

Ateti Tekawa for the Republic

Raweita Beniata for the accused

Date of sentencing: 26 November 2018

SENTENCE

- [1] Michael Nataua has pleaded guilty to 1 charge of careless driving causing death, contrary to section 33(1) of the *Traffic Act 2002*. The maximum penalty is imprisonment for 5 years, a fine of \$2000, or both.
- [2] An information was originally filed in this case on 15 September 2016, charging the prisoner with dangerous driving causing death. For reasons unclear, the case was not mentioned by the court until 3 August 2017, then not again until more than 11 months after that. When the matter was mentioned before me on 16 July this year, the question was raised as to whether the 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. On 10 August counsel for the prisoner advised that his client would be pleading not guilty to the charge, and the matter was set down for trial.
- [3] When the matter came on for trial last week, counsel for the prosecution advised the court that the Attorney-General wished to enter a *nolle prosequi* in respect of the July information under section 68(1) of the *Criminal Procedure Code*. They would instead be proceeding on a fresh information charging the present charge, to which the prisoner would be pleading guilty. The prisoner was discharged with respect to the previous information and, following a minor amendment to the new charge (to correct the title of the Act under which it is brought), he was arraigned and pleaded guilty.

- [4] The events giving rise to this charge occurred between 9:00am and 10:00am on 18 June 2016. The prisoner was driving a van for his employer, I-Mart, with a workmate as a passenger. The van had previously had problems with its brakes, but the fault had been repaired. Crossing the causeway from Bairiki to Betio, the brakes failed again. The prisoner ignored his workmate's pleas to slow down. He continued at speed (although not over the speed limit) and overtook several other vehicles. As he approached the toll booth at the Betio end of the causeway, another van belonging to I-Mart was ahead of them. The prisoner was unable to stop, so he took evasive action by swerving to the left of the other van. The prisoner's van crashed through a sign before colliding with the deceased, who was sitting on the side of the road soliciting donations from drivers as they stopped to pay the toll. The deceased was deaf and blind. He is believed to have died instantly. The momentum of the prisoner's van caused it to continue on for a further 10 metres before coming to a stop.
- [5] The lapse of judgment in this case was serious. The prisoner's duty to others on or near the road that morning was to pull over as soon as he realised that the van's brakes were not working. Instead, he continued on. The prisoner may not have been speeding that day but, given that he was driving a van without brakes, he was certainly going too fast. As I remarked in the course of submissions, the prisoner was perhaps fortunate that the prosecution accepted his plea to the lesser charge. Had he been convicted of dangerous driving causing death he would have been facing a minimum sentence of 10 years' imprisonment.
- [6] Counsel for the prosecution accepts that alcohol was not a factor in this case. The weather was fine at the time. The prisoner held the appropriate class of licence for the van, and he has no previous convictions. Counsel submits that the offence warrants imposition of a custodial sentence, as well as disqualification from holding a driver licence for a lengthy period.
- [7] The prisoner is 30 years of age. He is married with 3 young children. He is unemployed, and leads a subsistence lifestyle. The prisoner is the sole provider for his family. He has not driven a motor vehicle since the collision. The prisoner went straight to the police station and cooperated fully with the investigation. He has made a personal apology to the children of the deceased, and (in a remarkable display of forgiveness) he has been welcomed by them as a brother. A letter from the deceased's son Tawaia was provided to the court.
- [8] 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.

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

- [9] In *Rereintetaake Kanooa v The Republic*, the Court of Appeal agreed with a statement from the Chief Justice that a sentence within the range of 1 to 3 years' imprisonment was appropriate for offending of this nature.² In that case, the Court refused to interfere with a sentence of 18 months' imprisonment. Speed was a factor in the offending and the appellant had entered a timely plea of guilty.
- [10] Counsel for the prisoner submits that any sentence of imprisonment should be suspended, relying on the case of *Republic v Rabuna Kokoria*.³ I reminded counsel that the personal circumstances of an offender determine whether it is appropriate for a sentence of imprisonment to be suspended. Suspension of a sentence in one case will not necessarily mean that the sentence will be suspended in another, even if the facts of the 2 cases are similar. As I said in *Republic v Bwereata Kamoriki*, it will be a rare case where a person convicted of this offence receives anything other than an immediate sentence of imprisonment.⁴
- [11] It is relevant that there has been an unacceptable delay in the prosecution of this case, although not as bad as we have seen in other cases. It has been almost 2½ years since the commission of the offence. None of that delay can be attributed to the prisoner. For the reasons discussed by the Court of Appeal in *Attorney-General v Li Jian Pej*, the prisoner is entitled to a modest reduction in sentence, to compensate him for the breach of his constitutional right to be afforded a fair hearing within a reasonable time.⁵
- [12] The prisoner spent 1 night in custody immediately after the incident.
- [13] Taking all of these matters into account, I am of the view that an appropriate sentence in this case is one of imprisonment for a period of 15 months. I am not prepared to suspend the prisoner's sentence.
- [14] The only matter remaining to be dealt with is the cancellation of the prisoner's driver licence and the period of disqualification that will apply. As careless driving causing death is a serious traffic offence for the purposes of the *Traffic Act*, I am obliged by section 56(3) to cancel the prisoner's driver licence. I am also required to disqualify the prisoner from holding a driver licence for a period of at least 1 year. Under section 56(2)(b), the maximum period of disqualification is 5 years.
- [15] The prisoner does not have a current driver licence. The licence he held at the time of the offence (#301/15, issued on 3 March 2016) has expired, and was not renewed. There is therefore no licence to cancel.

² Court of Appeal Criminal Appeal 2/2014, at [6]-[7]

³ High Court Criminal Case 19/2017

⁴ High Court Criminal Case 2/2017, at [6]

⁵ Court of Appeal Criminal Appeal 5/2015

[16] The prisoner is disqualified from holding a driver licence for 3 years from today. The Highway Authority, as the licensing authority under the Traffic Act, is to be informed of his disqualification.


Lambourne J
Judge of the High Court

