



## HIGH COURT OF KIRIBATI

*Criminal Case No 31/2016*

**THE REPUBLIC**

**v**

**MIKAERE TOOMA**

*Pauline Beiatau, Director of Public Prosecutions, for the Republic  
Raweita Beniata for the prisoner*

*Date of sentencing: 7 March 2019*

### **SENTENCE**

- [1] Mikaere Tooma has pleaded guilty to 1 charge of causing grievous harm, contrary to section 220 of the *Penal Code* (Cap.67).
- [2] In the course of sentencing submissions, I advised that I was not prepared to accept certain assertions that had been made by counsel for the prisoner without hearing evidence. This matter then proceeded by way of a contested plea. The facts as I have found them to be, and on which I sentence the prisoner, are set out in my Ruling on Factual Matters, delivered on 18 February 2019.
- [3] An information was originally filed on 29 February 2016, charging the prisoner with 1 count of attempted murder and 1 count of causing grievous harm. A second information was filed on 12 May 2016, charging 1 offence of attempted murder and 1 domestic violence offence under *Te Rau n Te Mweenga Act* 2014. A third information, with a single count of attempted murder, was filed on 11 January 2017. None of these informations complied with section 70 of the *Criminal Procedure Code* (Cap.17). A fourth information, in the same terms as the third information, but signed by the Attorney-General, was filed on 20 July 2018.
- [4] For reasons unclear, the matter was not mentioned in Court until 31 July 2018. It then took until 21 November to locate the prisoner and bring him before the Court. On 7 December a fifth information was filed, charging the prisoner with a single count of causing grievous harm. On that day, counsel for the prosecution entered a *nolle prosequi* with respect to the fourth information, and counsel for the prisoner advised that his client would be pleading guilty to the new charge.

- [5] The prisoner is now 34 years of age. He and the complainant reconciled some time ago, and the complainant has provided 2 letters to the Court, indicating that she has forgiven the prisoner and asking that mercy be shown to him. Prior to being remanded in custody, the prisoner was working aboard an inter-island ship.
- [6] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.<sup>1</sup> The maximum penalty under section 220 is 7 years' imprisonment.
- [7] This is a very serious matter. I am astounded that Nei Tiana survived her injuries, especially given that the attack occurred on an outer island and she had to be brought to Tarawa for treatment. Tiana is perhaps fortunate that the more damaging blows landed on her arms and legs. As it is, she is left with significant scarring and limited use of her right hand, and will require assistance with many tasks for the rest of her life. This offending is very much towards the upper end of the spectrum for an offence of causing grievous harm. It is to Tiana's credit that she has been able to forgive the prisoner.
- [8] The violence involved in this case was extreme and (as I have found) unprovoked. A weapon was used against a vulnerable victim, and some of the blows landed on the complainant's head. The attack resulted in permanent disability impacting on her quality of life. I am of the view that, had the prisoner been convicted after a trial, an appropriate starting point would be imprisonment for 4½ years.
- [9] I consider that there are no particular aggravating features to this offending that have not already been taken into consideration in arriving at the starting point.
- [10] As regards mitigating factors, the prisoner has no previous convictions. I am satisfied that he is genuinely remorseful for his actions. The prisoner's plea of guilty was entered at a very early stage, for which he is entitled to a significant reduction in sentence. For these matters I reduce his sentence by 14 months.
- [11] The fact that this violence occurred in a domestic situation does not in any way reduce its seriousness. Family violence is a major problem in Kiribati. By passage of *Te Rau n Te Mweenga Act 2014*, the Maneaba ni Maungatabu has sent a clear signal that violence within the family will not be tolerated, and is a matter of grave concern for all of us.
- [12] I note that the complainant has asked that I impose a lenient sentence. Such a request is not unusual in cases involving family violence. However, just because the complainant has condoned her husband's violence, that does not mean that this Court should do the same. As the New Zealand Court of Appeal has said, "there is a public interest at stake as well as the interest of the victim".<sup>2</sup> I do not

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<sup>1</sup> *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

<sup>2</sup> *R v Taueki* [2005] NZCA 174, at [33], citing *R v Clotworthy* (1998) 15 CRNZ 651, at 659.

ignore the complainant's request, but her views cannot outweigh those of the wider community.

- [13] I take into consideration the fact that the prisoner has spent almost 5 months in custody prior to sentence. He had 2 months in custody immediately following his arrest, and a further period of almost 3 months since 14 December 2018. The prisoner's sentence is reduced by 10 months, to take account of the effect that the rules concerning parole will have on his ultimate sentence.
- [14] It is relevant that there has been an unacceptable delay in the prosecution of this case. It has been more than 3 years since the commission of the offence. For the reasons discussed by the Court of Appeal in *Li Jian Pei*, 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.<sup>3</sup> I therefore reduce his sentence by a further 3 months.
- [15] The prisoner is convicted on his plea of guilty. Taking all of the above matters into account, he is to be imprisoned for a period of 2 years and 3 months. The sentence is to run from today.

  
**Lambourne J**  
Judge of the High Court



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<sup>3</sup> *Attorney-General v Li Jian Pei & Taaiteti Areke* [2015] KICA 5