



HIGH COURT OF KIRIBATI

Criminal Case N° 18/2019

THE REPUBLIC

v

RIUA TEINARAOI

*Raaman Teneaki for the Republic
Reiati Temaua for the prisoner*

Date of sentencing: 4 November 2019

SENTENCE

- [1] Riua Teinaraoi has pleaded guilty to entry of a dwelling-house in the night with intent to commit a felony, contrary to section 294(a) of the *Penal Code*, simple larceny, contrary to section 254(1) of the *Penal Code*, and indecent assault, contrary to section 133 of the *Penal Code*.
- [2] The offences were committed in the early hours of 6 January 2019. The prisoner was intoxicated. He entered the Bairiki residence of 56-year-old Nanoua Kiroon while the inhabitants were sleeping. The door to the house is said to have been locked, but it is unclear how the prisoner gained entry. While inside the house, he approached Nanoua while she slept, lifted up her *lavalava* and moved his face between her thighs. She awoke and the prisoner ran away, taking with him a laptop computer, 3 mobile phones and \$80 in cash, with a total value of \$1509.
- [3] Nanoua was unable to identify the intruder, but the following day the prisoner returned the laptop to her. He was then interviewed by police and confessed to entering the house and stealing the laptop. He does not remember stealing the cash or the phones, nor does he have any memory of assaulting Nanoua, although, by his pleas of guilty, he accepts that these things happened. The phones (together valued at \$729) and the cash were never recovered.


- [4] An information filed on 14 June charged the prisoner with entry of a dwelling-house in the night with intent to commit a felony and simple larceny. The information was amended (without objection) on 20 September to add the indecent assault charge. On 27 September counsel for the prisoner advised that his client would be pleading guilty to all charges.
- [5] The prisoner is now 20 years of age, and was 19 at the time of the offences. He has recently married. He is employed as a 'cargo boy' for a local business and has no previous convictions. I am told by his counsel that the prisoner has not consumed alcohol since the night in question, and has moved away from his previous residence to avoid the negative influence of his former peers. He has made an effort to turn over a new leaf. Counsel submits that the indecent assault was purely opportunistic behaviour on the part of the prisoner, and had not been his intention when he entered the house.
- [6] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.¹ The maximum penalty for the offences of entering a dwelling-house in the night and indecent assault is imprisonment for 7 years, while for simple larceny it is 5 years' imprisonment. I intend to apply the totality principle and impose a single sentence in respect of all counts that I consider meets the gravity of the prisoner's offending.
- [7] Counsel for the prosecution submits that a custodial sentence is warranted in this case. I agree that such a sentence is the inevitable consequence of this kind of offending. As I remarked in an earlier case of house-breaking and stealing:
- It is said in Kiribati that the only crime worse than murder is theft. In a communal society, where security is non-existent, respect for the belongings of others is at the core of our need to maintain peace and harmony in our communities.²
- [8] The prisoner's conduct is further compounded by the indecent assault. While the assault itself falls to the lower end of the spectrum of seriousness, it was still a significant indignity inflicted on a mature woman as she slept.

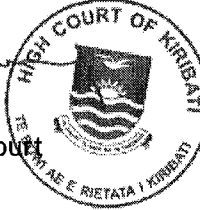
¹ *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

² *Republic v Tioti Teweia* [2019] KIHIC 31, at [11].

- [9] In all the circumstances, I am of the view that an appropriate starting point in this case is a sentence of imprisonment for 2½ years. There are no particular aggravating features to the prisoner's offending that have not already been taken into consideration in arriving at the starting point.
- [10] As for mitigating factors, the prisoner has no previous convictions. He co-operated with police and pleaded guilty at a very early opportunity. That he was almost instantly remorseful can be seen from his decision to return the laptop the following day. Had he not done that, he might possibly have avoided apprehension altogether. For these matters I will reduce his sentence by 9 months.
- [11] Taking all of the above matters into account, I am of the view that the sentence in this case should be one of imprisonment for a period of 1 year and 9 months.
- [12] As such a sentence falls within the scope of section 44 of the *Penal Code*, I turn to consider whether the circumstances of the offence and the prisoner's personal circumstances warrant suspension of his sentence.
- [13] I confess that I have not found this part of the sentencing process easy. The prisoner's offending was serious. He invaded the privacy of a family as they slept. His assault on Nanoua was disgraceful. He took items that others had no doubt worked hard to buy. There has been no restitution for the items not recovered. His intoxication in no way excuses his conduct. On the other hand, the prisoner is a young man, with no previous convictions. He has made a concerted effort to get his life back on track. If he went to prison now, he would lose his job. In the end, I am prepared to give him a chance to demonstrate that these offences were truly out of character by suspending his sentence. Suspension of the sentence will give the prisoner a strong incentive to avoid reoffending. I hope that he will not disappoint me.
- [14] The only condition attached to the suspension of a sentence of imprisonment under section 44 is that the prisoner must not commit an offence punishable with imprisonment during the operational period. If I had the power to impose other conditions I would likely order that the prisoner not consume alcohol during the period of the suspension. While I cannot do that, I encourage the prisoner to continue to refrain from drinking alcohol. If he can do that, his chances of not committing any further offences will be significantly reduced.

[15] The prisoner is convicted on his pleas of guilty. He is sentenced to imprisonment for 1 year and 9 months. However I order that the sentence is not to take effect unless, within 2 years from today, the prisoner commits another offence punishable with imprisonment. If such an offence is committed, it will be a matter for the court to decide whether this sentence should then take effect.


Lambourne J
Judge of the High Court



The seal of the High Court of Kiribati is circular. It features a central emblem with a sun, a bird, and a shield. The text "HIGH COURT OF KIRIBATI" is written around the top inner edge, and "E RIE TATA I KIRIBATI" is written around the bottom inner edge.