



HIGH COURT OF KIRIBATI

Criminal Case N° 31/2018

THE REPUBLIC

v

MATIKEE TOROMON

*Eweata Maata for the Republic
Reiati Temaua for the prisoner*

Date of sentencing: 20 December 2019

SENTENCE

- [1] The prisoner has pleaded guilty to indecent assault,¹ and entering a dwelling-house in the night with intent to commit a felony.²
- [2] The offences were committed at Eita village, South Tarawa, at around 1:00 or 2:00am on 31 October 2017. The complainant was sleeping naked next to her husband on the family *buia*.³ The prisoner entered the *buia* and sucked the complainant's breast. He then removed his shorts and underpants, got on top of the complainant and placed his penis between her thighs. The complainant assumed that he was her husband, but realised her mistake when she saw her husband sleeping beside her. She screamed and the prisoner ran away. He was chased and caught by the complainant's husband, who beat him with a stick. The prisoner was then tied up to await the arrival of the police.

¹ Section 133(1), *Penal Code* (Cap.67). Despite the repeal and replacement of section 133 by the *Penal Code (Amendment) and the Criminal Procedure Code (Amendment) Act 2017*, with effect from 23 February 2018, this case has proceeded under the *Penal Code* as it was in force on the date of the offence (as provided for under section 10(2) of the amending Act).

² Section 294(a), *Penal Code*.


³ A *buia* is a raised platform with a thatched roof, usually without walls.


- [3] The original information, filed on 5 July 2018, charged the prisoner with rape and entering a dwelling-house in the night with intent to commit a felony. That information did not comply with the formal requirements,⁴ which led to a fresh information (in similar terms) being filed on 9 November 2018. On 23 November counsel for the prisoner informed the Court that his client would be pleading not guilty, and the matter was set down for trial.
- [4] On 4 June 2019 (which was to have been the first day of the trial) counsel for the prosecution amended count 1 of the information to substitute a charge of indecent assault. Counsel for the prisoner then advised that his client would now plead guilty to both charges. The matter was adjourned for sentence submissions to 14 June.
- [5] The offence of indecent assault carries a maximum penalty of 5 years' imprisonment, while the maximum sentence for entering a dwelling-house in the night with intent is imprisonment for 7 years. The prisoner's conduct – sucking the complainant's breast and engaging in non-penetrative sex – sits in the middle of the range for offences of this kind. Such offending will ordinarily attract a custodial sentence.
- [6] In the course of the sentence submissions, counsel for the prisoner provided the Court with several medical reports, 2 of which had been prepared by Dr Arite Kauongo, the psychiatrist in charge of Te Meeria mental health ward. It transpired that, in 2014 (when he was 17), the prisoner had been diagnosed with schizophrenia. Prior to committing these offences, he had been admitted to Te Meeria on several occasions, with the most recent admission occurring in February 2017. After that however, the prisoner missed several follow-up appointments and stopped taking his medication. The day after his arrest he was re-admitted to Te Meeria. According to Dr Arite, around the time of the offences the prisoner was experiencing auditory hallucinations, persistent insomnia and bouts of aggression. He was "mentally unwell".
- [7] Subsequently, the prisoner began receiving regular treatment. He regained his mental health to the point that he was successful in gaining admission to the Marine Training Centre. In order to give the prisoner a further opportunity to demonstrate his commitment to complying with his treatment regime, and

⁴ Section 70, *Criminal Procedure Code* (Cap.17).

with his consent, I deferred passing sentence for 6 months under section 45 of the *Penal Code*. He now comes back before me to be sentenced.

- [8] In the intervening period the prisoner has done all that he needed to do. He took his medication as required and kept his appointments at Te Meeria. Last Friday he graduated from the Marine Training Centre. This is an impressive achievement, particularly given the challenges he faces.
- [9] As I have said, the prisoner's offending would ordinarily attract a custodial sentence. However his mental health issues warrant special consideration. I am satisfied that the prisoner is genuinely remorseful. He has no previous convictions and his pleas of guilty were entered as soon as the prosecution withdrew the rape charge. He has the strong support of his father.
- [10] In the circumstances, I have decided not to send the prisoner to jail. He will instead be released on his entering into a bond to keep the peace and be of good behaviour for a period of 18 months.⁵
- [11] If the prisoner is to honour his bond, it will be necessary for him to refrain from breaking the law. I also intend to make it a condition of the prisoner's bond that he continue to receive treatment as directed by the psychiatrist at Te Meeria. As long as he sticks to his treatment regime, I am satisfied that he poses no risk to the community.
- [12] Before leaving Court today, the prisoner must sign an acknowledgment of the conditions of the bond and of the consequences of failing to comply with those conditions.
- [13] The prisoner is convicted on his pleas of guilty. Instead of sentencing him today, I order that he be released on a bond without punishment for 1 year and 6 months. If, during that period, the prisoner fails to observe the conditions of his bond, he can be brought back before the Court to be sentenced for the original offences.


Lambourne J
Judge of the High Court



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

⁵ Section 36(1), *Penal Code*.