HIGH COURT OF KIRIBATI

Criminal Appeal № 14/2018

KIAMARO RITERI *Appellant*

v

THE REPUBLIC *Respondent*

Raweita Beniata for the appellant
Teanneki Nemta for the respondent

Date of decision: 15 March 2019

JUDGMENT

[1] On 15 March 2019, I allowed the appellant's appeal and his convictions were set aside. I advised counsel at the time that I would deliver my reasons for doing so at a later time. These are those reasons.

[2] On 18 July 2018, in South Tarawa Magistrates' Court case BetCrim 313/18, the appellant was convicted after a trial on 1 charge of challenging to fight a duel, contrary to section 82 of the *Penal Code*, and 1 charge of using insulting words in a public place, contrary to section 169(n) of the *Penal Code*. He was sentenced to imprisonment for 6 months and 2 weeks.

[3] The appellant filed an appeal against his conviction and sentence on 1 November. At some point I understand that the appellant was released on bail pending the hearing of his appeal, although I have no record of that order.

[4] This appeal was filed out of time. There are conflicting provisions in the law as to the time within which an appeal must be filed. Section 272(1) of the *Criminal Procedure Code* provides that an appeal must be lodged within 14 days of the date of the decision appealed against. Section 67(1) of the *Magistrates' Courts Ordinance* sets the deadline at 3 months (increased from 21 days by a 1990 amendment). Rule 33(1) of the *Magistrates' Courts Rules* retains the 21-day limit. Whatever the deadline, the appellant's appeal was lodged outside the time allowed.

[5] Rule 33(4) of the *Magistrates' Courts Rules* does allow the High Court to extend the time for the filing of an appeal, but rule 33(5) requires that an application for extension be made in writing, setting out the grounds on which the application is made. The proviso to section 272(1) of the *Criminal Procedure Code* allows the High Court to enlarge the time, "at any time, for good cause". No formal application is required.

[6] In any event, there being no objection to the filing of the appeal out of time, I am prepared to treat this appeal as having been filed within the time allowed.

[7] This matter arises from what appears to be a long-running family feud between the complainant and the appellant, who are nephew and uncle, respectively. On the evening in question the appellant went to the complainant's house and challenged him to a fight. The appellant was armed with an iron bar and a rock. The appellant claimed that the complainant and his mother had committed incest. The police were called and the appellant was arrested.

[8] Despite the appellant having been found guilty on both charges, it appears that the Single Magistrate fell into the trap of failing to fully consider all of the elements of the offences. Counsel for the respondent concedes that neither charge can be sustained, and the appeal must be allowed.

[9] The offence under section 82 is often referred to simply as "challenge to fight". To refer to the offence in this shorthand way is to fail to appreciate a crucial aspect of the crime, namely that the offender has challenged another to fight a duel. A duel is not an ordinary fight. The Oxford Dictionary defines a duel as "a contest with deadly weapons arranged between two people in order to settle a point of honour". A duel is usually fought with pistols or swords. It is an outdated concept, and section 82 really has no place in the modern law of Kiribati. While the appellant clearly wanted to fight the complainant on the night in question, he was not challenging him to a duel.

[10] The offence under section 169(n) is frequently abbreviated to "insulting words". On its face, it is easy to see how that might lead one to think that the only element of the offence is that the words used by the offender are insulting. That is not the case. There are other elements, all of which must be proved by the prosecution beyond reasonable doubt before a conviction is justified. Not only must the words be insulting, but they must be spoken in a public place, and they must be spoken with intent to provoke a breach of the peace. While the allegation of incest may easily amount to an insult, there is no evidence that the appellant was in a public place when the words were spoken, nor was there any evidence of an intention to provoke a breach of the peace.

[11] Neither charge was proven to the required standard at the trial before the Single Magistrate, and counsel for the respondent was correct to concede the appeal.

[12] Magistrates are reminded of the importance of correctly identifying each and every element of an offence, and of satisfying themselves that each element has been proven beyond reasonable doubt before convicting an accused person. Make no assumptions, and always review the section under which the charge has been brought. It is recommended that, early on in any judgment at the end of a trial, each element of the offence be identified and set out. That reduces the risk of an element being overlooked.

[13] The appeal is allowed. The convictions are set aside.

Lambourne J
Judge of the High Court