



HIGH COURT OF KIRIBATI

Criminal Case N° 39/2017

THE REPUBLIC

v

TEBWEBWE TERAACA

Teanneki Nemta for the Republic
Taoing Taoaba for the prisoner

Date of sentencing: 2 September 2019

SENTENCE

- [1] Tebwebwe Teraaka has been convicted after a trial of 2 counts of false pretences, contrary to section 301(a) of the *Penal Code*, and 1 count of fraudulent falsification of accounts, contrary to section 299(1) of the *Penal Code*. The facts of the case are set out in my judgment, which was delivered on 12 August 2019.
- [2] As a consequence of the prisoner's deliberate and fraudulent actions, the Government of Kiribati has been deprived of the sum of \$8000 by one of its own civil servants. Despite the submissions of counsel for the prisoner that her client received only \$5600, and that all of this was 'lent' to friends, I am satisfied that the full \$8000 was retained by the prisoner (save for the \$100 given to Beiauea) and used entirely for her benefit. The prisoner declined an opportunity to call evidence to support her claims.
- [3] None of the money has been repaid. The prisoner receives an income from her position as a Councillor with Teinainano Urban Council and her husband is employed by Kiribati Fish Limited. Despite this, not even partial repayment has been attempted. The prisoner has apparently sought loans from the ANZ Bank and the Development Bank. The ANZ Bank rejected her application, while the Development Bank is presently considering whether to lend her \$5000. I am surprised that such a loan is even under consideration, and I doubt that the true purpose to which the funds are to be put has been disclosed to the Development Bank. In any event, the prisoner comes to be

sentenced on the basis that none of the fraudulently obtained money has been recovered.

- [4] The prisoner is now 28 years of age. She has 4 children, aged from 1 to 10 years. I am told that the youngest child is still breastfeeding. She has no previous convictions.
- [5] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.¹ The offence of false pretences carries a maximum penalty of 5 years' imprisonment, while for fraudulent false accounting the maximum penalty is imprisonment for 7 years.
- [6] As the offences were committed as part of a single course of conduct, and in order to avoid what might otherwise be a crushing sentence were I to treat each offence separately, I will 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] This Court has often said that offences of dishonesty will, in the absence of compelling reasons justifying leniency, result in a custodial sentence. Most of the comparable cases involve the offence of embezzlement, which carries a maximum penalty of 14 years' imprisonment, so the sentences imposed in those cases will ordinarily be longer. However, the principle remains that those convicted of offences of dishonesty should expect to receive a custodial sentence.
- [8] The case of *Ikerua Tooma* is relevant.² Ikerua was the Council Clerk on Aranuka. During a period while he was also acting Treasurer for the Council, he altered the Money Order journal and forged 2 Telmos, in a vain attempt to disguise a deficiency of approximately \$5500 in the Council funds. Having been convicted after a trial, he was sentenced at first instance to 3 years' imprisonment. The Court of Appeal was satisfied that Ikerua did not benefit from the missing funds. The appeal was allowed, but only so as to reduce the sentence to one of imprisonment for 2 years. The Court said as follows:

On sentence the learned Chief Justice emphasised that an Island Council Clerk held a position of great responsibility and trust; that the Appellant's actions had been dishonest and a breach of trust; and that a person acting dishonestly in that position must expect a term of imprisonment.³

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

² *Ikerua Tooma v Republic* [2006] KICA 7.

³ *ibid.* at [6].

- [9] Counsel for the prisoner argued strongly for her client to be given a suspended sentence. She referred to the recent case of *Teretia Ioane*.⁴ There the amount of money taken was substantially greater than in this case. However the Court took note of the fact that the money had been repaid, and the offender was genuinely remorseful, as evidenced by her pleas of guilty. Working from a starting point of 3 years' imprisonment, the Chief Justice identified compelling reasons for imposing an effective sentence of 2 years' imprisonment, suspended for an unspecified period.
- [10] It is impossible to escape the conclusion that the prisoner must receive a custodial sentence. Given the outcome in Iekerua's case, where the offending was less serious, and no personal benefit was gained, I am of the view that, in a contested case such as this, an appropriate starting point is a sentence of 3 years' imprisonment. This takes into account the grave breach of trust inherent in such offending. There are no further aggravating features.
- [11] There is little if anything to be said in mitigation, save that the prisoner has no previous convictions. The prisoner offers no explanation for her conduct. She continues to insist that Beiauea was responsible for taking the cheque. There is no evidence of any remorse on her part. The prisoner went to trial, as is her right, but, by doing so, she has foregone the reduction in sentence that she would have received had she pleaded guilty. For her previous good character I will reduce the prisoner's sentence by 2 months.
- [12] As an elected Councillor, the prisoner is clearly a person who is held in high regard by her community. It would seem inevitable that she will lose her position as a consequence of the sentence to be imposed today. I do not consider this to be a mitigating factor in her case. The prisoner did not abuse her position as Councillor, but persons who hold elected office must be held to the highest of standards, particularly in matters of integrity and honesty.
- [13] There has been an unacceptable delay in the prosecution of this case. The prisoner's offending was detected in November 2016, almost 3 years ago. 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 her for the breach of her constitutional right to be afforded a fair hearing within a reasonable time.⁵ I will reduce her sentence by another 2 months.
- [14] Taking all of the above matters into account, the prisoner is sentenced to be imprisoned for a period of 2 years and 8 months. The sentence is to run from today. A sentence of this length cannot be suspended.

⁴ *Republic v Teretia Baraniko Ioane* [2019] KIHc 2.

⁵ *Attorney-General v Li Jian Pei & Taaiteiti Areke* [2015] KICA 5.

- [15] I direct that copies of these sentencing remarks, together with the judgment in the trial, be given to the Secretary for Internal Affairs (as the head of the Ministry responsible for Councils), as well as the Clerk to Teinainano Urban Council, for their information.
- [16] Finally, the office of Councillor is one of the offices to which the *Leaders Code of Conduct Act 2016* applies. As the offences were committed after the prisoner had been elected to the Council, it is possible that she has also breached the Act. For that reason, copies of the judgment and remarks are to be given to the Leadership Commission, for any action it considers necessary.


Lambourne J
Judge of the High Court

