



HIGH COURT OF KIRIBATI

Criminal Appeal N° 5/2019

NABWEBWE IANTAAI

Appellant

v

THE REPUBLIC

Respondent

Raweita Beniata for the appellant

Pauline Beiateau, Director of Public Prosecutions, for the respondent

Date of hearing: 13 September 2019

Date of judgment: 7 October 2019

JUDGMENT

- [1] On 12 June 2019 the appellant was convicted after a trial in the Makin Magistrates' Court on charges of criminal trespass (contrary to section 182(2) of the *Penal Code* (Cap.67)) and indecent assault (expressed to be contrary to section 133(1) of the *Penal Code*). He was sentenced to imprisonment for 3 years.
- [2] The offences were alleged to have been committed in the early hours of Friday, 17 May 2019. The appellant is alleged to have entered the house of the 12-year-old complainant and touched her in the genital area while she slept.
- [3] The appellant filed a notice of appeal against both conviction and sentence with the Magistrates' Court on 20 June. On 2 August I granted bail to the appellant pending the hearing of his appeal. He has been at liberty ever since. An amended notice of appeal (against sentence only) was filed by counsel for the appellant on 23 August, while on 29 August counsel filed a petition seeking a review of the appellant's conviction under section 81 of the *Magistrates' Courts Ordinance* (Cap.52).
- [4] On 29 August, I pointed out to counsel for the appellant that, as his client had filed an appeal, I was prevented from exercising my powers of revision by the first proviso to section 81(2) of the *Magistrates' Courts Ordinance*. The matter was adjourned to allow counsel to obtain further instructions.

- [5] When the case resumed on 13 September, counsel for the appellant withdrew the review petition and advised that his client wished to proceed with his appeals against both conviction and sentence. Counsel for the respondent then informed the Court that the appeal against conviction was conceded, as the Magistrates' Court was apparently unaware of the 2018 amendments to the *Penal Code*, by which section 133 had been repealed and replaced. The indecent assault allegation against the appellant had proceeded on the basis that he was charged under section 133(1) of the *Penal Code*, which no longer existed. There was also some question as to whether the Magistrates' Court had jurisdiction to hear the case at all.¹
- [6] Counsel agreed that, rather than remitting the matter for retrial in the Magistrates' Court, an order quashing the convictions on both counts would be sufficient. This was because it was intended that any new trial proceed in the High Court.
- [7] I therefore allow the appeal. The decision of the Makin Magistrates' Court dated 12 June 2019 in case MKCrim 28/2019 is set aside and the appellant's convictions for indecent assault and criminal trespass are quashed.
- [8] In closing, it is disappointing that at least 1 magistrates' court is unaware of the extensive amendments to the *Penal Code* that were enacted last year. I recommend that a circular be sent to all magistrates' courts, informing them (or reminding them, if they have already been informed) of the changes to the law. The Attorney-General should also ensure that all police prosecutors are made aware of the amendments.


Lambourne J
Judge of the High Court

The seal of the High Court of Kiribati is circular with a red border. The text "HIGH COURT OF KIRIBATI" is written in red capital letters around the top inner edge. The text "TEHOMI AE E RIETATA I KIRIBATI" is written in red capital letters around the bottom inner edge. In the center of the seal is a red shield featuring a white sun with rays, a white bird, and a white anchor.

¹ Ordinarily, magistrates' courts do not have jurisdiction to hear criminal proceedings where the charge is brought under Part 16 of the *Penal Code*, which includes section 133 (see Schedule 2 of the *Magistrates' Courts Ordinance*). On 6 September 2012, the Chief Justice made an order under section 28 of the *Magistrates' Courts Ordinance* extending the jurisdiction of magistrates' courts to include proceedings where the charge is brought under, *inter alia*, section 133 (indecent assaults on females). Given that the new section 133 (inserted with effect from 23 February 2018) provides for indecent assaults against any person (regardless of sex) it is unclear whether the order extending jurisdiction applies to offences alleged to have been committed after 23 February 2018. For present purposes, it is unnecessary to decide the question.