



HIGH COURT OF KIRIBATI

Criminal Case N° 34/2018

THE REPUBLIC

v

**MANNABA TEAUOKI,
TEITEMAURI EROTE
and TEAIWA TETAO**

*Fuatino Noa for the Republic
Banuera Berina for the prisoners*

Date of sentencing: 17 January 2020

SENTENCE

- [1] The prisoners have each pleaded guilty to 1 count of damaging property.¹ On 14 December 2017 the prisoners were part of a large mob that demolished a *mwaneaba*,² constructed from 'permanent' materials,³ belonging to the Kiribati Uniting Church (KUC) in Aoniman village on Beru island. After the demolition there was nothing left of the *mwaneaba* save for the concrete floor.
- [2] The original information, filed on 29 August 2018, charged the prisoners and 23 others with 2 counts of damaging property and 1 count of arson. The damaging property charges related to the *mwaneaba* and a church building, while the arson charge concerned the house of the KUC pastor. A further information was filed on 30 October 2018, charging only the prisoners with 1 count of damaging property and 1 count of arson. The subject of the

¹ Contrary to section 319(1), *Penal Code* (Cap.67).

² A large communal meeting house.

³ 'Permanent' is used in contrast to 'traditional'. 'Permanent' materials are imported, and include materials such as roofing iron, sawn timber and concrete.

damaging property charge was said to be both the *mwaneaba* and the church. On 9 November 2018 a *nolle prosequi* was entered with respect to the original information. On 22 February 2019 counsel for the prisoners informed the Court that his clients would be pleading guilty to the damaging property charge but not guilty to the arson charge. The matter was set down for trial. On 27 May 2019 (which was to have been the first day of the trial) then-counsel for the prosecution withdrew the arson charge. She later amended the damaging property charge to remove the reference to the church building. The prisoners were arraigned on the charge as amended and each pleaded guilty. I heard initial submissions on sentence on 28 May 2019.

- [3] The incident giving rise to the charge has, as its genesis, a split that arose in 2016 among the members of what had previously been known as the Kiribati Protestant Church, or KPC. The prisoners (and many others) disagreed with a resolution taken at the KPC General Assembly in 2014 to change the name of the church to the Kiribati Uniting Church. That change took effect from the time of the next General Assembly, in September 2016. A legal challenge to the change of name was unsuccessful.⁴ Those who opposed the name change (including the prisoners) then left the KUC and set themselves up as a new church, reviving the name 'Kiribati Protestant Church'.
- [4] The split led to disputes in many parts of the country. Often the disagreement concerned the desire of the members of the new KPC to retain possession of the assets of the KUC. This was based on their mistaken belief that the KUC was a new church, and the assets of the old KPC should be vested in the new KPC.
- [5] Shortly before the events giving rise to the present charge, the Magistrates' Court in Beru registered the KUC (properly, the trustees of the KUC) as owners of the land in Aoniman on which stood the *mwaneaba*, church and pastor's house. The prisoners and other members of the new KPC were aggrieved by this decision. On 14 December 2017 they held a meeting at the *mwaneaba*, at which it was decided that the *mwaneaba* should be demolished and the materials carried away to allow for its reconstruction at another location. The prisoners assert that the mood of the deliberations was not helped by the actions of the husband of the KUC pastor, who was cycling nearby, and whistling, in a manner considered provocative. The group then

⁴ *Motiti Koea & ors v Ariti Tiira & ors* [2017] KICA 12.

proceeded to dismantle the *mwaneaba*, carrying away the roofing iron and timber frame. The concrete *boua*⁵ were smashed. When the group was approached by the senior police officer on Beru and asked to desist, the prisoner Mannaba told him that he should not interfere. The roofing iron and timber were taken to the house of Mannaba, which was nearby.

- [6] It is not clear who at the meeting led the discussion about the demolition of the *mwaneaba* – counsel for the prosecution concedes that she has no evidence to suggest that any of the prisoners played a leadership role in the commission of the offence. Indeed, counsel for the prosecution is unable to say what distinguishes the conduct of the prisoners, such that they should be singled out for prosecution ahead of the more than 20 others who participated. Apart from Mannaba’s conversation with the police officer, and the fact that the materials were taken to his house, there is nothing to suggest a greater culpability on the part of any of the prisoners when compared to the rest of the group.
- [7] The prisoner Mannaba is aged 50 years. He is married with 4 children aged between 8 and 17. Teitemauri is aged 38 years. He is married with 4 children aged between 7 and 17. Teaiwa is aged 57 years. He is married with a 28-year-old son, who lives with an intellectual disability. None of the prisoners are employed – each of them leads a subsistence lifestyle.
- [8] Counsel for the prisoners submits that his clients are remorseful for their actions. They maintain that they were not the ringleaders of the group; they were simply carrying out the wishes of their *unimwane*.⁶ Mannaba’s house was used to store the roofing iron and timber only because it was the closest. Having now had the benefit of legal advice with respect to the dispute between the KUC and the new KPC, the prisoners accept that they were wrong to do as they did. A customary apology has been offered.
- [9] The prisoners’ offending must be viewed in the broader context of the ongoing dispute between the members of the 2 churches. I accept that the prisoners misunderstood their rights with respect to the *mwaneaba*; their actions were not malicious. However the prisoners’ refusal to comply with the police officer’s request that they stop what they were doing does suggest

⁵ The pillars of the *mwaneaba*.

⁶ Old men, traditional leaders of an extended family or community group.

that they were, at least in part, motivated by animosity toward the members of the KUC.

- [10] Determining appropriate sentences in this case is a challenging task. It has been the strong view of counsel for the prosecution that I should impose a custodial sentence. After hearing the initial submissions in May last year, I deferred passing sentence on the prisoners until 22 November.⁷ It was clear to me then that there were deep divisions in the Aoniman community. I feared that sending the prisoners to jail might further inflame tensions. I wanted to see if it might be possible during the interval to repair relations between the 2 groups and restore harmony to Aoniman. At the time I expressed the view that, ordinarily, an immediate sentence of imprisonment would be the inevitable consequence of property damage on this scale.⁸ The seriousness of the prisoners' conduct is magnified by the fact that their target was a *mwaneaba*, a structure that sits at the heart of the community.
- [11] In deferring passing sentence, I said that I hoped that the prisoners would go back to Beru and participate in the reconstruction of the *mwaneaba*, along with the other members of the KPC group. Counsel for the prosecution was to arrange for the seized building materials to be returned. The expectation was that, by contributing to the rebuilding, the prisoners could demonstrate the sincerity of their remorse and make reparations for their offending.
- [12] Unfortunately my optimism was somewhat misplaced. When the matter resumed, I was given a letter from the KUC pastor in Aoniman, dated 8 November, in which she said that the building materials had been returned from police custody, although not until August, and they had deteriorated significantly in the 20 months since the demolition of the *mwaneaba*. The prisoners had not assisted in the retrieval of the materials. In September, the KPC and KUC pastors had met to discuss the reconstruction project, but there was no action until 7 November (some 2 weeks before the case was to resume), when the prisoners assisted in delivering 2 truckloads of gravel. Reconstruction has not yet commenced.
- [13] The prisoners filed a response to the pastor's letter, in the form of an affidavit from Teaiwa. He explained that they had not known when the seized materials

⁷ Six months being the maximum period allowed under section 45 of the *Penal Code*.


⁸ Counsel for the prosecution is unable to give a precise valuation of the damage caused, but it is conceded that it was in the tens of thousands of dollars.

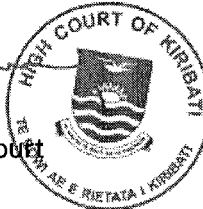
were to be released, and they would have helped had they known. As for the lack of action, the prisoners say that they were waiting for advice from the KUC pastor as to when their assistance would be required. The KPC pastor had been told that the KUC group was waiting for a delivery of cement before they could begin reconstruction of the *mwaneaba*. As the court date approached, and not wanting to return to Court empty-handed, the prisoners thought it best to demonstrate their goodwill by delivering the gravel without waiting to be asked. A further 3 truckloads of gravel had been delivered to the site by other members of the KPC group since the prisoners' return to Tarawa.

- [14] I did consider again deferring passing sentence, to see whether further action might be possible, however counsel for the prosecution advised that she had been instructed by the KUC pastor in Aoniman that further assistance from the prisoners would not be welcome. It is clear that relations between the KUC and KPC groups in Aoniman remains strained. In the circumstances it was agreed that I should simply go ahead and pass sentence on the prisoners.
- [15] The offence of damaging property (where no particular circumstances of aggravation are present) carries a maximum penalty of a \$5000 fine, 5 years' imprisonment, or both. As I said earlier, the prisoners' conduct would usually attract a custodial sentence. I remain concerned that sending these 3 men to prison while the ringleaders go unpunished would not be fair. That is however a matter for the Attorney-General in the exercise of her prosecutorial discretion. It does not justify the passage of a sentence shorter than would otherwise be appropriate in the circumstances.
- [16] I consider an appropriate starting point in a case such as this, where the extent of the damage is significant, is a sentence of imprisonment for 1 year and 6 months.
- [17] That the offence was committed in company with several others is a serious aggravating factor, warranting an increase of 4 months from the starting point, which takes the sentence to 1 year and 10 months.
- [18] As far as mitigating factors are concerned, none of the prisoners have previous convictions, and they are respected members of their community. Despite the failure of the plan for the prisoners to assist in the *mwaneaba's*

reconstruction, I am satisfied that they are sincere in their remorse for what happened. For these matters I reduce the prisoners' sentence by 3 months.

- [19] For their very early pleas of guilty, the prisoners are entitled to receive a significant discount. I will allow a further reduction in the prisoners' sentence of 7 months. That brings the sentence down to 1 year.
- [20] 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 prisoners' personal circumstances warrant suspension of their sentences.
- [21] The Court of Appeal⁹ has recommended the New Zealand case of *Petersen*¹⁰ as a useful guide when considering whether to suspend a sentence. It is clear from that case that, primarily, the suspension of a prison sentence should have some direct benefit for an offender by providing some incentive to avoid reoffending. The purpose of suspension is not just to free a person who should otherwise be imprisoned. Suspension of a sentence will rarely be appropriate where the need for general deterrence is strong.¹¹
- [22] I have no doubt that the prisoners are unlikely to reoffend. They are not young men, and they do not need the incentive to avoid reoffending that suspension of their sentences will offer. I see no benefit to the prisoners if I were to suspend their sentences (other than the obvious benefit that they would not be in prison). Furthermore, the need to send a clear message that the courts will not tolerate the kind of mob action seen in Aoniman that day outweighs any factors in favour of suspension. I am not prepared to suspend the prisoners' sentences.
- [23] Each prisoner is convicted on his plea of guilty. Taking all of the above matters into account, I sentence them to imprisonment for 1 year, to run from today.


Lambourne J
Judge of the High Court



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

⁹ *Attorney-General v Katimango Kauriri* [2015] KICA 6, at [3].

¹⁰ *R v Petersen* [1994] 2 NZLR 533.

¹¹ *Republic v Bwebwetaake Dan & Taniera Dan* [2014] KICA 4, at [12].