

IN THE HIGH COURT OF KIRIBATI ) HIGH COURT CRIMINAL CASE NO. 13 OF 2005  
CRIMINAL JURISDICTION )  
HELD AT BETIO )  
REPUBLIC OF KIRIBATI )

THE REPUBLIC  
VS  
ANTONIO TERIETA

FOR THE REPUBLIC: MS RURIA ITERAERA  
FOR THE ACCUSED: MR AOMORO AMTEN  
DATE OF HEARING: 13 MARCH 2006

J U D G M E N T

Antonio Terieta is charged with larceny:

----- on 27 July 2004 at Betio wharf on South Tarawa, stole a 40 HP Yamaha outboard motor engine, belonging to Otea Bwanian.

Between six and seven in the morning of 27 July Otea Bwanian, because of something he had been told, went to check on his boat in the Betio dock. He saw that the 40 HP Yamaha engine was missing. He had left the engine on the boat because it was hard to carry to his house. He heard the engine was with Ngaluenga Tianere. He went to Ngaluenga's house and identified a Yamaha 40 HP engine there as his.

Ngaluenga said that at about four o'clock that morning some men came to his house wanting to sell the engine to him. They said it was theirs. He went out to a white truck and looked at the engine. On the truck were the driver, the accused and a tall skinny man. He agreed to pay them \$2,000. He made a down payment of \$100 and arranged to pay the balance later that day. He handed the \$100 to the accused.

Itaaka Tawita was the driver of the white truck. Early that morning three men of whom the accused was one had come to him asking to hire a truck. He got the key from the owner. A man called Tebou sat next to him: the accused was on the back. Itaaka drove to the end of the fence near the Betio slipway. He had dropped Tebou off on the way. He went back to fetch Tebao and returned. Something was loaded on the back of the truck.

They drove first to Emile's house, then to Romy's house. They could not find either Emile or Romy. They drove on. The accused shouted to him from the back of the truck to stop. That was near Ngaluenga's house. The accused went in: came out: asked him to driver closer to the house. Itaaka saw the accused unloading the engine. In cross examination he maintained that the accused was one of the men who that morning took the engine from the dock to Ngaluenga's house.

All three prosecution witnesses appeared honest. I accept beyond reasonable doubt their evidence.

Three men of whom the accused was one, hired a truck, had it driven to the Betio dock, removed Otea's engine from his boat, took the engine to Ngaluenga and agreed either to sell or to pawn (that word was used as well) it to Ngaluenga for \$2,000. Ngaluenga paid a deposit of a \$100 promising the balance later in the day. When Otea came to see him Ngaluenga realized who the real owner of the engine was. He has never recovered his \$100.

The accused told a story sufficiently similar to explain how he came to get from Ngaluenga \$100. He and a lady, Nei Riina (whose whereabouts the accused does not now know) after doing the night clubs had been sitting near Ngaluenga's house. Three of his friends came along in a white truck. They asked him, as he knew Ngaluenga, to go in and find out if Ngaluenga would give them money for an item. He complied: the deal was struck. He helped Ngaluenga carry the engine to the house and received \$100. He later heard about an engine missing: he realized this engine did not belong to his friends: he had not asked them whether they got it.

I have no reasonable doubt that the facts are as told by Otea, Ngaluenga and Itaaka. The accused was one of the men who took the engine from Otea's boat and tried to dispose of it for \$2,000 to Ngaluenga.

But there is more to the case to that. The indictment alleged several previous convictions:

And further that the said Antonio Terieta had previously, namely on 12 December 1978 at Betio been convicted in the Betio Magistrate's Court of a felony, namely simple larceny,

And further that the said Antonio Terieta had previously, namely on 5 September 1978 at Betio been convicted in the Betio Magistrate's Court of a felony, namely simple larceny.

And further that the said Antonio Terieta had previously, namely on 8 October 1979 at Betio been convicted in the Betio Magistrate's Court of a felony, namely simple larceny from a dwelling house,

And further that the said Antonio Terieta had previously, namely on 6 April 1981 been convicted in the High Court of a felony, namely simple larceny,

And further that the said Antonio Terieta had previously, namely on 7 September 1987 at Betio been convicted in the High Court of a felony, namely murder.

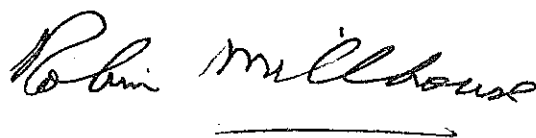
On his arraignment the accused admitted only the conviction for murder.

Ms Iteraera was taken by surprise by the accused's denials and seemed quite put out that the convictions were not admitted. The prosecution should never assume that the defence will make concessions, any admissions. The prosecution must always be ready to prove every fact alleged against an accused.

Ms Iteraera called Nei Bwereia Buta who keeps the Police records. Nei Bwereia produced what purported to be the accused's record of previous convictions. Part of the record are two photographs which look like the accused. He said they were taken when he was on the murder charge in 1987. Despite the accused's vociferous, indeed heated, denials in evidence that he had these convictions (except for the last, murder), until I asked the accused his age I was inclined to accept the records as accurately referring to him. The accused told me he is 36. On appearance that looks about right. Ms Iteraera did not cross examine on the accused's assertion of his age. Age 36 now would put the year of his birth as 1970. That would mean he was 8, may be 9 at the first two convictions, 9 perhaps 10 at the third and about 11 at the fourth. Despite Ms Iteraera telling me that these were the bad old days when children of these ages were brought before the courts and punished (perhaps she was hinting that no provision such as S14 of the Penal Code was then part of the law of Kiribati), in the absence of some confirmation that the accused was before the court at such tender ages I must have at least a reasonable doubt that this record is the accused's. This must be one of those rare occasions when it would not be safe to take the official records as accurate.

The accused is guilty of larceny.

Dated the 14<sup>th</sup> day of March 2006



THE HON ROBIN MILLHOUSE QC  
Chief Justice