



## HIGH COURT OF KIRIBATI

*Criminal Review No 3/2018*

**THE REPUBLIC**

**v**

**AURAI KOITO**

*Pauline Beiatau, Director of Public Prosecutions, for the Republic  
Raweita Beniata for the petitioner*

*Date of decision: 11 December 2018*

### **DECISION ON REVIEW**

- [1] On 17 May 2018, in case 26/18, the Nonouti Magistrates' Court sentenced Aurai Koito to imprisonment for 1 year following his plea of guilty to 2 charges under the *Penal Code* (Cap.67): damaging property, contrary to section 319(1); and criminal trespass, contrary to section 182(1).
- [2] On 21 August a petition was received on his behalf asking that this court exercise its powers under section 81 of the *Magistrates' Courts Ordinance* (Cap.52) to review the conviction and sentence.
- [3] On 1 October, the petitioner was granted bail pending the hearing of his review petition.
- [4] When the matter came on for hearing on 15 November, counsel for the petitioner advised that he was no longer challenging the conviction, and that a review was sought only in respect of the petitioner's sentence.
- [5] On the evening of 4 May this year, around 7:00 or 8:00, the petitioner went to the house of the complainant, Kabwebwea. He was drunk, and armed with an axe. He had a dispute with a member of the complainant's household. The petitioner swung the axe at one of the beams of the house, causing minor damage. This is the subject of the damaging property charge.
- [6] The petitioner also damaged a bucket and a cooking pot belonging to Bwaeao. This matter is the subject of a separate charge of damaging property, which has been dealt with in this court as Criminal Case 38/2018.

- [7] It is not clear from the facts before me whether anyone was present during the petitioner's attack. In any event, the Nonouti Magistrates' Court was entitled to view the matter as very serious. However I am satisfied that the sentence the Magistrates imposed was manifestly excessive.
- [8] The maximum penalty for damaging property is imprisonment for 2 years. The maximum penalty on the criminal trespass charge is imprisonment for 1 year.
- [9] The petitioner is 20 years of age. He has no previous convictions. He pleaded guilty at the earliest possible opportunity. These are all strong mitigating features of this case. A sentence of imprisonment, particularly in the case of a young person, should be a matter of absolute last resort. The court should have looked for a way to address the petitioner's offending behaviour that did not involve a custodial sentence. A sentence of imprisonment was not warranted in this case.
- [10] The magistrates' courts of Kiribati are in an ideal position to make use of the principles of restorative justice in their approach to sentencing, particularly where the offender is a young person. Restorative justice focuses on the rehabilitation of an offender through reconciliation with the victim of the crime and the wider community. Restorative justice brings offender and victim together in mediation, sometimes joined by community elders, and works to find a resolution that is acceptable to all participants. This approach is expressly provided for in section 35(1) of the Magistrates' Courts Ordinance, as follows:
- (1) In criminal cases a magistrates' court may promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault, or for any offence of a personal or private nature not amounting to felony and not aggravated in degree, on terms of payment of compensation or other terms approved by such court, and may thereupon order the proceedings to be stayed or terminated.
- This is very much in keeping with how troublemakers are handled under custom. Such an approach was called for in this case.
- [11] Prior to his release on bail on 1 October, the petitioner had served 4½ months in custody. Even if a custodial sentence could have been justified, this far exceeds what might have been an acceptable term of imprisonment. It will therefore not be appropriate to impose any alternative penalty.
- [12] The sentence imposed by the Nonouti Magistrates' Court is set aside and, in lieu thereof, the prisoner is sentenced to the rising of the court.

  
**Lambourne J**  
 Judge of the High Court

