HIGH COURT OF KIRIBATI

Criminal Appeal Nº 7/2019

ARIOKA KOKORIA *Appellant*

v

THE REPUBLIC *Respondent*

Criminal Appeal Nº 8/2019

TIEMATI ETEKIA *Appellant*

v

THE REPUBLIC *Respondent*

Criminal Appeal Nº 9/2019

ABIUTA ANATORE *Appellant*

v

THE REPUBLIC *Respondent*

Angitonu David for the appellants
Tewia Tawiita for the respondent

Date of judgment: 21 October 2019

JUDGMENT

[1] These 3 appeals arise out of the same set of facts. Although each matter was heard separately by the Tabuaeran Magistrates' Court, the circumstances giving rise to the charge in each case were identical. Each appellant was charged with contravening section 72(1) of the *Liquor Ordinance* (Cap.50). The appellants should have been tried together, and it is not clear why they were not. I have heard all appeals together.

[2] It is convenient to start by setting out section 72 of the *Liquor Ordinance*:

> **72 Liquor not to be consumed in prohibited areas**
>
> (1) Any person found consuming liquor in any place other than premises licensed for that purpose in any part of a prohibited area to which the public have access shall be liable to a fine of not less than $500 and not exceeding $5000.
>
> (2) The Minister may by notice declare any area to be a prohibited area for the purposes of this section.

[3] It is not disputed that, on 6 May 2019, the 3 appellants were found consuming alcohol at the house of the appellant Abiuta in Terine village on Tabuaeran. They were arrested and charged under section 72. Each appellant pleaded not guilty and went to trial. The trial of the appellant Arioka was held on 1 July, while the trials of the appellants Tiemati and Abiuta were held on 4 July. At each trial the prosecutor called the same 2 witnesses, and each appellant gave evidence on his own behalf. Each appellant was convicted and fined $500. The appellant Arioka was given 4 days to pay the fine and, in default of payment of the fine, he would be imprisoned for 5 months. Tiemati and Abiuta were each given 5 days to pay the fine and, in default of payment of the fine, they would be imprisoned for 6 months.

[4] None of these convictions can stand. Counsel for the respondent concedes as much. For a person to be convicted of an offence under section 72(1), the prosecution must prove that the place where an accused is found to be consuming alcohol is: (a) in a prohibited area; and (b) a place to which the public have access. The prosecution produced no evidence to support either of these elements.

[5] An area is a prohibited area if it has been declared to be such by the Minister under section 72(2). It is conceded by counsel for the respondent that no part of Tabuaeran has been declared to be a prohibited area.

[6] Counsel for the respondent also concedes that the place at which the offences were alleged to have been committed, namely Abiuta's house, cannot be said to be a place to which the public has access.

[7] The appeals are allowed. The decisions of the Tabuaeran Magistrates' Court in the following cases are set aside and each appellant's conviction is quashed:

a. case number 77/19, dated 1 July 2019 (Arioka Kokoria);

b. case number 75/19, dated 4 July 2019 (Tiemati Etekia);

c. case number 76/19, dated 4 July 2019 (Abiuta Anatore).

[8] Counsel for the appellants applies for an order that the Republic reimburse each appellant the sum of $340, being the cost of the return airfare from their homes in Tabuaeran to Kiritimati, where the appeals were heard. This application is opposed by counsel for the respondent, who submits that counsel for the appellants had sufficient notice that the appeals would be conceded to let the appellants know that they need not travel to Kiritimati.

[9] I am satisfied that I have the power to make such an order. Section 70(1) of the *Magistrates' Courts Ordinance* (Cap.52) provides that, at the hearing of a criminal appeal, the High Court "may make such other order in the matter as to it may seem just". Identical language is to be found in section 280(1) of the *Criminal Procedure Code* (Cap.17).

[10] The appellants were served on Tabuaeran in late September with notice to attend the High Court in Kiritimati for the hearing of their appeals. Counsel for the respondent told appellants' counsel on 10 October that the appeals would be conceded. She informed the Court the next day. The appellants travelled to Kiritimati on 16 October (the first day of the sitting). Counsel for the respondent submits that either the Court or appellants' counsel should have told the appellants that they did not need to come. Counsel for the appellants told the Court that she had not had an opportunity to travel to Tabuaeran prior to the Court sitting, so she had not been formally instructed in the matters until the appellants arrived in Kiritimati.

[11] It is also relevant that, under section 283 of the *Criminal Procedure Code*, an appellant has the right to be present at the hearing of his or her appeal.

[12] I am satisfied that it was reasonable for the appellants to travel to Kiritimati for the hearing of their appeals. It would be absurd if, despite having been successful in their appeals, the appellants were still left to pay the cost of attending court from their own pockets. In the circumstances I will make the order sought by their counsel. The Republic is ordered to pay each appellant the sum of $340 forthwith.

Lambourne J
Judge of the High Court

HIGH COURT OF KIRIBATI
TE KOMI AE E RIETATA I KIRIBATI