



## HIGH COURT OF KIRIBATI

*Criminal Case N° 15/2019*

### THE REPUBLIC

v

### NANOTAAKE REREIETA

*Teanneki Nemta for the Republic  
Kiata Kabure-Andrewartha for the prisoner*

*Date of sentencing: 16 August 2019*

### SENTENCE

- [1] Nanotaake Rereieta has pleaded guilty to 1 count of sexual intercourse with a person under the age of 13 years, contrary to section 134(1) of the *Penal Code* (Cap.67).
- [2] The offence was committed on 18 March 2018. The complainant, who was aged 12 at the time, is the first cousin of the prisoner's wife. That afternoon the complainant was with the prisoner and his wife at a restaurant in Bairiki. They were drinking beer and rum until evening. When they finished, the prisoner's wife told the complainant that the prisoner would drop her home on his motorcycle. Once on the motorcycle, and with the complainant as his passenger, the prisoner rode in the opposite direction, across the Nippon causeway to Betio. He stopped and they got off. The prisoner took the complainant's *lavalava* and spread it on the ground. He laid the complainant on the *lavalava* and removed her clothing. He got on top of her and inserted his penis into her vagina. He began thrusting his hips. While at first the complainant was a willing participant, after some time she asked the prisoner to stop. He did not stop, and kept thrusting his penis into her vagina. He was not using a condom. The complainant was in pain and she began crying. Eventually the prisoner stopped. It is not clear whether he ejaculated.
- [3] The prisoner then decided that he would take the complainant as his wife. He eloped with her, in the customary sense. They went to a house in Teoraereke

where they slept. The next morning the complainant's mother and the mother of the prisoner's wife arrived. The complainant was taken away.

- [4] An information was originally filed on 15 May 2019, charging the prisoner with unlawful sexual intercourse, with the present charge as an alternative count. On 7 June, counsel for the prisoner advised the court that her client was willing to plead guilty to the alternative count. Counsel for the prosecution advised that she would accept the plea in satisfaction of the information. The charge of unlawful sexual intercourse was withdrawn, and the matter was adjourned for submissions on sentence to 14 June. Unfortunately the prisoner did not attend Court on that day and a warrant was issued for his arrest. The warrant was executed on 17 July, and the prisoner has been remanded in custody since then.
- [5] The prisoner is now 25 years of age, and was 23 at the time of the offence. He is no longer married to the complainant's cousin, although he has since remarried. He has 3 children aged between 2 and 7 years. He is self-employed maintaining air conditioning units, and is the sole breadwinner for his family. He has no previous convictions.
- [6] The prisoner's offending was serious. Counsel for the prisoner offers no explanation for her client's conduct, other than to say that he was intoxicated at the time of the offence. When questioned by police, he admitted to having had sexual intercourse with the complainant, but maintained that she was a willing participant throughout. Although the prisoner was not asked by the police about the complainant's age, his counsel advised the Court that he claims not to have been aware at the time that the complainant was only 12. Counsel for the prisoner conceded that her client did not know that it was a criminal offence to have sexual intercourse with a person of that age. To test whether the prisoner's assertion was reasonable, I asked counsel for the prosecution to bring the complainant to Court. When she attended it was obvious, both from her appearance and her demeanour, that she was very young. On the day of the offence, some 17 months ago, the prisoner spent several hours in her company. In such circumstances, I am satisfied that he could not have been honestly mistaken as to the complainant's age.
- [7] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal.<sup>1</sup> The maximum penalty for the offence of sexual intercourse with a person under the age of 13 years is life imprisonment. This offence replaced the offence of defilement of a girl under the age of 13 years, with effect from 23 February 2018.<sup>2</sup> To my

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<sup>1</sup> *Kaere Tekaei v Republic* [2016] KICA 11, at [10].

<sup>2</sup> *Penal Code (Amendment) and the Criminal Procedure Code (Amendment) Act 2017*, section 4.

knowledge this is the first time a person has come to be sentenced under section 134(1) since the *Penal Code* was amended.

- [8] In *Atanaera Bwaibwa*,<sup>3</sup> which concerned a charge under the amended section 135(1), I said the following:

The amendments to the *Penal Code* present a challenge in determining an appropriate starting point for this kind of offending. The offences of unlawful sexual intercourse (section 129(1)), engaging in sexual intercourse with a person under the age of 13 years (section 134(1)) and engaging in sexual intercourse with a person under the age of 15 years (section 135(1)) all now carry a maximum penalty of imprisonment for life. Furthermore, the much broader definition of ‘sexual intercourse’ provided for in section 127A means that a wider range of conduct now falls within the ambit of the expression, which no longer refers only to penetration of the vagina of a female person by the penis of a male person. Penile penetration, anal penetration, digital penetration, penetration of the genitals or anus by an object, and oral sex are all now categorised as sexual intercourse. Some of these actions are clearly more serious than others. In my view, penile penetration falls at the higher end of the spectrum.<sup>4</sup>

- [9] I said there that I considered a sentence of 5 years’ imprisonment to be an appropriate starting point on a charge of unlawful sexual intercourse involving penile penetration with a person under the age of 15 years. I relied, in part, on the decision of the Court of Appeal in *Uriano Arawaia*,<sup>5</sup> which was a case of defilement of a girl under the age of 13 years. Under the *Penal Code* as amended, an offender convicted of sexual intercourse with a person under the age of 13 years is objectively more culpable than a person convicted of sexual intercourse with a person under the age of 15. In the circumstances, and so as to best give effect to the intention of the Maneaba ni Maungatabu, I am of the view that an appropriate starting point on a charge of unlawful sexual intercourse involving penile penetration with a person under the age of 13 years is a sentence of imprisonment for 7 years. This takes into account the young age of the complainant (although offending involving a particularly young victim would warrant a somewhat higher starting point).

- [10] I consider the following matters to be the aggravating features of this case:
- a. as the husband of the complainant’s cousin, the prisoner owed the complainant a duty of trust, and his offending constituted a breach of that trust;
  - b. the prisoner continued to have sexual intercourse with the complainant after she ceased to be a willing participant;

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<sup>3</sup> *Republic v Atanaera Bwaibwa* [2018] KIHc 33.

<sup>4</sup> *ibid.*, at [4].

<sup>5</sup> *Republic v Uriano Arawaia* [2013] KICA 11, at [18].

- c. the prisoner did not use a condom, thereby exposing the complainant to the risk of both pregnancy and sexually-transmitted infection.

For all of these matters I increase the prisoner's sentence by 1 year.

- [11] As far as mitigating factors are concerned, the prisoner is a young man with no previous convictions. He is to be regarded as having pleaded guilty at the earliest possible opportunity. While he was not completely honest regarding the circumstances of his offending when interviewed by police, I am satisfied that the prisoner is remorseful for his actions. For these matters I deduct 2 years and 9 months.
- [12] Counsel for the prisoner submitted that I should consider his willingness to elope with the complainant to be a matter in mitigation of sentence. I am not prepared to do that. It is hardly to the prisoner's credit that he was willing to discard his wife in an instant in order to take up with her 12-year-old cousin.
- [13] There is no suggestion that there has been an unacceptable delay in the prosecution of this case.
- [14] The prisoner is convicted on his plea of guilty. Taking all of the above matters into account, he is to be imprisoned for a period of 5 years and 3 months. Under section 28(2) of the *Penal Code*, I order that the sentence is to run from 17 July 2019, being the day on which he was first remanded into custody on this charge.

  
**Lambourne J**  
Judge of the High Court

