



HIGH COURT OF KIRIBATI

Criminal Case N° 16/2018

THE REPUBLIC

v

KIAEN TOKIA

*Teanneki Nemta for the Republic
Botika Maitinnara for the accused*

Date of hearing: 27 January 2020

Date of ruling: 27 January 2020

RULING

- [1] Kiaen Tokia (also known as Charles Godfrey Buakaua) is charged with having caused the death of Kokoria Barao by driving without due care and attention.¹ The offence is alleged to have been committed on 18 March 2017, at Teaoraereke on South Tarawa.
- [2] An information was initially filed with the Court on 11 January 2018. When the matter first came before me on 16 July that year, defence counsel objected to the information on the ground that it failed to comply with section 70 of the *Criminal Procedure Code* (Cap.17). The Attorney-General rectified the error by filing a fresh information on 1 August. A third information (in similar terms) was filed on 3 August. That day defence counsel advised that her client would be pleading not guilty, and the matter was allocated a trial date in the week commencing 24 September 2018. The matter was not reached that week, so a new trial date of 18 February 2019 was fixed. The accused failed to appear on that day having gone to Nauru the previous November, in breach of his bail

¹ Section 33(1), *Traffic Act* 2002. Despite the repeal of the *Traffic Act* 2002 by section 71(1) of the *Traffic Act* 2017, with effect from 5 June 2018, this case has proceeded under the law as it was in force on the date of the alleged offence (as provided for under section 71(2) of the 2017 Act).

conditions. He returned to Kiribati in May 2019, so the trial was relisted for the week commencing 22 July. Again the matter was not reached, and trial dates in September and October also fell through. The trial finally got underway this morning.

- [3] Three witnesses were called for the prosecution, the first of whom was Toorea Bonteman. On the night of 17 March 2017, Toorea had been drinking with Kokoria at the Emperor nightclub in Teaoaraereke. Sometime around 3:00 or 4:00am they walked from the nightclub towards Toorea's house, which was not far from the KFHA² compound. They were both very drunk, but Toorea felt that Kokoria was more affected by alcohol than he was. Twice on the way to Toorea's house Kokoria fell and had to be helped to his feet by Toorea. On reaching the house, Kokoria was some distance behind Toorea. Toorea went inside. A few minutes later he heard what sounded like a car colliding with something. He went outside and saw Kokoria on the ground. He saw a car he recognised as belonging to the accused not far away. A van came. Toorea and others loaded Kokoria onto the van and it drove off.
- [4] The second prosecution witness was Manila Timon. His house is located just to the east of the KFHA compound in Teaoaraereke. At about 3:00 or 4:00am on 18 March 2017, Manila was at home, playing games on his mobile phone. It was raining. He heard Toorea outside, speaking to someone. He heard Toorea say, "I have arrived home. Where are you going now?" Manila heard a car go past, heading east; it sounded like it had a big engine, and was going very fast. He then heard the car return, now heading in a westerly direction, towards Betio. He heard what sounded like a collision – "boop boop" – then the sound of tyres squealing, as if the car was braking heavily. Manila and his wife went to the window and looked out. He then went outside and saw a man lying in the road. He was not moving. Manila did not recognise him. Toorea was there, crying.
- [5] Manila saw a car that he knew belonged to the accused a short distance away, on the lagoon side of the road, half on and half off the road surface. It was facing towards Betio. The accused got out of the driver's side door of the car and came to where Manila was. The accused said, "I did not see him clearly as

² Kiribati Family Health Association.

he jumped onto the car.” There was a woman in the passenger seat of the accused’s car. She called out, “Come on. Quickly. Let’s go.”


- [6] With the help of the accused and others, Manila helped load the man onto a van belonging to the hospital. The man was bleeding from the head, but he was still breathing.
- [7] The final prosecution witness was Doctor Kabiri Tuneti, a surgeon at the Tungaru Central Hospital in Nawerewere. He first saw Kokoria at the hospital at about 5:00am on 18 March 2017. He was unconscious and covered in blood. He was having difficulty breathing. Kokoria had multiple head injuries, along with broken ribs and a likely fractured femur. He was bleeding profusely from the mouth and nose. Kokoria was admitted to the intensive care unit but died at about 11:00 that morning. Cause of death was given as a combination of hypovolaemic shock (caused by loss of blood), severe head injury, multiple fractures, and a severe haemothorax (blood in the chest cavity). Kokoria’s injuries were consistent with him having been in a motor vehicle collision.
- [8] That brought the prosecution case to a close. Counsel for the accused then made a submission that her client had no case to answer. The question I must ask myself when considering such a submission is whether there is any evidence that the accused committed the offence. If I am of the view that there is no such evidence, I am required to record a finding of not guilty.³
- [9] As I have said previously:
- [A] submission of ‘no case’ can only succeed if there is no evidence at all that the accused committed the offence. This determination should be made by taking the evidence from the prosecution witnesses ‘at its highest’, and putting to one side any concerns I may have regarding the veracity of any or all of the witnesses.⁴
- [10] Section 33(1) of the *Traffic Act* provides as follows:
- A person must not cause the death of another person by driving a motor vehicle on a road or elsewhere without due care and attention, or without reasonable consideration for other persons using the road or place.
- [11] In this case the prosecution must establish that Kokoria’s death was caused by the accused’s driving, and that, at the time of the incident, the accused was

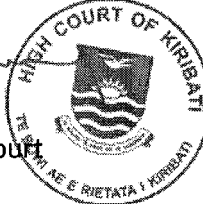
³ Section 256(1), *Criminal Procedure Code*.

⁴ *Republic v Bitiauoki Temeria* [2018] KIHc 31, at [20].

either driving without due care and attention, or without reasonable consideration for other road users. Putting the prosecution case at its highest, I am satisfied that there is some evidence that the car driven by the accused collided with the deceased and caused his death. This much flows from what the accused said at the scene, as reported by Manila.

- [12] Where the defence submission must succeed however is in pointing to the fact that none of the evidence adduced by the prosecution suggests that there was any careless driving on the part of the accused. I cannot accept the submission from counsel for the prosecution that the mere fact of the collision should be enough for me to be satisfied that the accused had failed to “exercise the standard of care which one would expect of a reasonably prudent driver in the like or similar circumstances”.⁵ That is not to say that, in an appropriate case, carelessness cannot be inferred from the circumstances, but there must be some evidence to support such an inference. In this case there is none. There is no evidence as to the speed of the accused’s car at the time of the collision, or as to where on (or off) the road the collision occurred. There is nothing from which the accused’s driving can be assessed as against that of the reasonably prudent driver.
- [13] In the circumstances, I am satisfied that there is no evidence that the accused committed the offence with which he is charged. He has no case to answer. I therefore find him not guilty.
- [14] The passport of the accused is to be returned to him. I further order that the sum of \$5000, paid into Court by the accused on 6 June 2019 to guarantee compliance with the conditions of his bail, be returned to him.


Lambourne J
Judge of the High Court



The seal of the High Court of Kiribati is circular, featuring a central emblem with a sun, a bird, and a shield. The text around the seal reads "HIGH COURT OF KIRIBATI" at the top and "TE KIRI AE E RIETATA I KIRIBATI" at the bottom.

⁵ *Republic v Bwereata Kamoriki* [2018] KIHc 49, citing White J of the South Australian Supreme Court in *Police v Melisi* [2010] SASC 21, at [17].