

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)

CR NOS. 269, 273 & 276/98

POLICE v Robert Exham BEN

Sgt Maunga for the Police

Mr Arnold for the Defendant

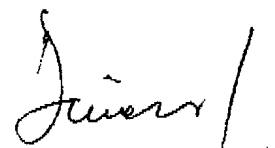
Date of Sentence: 15 September 1998

To what Mr Arnold has said on your behalf, and from the probation report which was an excellent one and very detailed and from the references that have been supplied they confirm exactly what Mr Arnold has said on your behalf. And that the fact, that you have been up until now, have been an outstanding citizen, a good father, a respected sportsman makes it even more difficult to carry out what is one of the most difficult tasks that any judge has to do. The responsibilities of being a judge have many benefits. They also have many trials. And the most difficult responsibility of a judge is to pass judgement on his fellow-men. And of course, the more honourable the person that is being sentenced, the more difficult is the job that the judge has to undertake. I have taken into account, that this is your first offence. I have taken into account that you are recognised as a good father, that you are an outstanding sportsman and in your work you are sufficiently recognised as to be a prospective person to go overseas and get further training in the work you were undertaking when this accident occurred. I have also taken into account your parents stood by you and stood by the people whom you have affected. They have contributed substantially in the way of a thousand dollars that has been

remitted for the funeral of this poor lady. They have contributed another three thousand seven hundred and sixty three dollars towards the medical care and other expenses incurred by Mr Ngau. All that speaks volumes for the manner in which you have conducted yourself up till now and how responsible your parents have been in adopting the attitude and being financially responsible in the way that they have. Sitting those on the credit side, the debit side, is, of course, for reasons you alone can explain, on this fateful day you have been drinking from all accounts from ten o'clock in the morning until six o'clock at night. It is a pity that your three companions are not standing with you today because they must surely accept some responsibility for the disastrous situation which you face. But it is a serious matter because its getting very close to the stage where such drinking of eight hours must be getting very close to qualifying you being charged not with driving while intoxicated and causing death but rather the more serious charge of murder. And that is the status which this crime equates. And in New Zealand and no doubt in other countries, people who offend in this nature are being charged with murder. So that the seriousness of what has happened can be more appropriately understood when you realise that, that is what in effect has happened. Such are the consequences that, only just within the last month in New Zealand the owner of a car who was involved in a drinking spree such as yours was a passenger in the back of his own car and he allowed somebody to drive his car and that driver killed somebody and he was charged with murder and the owner/passenger in the back seat of the car was also charged with murder. So that puts into context in my view, and in my opinion, the seriousness of this offence which I have to weigh in a fair and reasonable balance to what is an appropriate punishment as to what you have done and what this country and this

society and your people can expect if they commit the like offence. A judge when assessing what is an appropriate penalty has to do two things: he has to punish the offender and he has to give notice to the rest of the community as to what is an appropriate or considered as an appropriate sentence so that the rest of the community will have clear and unambiguous notice of the consequences if anybody else transgresses. And no doubt, it is for that reason, that the probation officer in a very fair reasoned and comprehensive report was not able to make any recommendation regarding penalty. He has quite rightly left it to the decision of the Court. If probation was to be considered, then everybody else who commits the like offence would expect probation. That would be natural. So that the penalty that I impose today must be a reflection to the community of what other people in the future can expect if they likewise offend. Mr Arnold has referred to certain previous cases. He referred to one case, as I understood him to say the last one of this nature was in 1985. Well I am not sure which case is he referring to but there were two cases in 1985. There being cases in 1992 - two of them, one in 1987 and 1991. And all of those cases apart from one which Mr Arnold quite properly mentioned - all of those cases have required and have received a term of imprisonment so that the standard has been set over many years that people that drink and drive and cause death must go to prison. It is a question of what term of imprisonment is all that I have to decide taking into account all those factors which I have referred to are in your favour and taking into account the factors which are not in your favour and the consequences which have flowed from this most unfortunate and regrettable incident. The results have been referred to by Mr Arnold as being tragic and extreme. The taking of any life is a tragedy. In this case you have taken the life of the woman, the mother and the wife. You

have also disabled her husband whose had his leg amputated. A reminder for the rest of his life. Of your negligence, and, a reminder of the tragic event of that day of your life. As I say, it makes it even harder because of the glowing reports, references and recommendations and the life that you have led up until the present time. But that is one of the consequences which flows such an indiscretion. Tragedy does strike and it is unfortunate. I have just come from Niue where I had the responsibility of passing sentence for exactly the same offence on a member of the Niue Government – a Minister in the Cabinet. And it was unpleasant duty to sentence him a first offender, two years imprisonment. The consequences in this particular case attended to be double, not only have you killed somebody, some would say murdered somebody but you have also crippled somebody for life. Taking all factors into account – taking into account everything that has been said on your behalf and submitted in a very capable way by your counsel, the very least I can impose is a term of two years imprisonment in respect of the charge causing death, a term of six months imprisonment in respect of the charge causing bodily injury, those terms are concurrent so that the total term is two years in respect of the charge of having no driving licence you are being convicted and charged and you will not be able to apply for a licence – you don't have a driving licence so you will not be entitled to apply for a driving licence for a period of three years.

A handwritten signature in black ink, appearing to read "J. J. J.", is located in the lower right quadrant of the page.

**CASES INVOLVING DRUNKEN
DRIVING CAUSING DEATH**

CR NO:	DEFENDANT:	DATE OF SENTENCE	PENALTY:	JUDGE/JUSTICE OF THE PEACE:
199/1982	Terii TIPOKOROA		1 year imprisonment 3 years disqualification	Donne CJ
549/1985	Kata KATA	10.10.1985	18 months imprisonment 3years disqualification	Dillon J
464/1985	Stephen Ngateina NGAPARE	7.11.1985	12 months imprisonment	Webb JP Nicholas JP Short JP
66/1987	Moeroa TAKAIRANGI	19.3.1987	2 years supervision Fine \$500.00 Restitution \$1,400.00 3 years disqualification	Speight CJ
339/1992 341/1992	Simon TIPUTOA	3.7.1992	6 months imprisonment by 12 months supervision 12 months disqualification	Quilliam J
837/1991	Tereapii MATAKERE	8.10.1992	2 years imprisonment.	Roper C.J