

IN THE DISTRICT COURT OF NAURU
(Criminal Jurisdiction)

CRIMINAL CASE NO. 43 of 2015

BETWEEN:

THE REPUBLIC OF NAURU
Complainant

AND:

DEKAROA TEIMITSI, JONAN JOHAN, OPA THOMA AND NIVED GRUNDLER
Defendant

Mr. Knox Tolenoa of the Office of the Public Defender for the defendants.

Mr. Filimoi Lacanivalu office of the Public Prosecutions for the defendant.

Date of Hearing: 4th, 5th and 6th April 2016

Date of Ruling: 25th May 2016

Ruling

INTRODUCTION

1. On the 25th May 2016, I ruled that the Record of interview for each of the defendants in this matter inadmissible and that I will give my written ruling at a later time. I now do so.
2. The defendants are jointly charged with the offence of malicious injuries in general contrary to section 469 of the Criminal Code 1899. The defendant Mr. Nived Grundler is also charged with 1 count of common assault contrary to section 335 of the Criminal Code 1899 and 1 count of going armed so as to cause fear contrary to section 69 of the Criminal Code 1899. The defendant Mr Jonan Johan is also charged with 1 count of common assault contrary to section 335 of the Criminal Code 1899. The defendant Mr. Dekaroa Teimitsi is charged with 1 count of going armed so as to cause fear contrary to section 69 of the Criminal Code 1899.
3. The defendants challenged the admissibility of the Records of Interview conducted between the police and each of the defendants on the 26th July 2015.

ISSUES

4. From the evidence the only issue to be determined is whether or not the Records of interview were fairly conducted by the police and therefore the confessions made therein were fairly obtained by the police and should be ruled admissible by the court.

PROSECUTION CASE

5. The prosecution called three witnesses. Sergeant Bryvenia Dageago, Constable Bernard Dagan and Police Reserve Yanma Bam. The prosecution also sought to rely on the four documents which has been tendered for identification purposes and marked as:

- i) Record of interview of Jonan Johan marked as exhibit "PE1"
- ii) Record of Interview of Dekaroa Teimitai marked as exhibit "PE2"
- iii) Record of Interview of Nived Grundler marked as exhibit "PE3"
- iv) Record of Interview of Opah Thoma marked as exhibit "PE4"

FACTS NOT DISPUTED

6. From the evidence the following facts are not disputed. That all the interviews were conducted on the 26 July 2016. Sergeant Bryvenia Dageago conducted the interview for defendant Jonan Johan and Dekaroa Teimitai. For the Interview of Mr. Jonan Johan the witnessing officer is Constable Bernard Dagan. For the interview of Dekaroa Teimitai, Police reserve Yanma Bam was the witnessing officer. For the interview of Opa Thoma Constable Bernard Dagan conducted the interview and Sergeant Bryvenia Dageago witnessed the interview. For the interview of Nived Grundler Constable Bernard Dagan conducted part of the interview witnessed by Sergeant Bryvenia Dageago and then left and Sergeant Dageago continued interviewing defendant Nived Grundler and recording the interview without another officer present or anyone else present to witness the interview.
7. Common to all the interviews is that the interviews were conducted in the Nauruan language but were recorded in English. No Nauruan version was recorded of the questions that were asked and the answers that were given in Nauruan.

8. Sergeant Dageago when asked by the court why she did not write the Nauruan version of the Record of interview answered that because that would take a long time for interpreting.

9. In respect of the Record of Interview for Mr. Jonan Johan, Sergeant Dageago gave evidence that some parts of the interview were also conducted in English but she can't recall which parts of the interview were conducted in Nauruan and which part of the interview were conducted in English. During re-examination she said that questions 26 to 29 were all asked in English. However in the actual Record of Interview for Mr. Jonan Johan there is nothing to show which part of the interview questions were asked in Nauruan and answered in Nauruan but translated to English and which part of the questions were asked and answered in English.

10. Constable Bernard Dagan explained that for the records of interviews which he conducted he did it in English because he doesn't know how to write it Nauruan either read. I take this to mean he doesn't read and write Nauruan. Further explaining that he has difficulties in writing Nauruan.

11. In respect of the interview of Mr Nived Grundler, the evidence of Constable Bernard Dagan is that he conducted the interview and during the interview his colleagues informed him that his wife had telephoned saying that his son was sick so he left to attend to his son. Constable Dagan gave evidence that he asked questions 1 to 11 in the interview of Nived Grundler. That by the time he went back to the police station Sergeant Bryvenia was conducting the interview and was at question 23 in the Record of Interview. Viewed in this context, this means that part of the interview of Mr. Nived Grundler conducted by Constable Dagan although conducted by Constable Dagan in Nauruan was recorded in the English language because Constable Dagan has difficulties writing the Nauruan language. Part of the interview of Nived Grundler conducted by Sergeant Bryvenia Dageago although conducted in Nauruan was translated and recorded and written in English because it would take a long time for interpreting.

THE LAW ON INTERPRETATION

12. The law on interpretation and or translation in this jurisdiction is well settled in the case of *Benjamin v Republic*.¹ Thompson Chief Justice as he then was held:

*"Rule IV(d) of the judges rules provides that "wherever a police officer writes the statement, he shall take down the exact words spoken by the person making the statement". That particular words and phrases in the Nauruan language may be interpreted with different meanings or shades of meaning by different translators is well known to the Courts here. It is therefore, not adequate compliance with Rule IV(d) for a Nauruan police officer to record in English a statement made to him in Nauruan, having made the translation himself without recording the actual Nauruan words used."*²

13. In *Benjamin v Republic*,³ his Lordship further held that:

*"In making his ruling, to admit Sub-Inspector Gioura's evidence of the statements, the magistrate sought to draw a distinction between tendering the written statements, as evidence and giving evidence of what was said. However, in this case that oral evidence was objectionable for precisely the same reason as the recorded statements, namely that it was not an account of what the appellants actually said in Nauruan but of Sub-Inspector Gioura's translation. Further, to admit such oral evidence is to ignore a principal purpose of the requirement for Judges' Rules that a suspects' statement should be recorded in writing, namely to safeguard him against defects in the police officer's memory"*⁴

14. On the evidence and the law, the contents of the records of interview for each of the defendants in this case cannot be said to an account of what each of the defendants actually said in Nauruan but a record of the translation of Sergeant Bryvenia and Constable Dagan's translation. Mr Lacanivalu has submitted that there is no suggestion by the defendant's that the translation recorded in the English language were overbearing, or done by trickery or unfair. Mr Lacanivalu's submission in this regard overlooks the fact that the record of interview requires that what is actually said by the defendants is recorded. In this case we have the English translation as translated by the police without the

¹ *Benjamin v Republic* [1975] NRSC 9; [1969-1982] NLR (D) 44 (25 November 1975).

² *Benjamin v Republic* [1975] NRSC 9; [1969-1982] NLR (D) 44 (25 November 1975) at paragraph 4, page 3

³ *Benjamin v Republic* [1975] NRSC 9; [1969-1982] NLR (D) 44 (25 November 1975)

⁴ *Benjamin v Republic* [1975] NRSC 9; [1969-1982] NLR (D) 44 (25 November 1975) at paragraph 4, page 4

Nauruan version being actually recorded. There is nothing to compare or even analyse whether the translations as are recorded are an accurate translation of what has been asked and answered in Nauruan. The absence of the Nauruan version of the interview, cannot not take the prosecution case any further.

JONAN JOHAN RECORD OF INTERVIEW

15. It is clear from the evidence of Sergeant Bryvenia that some part of the interview of Jonan Johan were conducted in English and the other parts were conducted in Nauruan but translated in written in English. In her evidence during re-examination she stated that questions 26 to 29 in the interview of Jonan Johan were asked in English. There is nothing in the interview of Jonan Johan to show which part of the interview was conducted in English and which part of the interview was conducted in Nauruan and was being translated. If anything, the only reasonable conclusion to draw is that, not only was it a translation but one cannot be satisfied that it is a proper record of what transpired during the interview. This aspect of Sergeant Bryvenia's evidence in court is not reflected in the interview of Jonan Johan.

NIVED GRUNDLER

16. Both Sergeant Bryvenia and Constable Bernard Dagan agree that Constable Bernard Dagan left after having started the interview. And then Sergeant Bryvenia continued on with interviewing Nived Grundler without another officer present to witness the interview. The time Constable Dagan left the interview was not recorded in the interview. The fact that Constable Dagan left during the interview of Nived Grundler was not recorded in the record of interview of Nived Grundler. The time Constable Dagan came back to witness the interview of Mr. Nived Grundler was not recorded. Sergeant Bryvenia could not remember at what part of the interview Constable Dagan left and when he came back. Viewed in this context, it is clear that at some point during the interview of Nived Grundler there was no witnessing officer. I fail to understand how the prosecution could still submit that there is no circumstance of unfairness in this regard.

I find on the evidence that the conduct of the record of each of the defendants is tainted with such an unfairness and is in breach of rule IV(d) of the Judges Rules as clearly stated in *Benjamin v Republic*⁵ by his Lordship Thompson Chief Justice as

⁵ Benjamin v Republic [1975]NRSC 9; [1969-1982] NLR (D) 44(25 November 1975

he then was, so as to warrant that the court should exercise its discretion to rule that the Record of Interview of each of the defendant's is inadmissible because of unfairness. I rule that:

- i) Record of interview of Jonan Johan marked as exhibit "PE1" is inadmissible.
- ii) Record of Interview of Dekaroa Teimitsi marked as exhibit "PE2" is in admissible
- iii) Record of Interview of Nived Grundler marked as exhibit "PE3" is inadmissible.
- iv) Record of Interview of Opah Thoma marked as exhibit PE4 is inadmissible.

Dated this 30 day May of 2016


Emma Garo
Resident Magistrate

**District Court of
Nauru, Yaren**