

IN THE DISTRICT COURT OF NAURU
(Criminal Jurisdiction)

CRIMINAL CASE NO. 118 of 2014

BETWEEN:

THE REPUBLIC OF NAURU
Complainant

AND:

HUDSON ADIRE
Defendant

Date of hearing: 12 September 2016
Date of Sentence: 13 September 2016

Mr. Filimoni Lacanivalu for Republic
Mr. Ravunimase Tangivakatini for Defendant

Sentence

1. The defendant pleaded guilty to 1 count of resisting arrest contrary to section 340 (2) of the Criminal Code 1899. The particulars of the offence as charged read:
"Hudson Adire on the 21st December 2013 at Nauru, did wilfully obstruct a police officer namely Constable Mike Amram whilst acting in the execution of his duty."¹

2. The facts of the case as presented by the prosecution are that:

On the 21st December 2013 between 5pm and 6pm, police officers were on patrol around the Island in a police vehicle. At the clearing at Anibare district after the hill in the anti-clockwise direction, one of the police officers noticed a group of people drinking alcohol on the clearing that is usually used by the public to play and relax. The police made a u-turn and came to the group of about 8 to 15 people. Sgt Detageouwa got out of the Police vehicle and approached the ring leader namely Snuka while PC Liberty Adeang and Mike Amram stood behind him while they spoke. PC Leon Adeang stood

¹ Particulars of the offence charged as pleaded in the charge filed with the court on 24 the September 2014

beside the Police Vehicle. All officers were there to make sure that the group moved from the public place as they were drinking alcohol. Sgt Rory Detageoua told the ring leader that they were drinking in a public place and requested him to tell his group to move from the area. He also told those who were there that what they were doing is wrong and asked them to move. Snuka began to tell them to move and some had started to move while others told the police they were waiting for their transport. The defendant who was sat amongst the others became angry and started swearing at PC Mike Amram and challenged him to a fight. He then stood up and went towards PC Amram and challenged him to a fight swearing at him and asking him for a fight. Sergeant Detageouwa warned the defendant to stop but the defendant refused and kept on swearing at PC Mike Amram. The defendant was then arrested.

3. It is to be noted that although the defendant committed the offence on 21st December 2013, he was not charged with the offence until the 24th September 2014. A delay of 9 months and 3 days.²
4. This matter was first called up in the District Court on the 22 October 2014 and had to be adjourned because the defendant was not served with the summon to appear in Court.³ Again on the 24 November 2014, the matter was called before the Court and had to be adjourned because the defendant was not served with the summon to appear before the Court.⁴
5. On the 9 December 2014, the defendant appeared in Court and this matter was adjourned to the 21st January 2015. On the 21st January 2015, the defendant did not appear in Court and the prosecution sought further adjournment to have the defendant served with a fresh summon. The matter was adjourned to the 18th March 2015 to give time for bench warrant issued for the arrest of the defendant to be executed.⁵ From the 18th March 2015 to 12th August 2015, this matter was adjourned on 5 occasions over a period of 5 months, for the Bench warrant to be executed but his has not been done.⁶ On the 12th August 2015, the defendant appeared in Court and the prosecution filed an amended charge and matter was adjourned to 23 September 2015.⁷ On the 23 September 2015, disclosures were ordered by the Court to be served on the defence and matter adjourned to 7th October 2015 for plea.⁸ On the 7th October 2015, the defendant appeared in Court and was ready to take his plea but there was a defect in the charge and the matter had to be adjourned to the 28 October 2015 to allow prosecution further time to amend the charge.⁹ On the 28 October 2015, the defendant did not

² Date charge presented to Magistrate as per the complaint filed with the court on 24th September 2014.

³ Record of Court proceedings 22 October 2014.

⁴ Record of Court proceedings 25 November 2014

⁵ Record of Court proceedings 21 January 2015

⁶ Record of Court proceedings 18 March 2015, 8th April 2015, 29 April 2015, 28 May 2015, 15 July 2015,

⁷ Record of Court proceedings 12 August 2015

⁸ Record of Court proceedings 23rd of September 2015

⁹ Record of Court proceedings 7th October 2015

appear in Court and a bench warrant was again issued for his arrest and this matter was adjourned to 11 November 2015 for the warrant of arrest to be executed.¹⁰ On the 11 November 2015, the bench warrant was not executed and so this matter has to be adjourned to 20 January 2016 for the bench warrant to be executed.¹¹ On the 22nd January 2016, the bench warrant issued by the court was still not executed so this matter was adjourned to 3 February 2016¹². On the 10th February 2016, this matter was adjourned to 2nd March 2016 for the bench warrant to be executed.¹³ On the 2 March 2016, this matter was adjourned to 23rd March 2016 for the bench warrant to be executed.¹⁴ On the 23rd March 2016, this matter was adjourned to 13th April 2016 to give time for the bench warrant to be executed. On the 13th April 2016, this matter was adjourned to 11 May 2016 for bench warrant to be executed.¹⁵ On the 11th May 2016, this matter was adjourned to 1st June 2016 because the bench warrant has not been executed.¹⁶ On the 1st of June 2016, the matter was adjourned to 13 July 2016 to give further time to have the bench warrant executed.¹⁷ On the 11 July 2016 the defendant was arrested and brought before the Court pursuant to the bench warrant issued by the Court. The court not being satisfied with the reason given for his failure to attend Court forfeited his bail recognisance and ordered defendant to pay \$50.00. The Court also took the defendant's plea and the defendant pleaded not guilty and so this matter was adjourned to 13 July 2016.¹⁸ On 13 July 2016, this matter was set for trial today 12 September 2016. On 12th September 2016 the defendant pleaded guilty to an amended charge filed by the prosecution.

6. When one looks at the history of this matter before the court, it is clear that the failure to execute the bench warrants issued by the Court over long periods has largely contributed to the delay in this matter being brought to some finality.

7. On the first occasion it took a period of 8 adjournments over a period of 8 months before the warrant was executed. On the second occasion it took 9 adjournments over a period 6 months to execute the bench warrant. No explanation has been given to the court as to why there has been a delay in executing the bench warrants to have the defendant arrested and brought before the Court. In the absence of an explanation for the delay in executing the bench warrant, the delay must be deemed to be unreasonable and taken in favour of the defendant to mitigate in favour of a reduction in sentence.

¹⁰ Record of Court proceedings 28 October 2015.

¹¹ Record of Court Proceedings 11 November 2015

¹² Record of Court Proceedings 22 January 2016

¹³ Record of Court Proceedings 10 February 2016

¹⁴ Record of Court proceedings 2 March 2016

¹⁵ Record of Court Proceedings 13 April 2016

¹⁶ Record of Court Proceedings 11 May 2016

¹⁷ Record of Court Proceedings 1 June 2016

¹⁸ Record of court Proceedings 11 July 2016

8. The defendant is a first offender and has pleaded guilty to the offence. It is to be noted that the prosecution today filed an amended charge, conceding that the initial charge as preferred and filed earlier against the defendant was not supported by the evidence. In light of this concession by the prosecution the defendant's guilty must be treated as a guilty plea in the first instance.

9. The defendant is now 22 years old. There has been a delay of 2 years 8 months and 23 days to bring this matter some finality. Considering the nature of the charge and the fact that all the complainants are police officers, the delay to execute the bench warrants issued for the arrest of the defendant, in the absence of any explanation being given by the prosecution must be taken to be an inordinate delay. Had this matter been dealt with earlier, and an immediate custodial sentence imposed, the defendant would have served any term of imprisonment imposed on him and would have moved on with his life.

10. Any form of assaults or obstructions on police officers is serious because the police are law enforcement officers and those who assault or obstruct police officers must expect to be sent to prison. But in the same breathe it is incumbent on the prosecution and police to timely execute court orders and prosecute matters so that cases are dealt with without undue delay by the Court. Because where there is substantial and inordinate delay as has happened in this case then this case, in absence of good reason for any such delay, such inordinate delay will only go to reduce what would have been appropriate sentences being imposed by the Court.

11. I would have sentenced the defendant to an immediate term of imprisonment had this matter been dealt earlier. But a punishment served too late may in itself cause an injustice. I sentence the defendant to pay a fine of \$100.00 within 1 month. In default of payment of fine he will go to prison for 2 months. I also further order that he pay the \$50.00 imposed by the Court on the 11th July 2016. He has one month to pay this fifty dollars. If he fails to pay he will serve a term of imprisonment for 2 weeks imprisonment.

Dated this 13th September 2016



Emma Garo
Resident Magistrate

