



IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 18/2019

THE REPUBLIC OF NAURU

-v-

CHRISHILDA AKUBOR

*Before:* RM. P. R. Lomaloma  
*Prosecutor:* Mr. Filimoni Lacanivalu  
*Defence:* Mr. Sevuloni Valenitabua  
*Sentencing Hearing:* 28 February 2020  
*Submissions:* 5 March 2020  
*Date of Sentence:* 10<sup>th</sup> March 2020

SENTENCE

**Catchword:** *Sentence – Dangerous Driving; self-induced intoxication; Damaging property; Recklessly causing harm.*

**Introduction**

1. You pleaded guilty to one count of dangerous driving contrary to section 67(1) of the Motor Traffic Act 2014; and you were found guilty after a trial on 5 other counts comprising 3 counts of damaging property contrary to section 201 of the Crimes Act 2016 and 2 counts of recklessly causing harm contrary to section 75(a) (b)(c) and (ii) of the Crimes Act.

## The Facts

2. The facts are set out fully in my judgment of 14<sup>th</sup> February 2020. On 25 June 2019, you returned from work in the morning and after dropping someone at school, decided to drink. You bought a bottle of vodka and you started drinking it in Anibare. You then drove to Nibok and then to Yaren to question a man about allegations he made against you which you did not like. You then drove off to one Babylon store. You said you cannot remember what happened after that.
3. The evidence of witnesses show that you drove from Nibok towards the hospital in an anti-clockwise direction. Opposite the Stardonna store, your vehicle ran into the back of Eileen Hiram's van. You did not stop but collided with it again, forcing it off the road on the left side where it collided with a container and a trailer on the left hand side of the road. You continued driving and accelerated your vehicle and ran into Blackie Ephraim's vehicle stopped on the right hand side of the road and then slammed into the Martin store. The force of the collision with Ephraim's car forced it about 15 meters into the opposite side of the road. Witnesses said you were drunk.
4. Eileen Hiram suffered headaches and neck pain as a result of the collision. Ephraim Blackie's medical report shows that he suffered lacerations to his right leg. Pain from an old injury which had been healing returned and Ephraim still suffers from it today. The two counts of recklessly causing harm are for the injuries you caused to Eileen Hiram and Blackie Ephraim.
5. The three counts of damaging property are for the damages you caused to the van owned by Eileen Hiram, the car owned by Blackie Ephraim and to Martin Store.
6. The maximum sentences for the offences are:-
  - a. Count 1—Dangerous driving contrary to section 67 of the Motor Traffic Act 2014—\$1,00 fine or 6 months imprisonment or both;
  - b. Counts 2, 4 & 6—Damaging property contrary to section 201 of the Crimes Act 2016—5 years imprisonment;
  - c. Count 3 & 5—Recklessly causing harm contrary to section 75(a)(b)(c) and (ii) of the Crimes Act 2016—5 years imprisonment

## Seriousness.

7. The starting point for each sentence is to look at the seriousness of the offending, taking into account your culpability and the harm caused, intended or likely to be caused by your offending. Culpability or blameworthiness is the measure of your fault in these offences and starts with negligence followed by recklessness, knowledge and with intentional acts at the top of the scale. For all your offences, I found that you were reckless. I will assess the seriousness of each offence type separately after looking at the general aggravating factors and the mitigating factors.

### Aggravating Factors

8. The major aggravating factor common to all the counts is that you were drunk at the time you committed these offences. You were so drunk that you could not remember what you were doing. The second factor is that you did not stop after you hit Eileen vehicle but you continued to drive and in fact accelerated and hit the other vehicle and ended up in Martin Store. This shows a complete disregard for the safety of other road users and the potential damage to their property.

### Personal Circumstances and Mitigating Factors

9. You are 40 years old and single. You work as a security officer at the Airport. Your counsel submits that on the day, you heard that Carusso Amwano was spreading rumours about you. You then decided to drink to get Dutch courage so you could go and face Carusso. You drank a lot of alcohol quickly and you quickly lost control of yourself.
10. In mitigation, your counsel said you are sorry for what happened. He reiterates that you were not aware of what happened but I had found that your conscious mind was in control to allow you to steer your car safely from Nibok, several hundred meters to where you had the accident and in that time, you should have been aware of the risks you were putting others into by driving while under the influence of alcohol. You are a first offender.

### Damaging Property – Counts 2, 4, 6

11. The two most serious charges, carrying the highest maximum sentence are damaging property and recklessly causing harm. There is no evidence of the damage you caused to the vehicles you collided with or Martin store but I can infer from the evidence that they were not minor. The vehicle driven by Eileen was forced off the road and collided with a container on the side of the road. I can infer that the damage would have been substantial.
12. The vehicle owned by Ephraim Blackie was stationary outside Martin Store and it was thrown about 15 meters after the impact showing the amount of force it absorbed. From this I can infer that the damage was substantial.
13. The damage to Martin Store was not described nor the amount to repair it tendered. I can only infer that the damage was not minor.
14. From the damage caused to these properties, I would assess the harm caused by your offending to be in the midrange for these offences taking the seriousness of these offending to the midpoint.

15. I have taken account of the seriousness of your offending and the aggravating and mitigating factors and would sentence you to 12 months imprisonment on counts 2,4 & 6.

**Recklessly Causing Harm – Counts 3 & 5**

16. The fault element for this offence is recklessness which is the second lowest on the culpability scale. The harm caused to Eileen was minimal but she could have suffered more serious injuries. For dangerous acts, including this one, the harm likely to be caused should be the measure of the harm caused. I have taken account of the injuries caused or likely to be caused and would rate your offending for count 3 at the midlevel for this offence. I have taken account of the fact that you were drunk and that it was self-induced and consider an appropriate sentence would be 12 months imprisonment.
17. The visible injuries to Ephraim Blackie were minor but the pain from a previous injury he suffered has resurfaced and he continues to suffer it more than 12 months after the accident. I would rate the seriousness of this offending at the midpoint. Taking into account the aggravating factors and the mitigating factors, I would sentence you to 12 months imprisonment for this offending.

**Dangerous Driving**

18. The maximum sentence for this offence is imprisonment of 6 months. I had found that you were reckless in this offending. This was not a momentary loss of attention but you had plenty of opportunity to realise what you were doing was wrong. You did not stop your vehicle but you continues to drive knowing that you were drunk. This raises your culpability for this offence. I would therefore rate your offending for this offence at above the midpoint.
19. Your counsel referred me to the case of *R v Paul Teutendberg NRDC Case No. 28 of 2017* where he was fined \$1,000 by this Court for this offence. In that case, the defendant was sober and the accident resulted from a momentary disability when he was blinded by the sun and did not see the motor bike which he collided with. He also paid compensation of \$1,500 to the victim and stopped to render aid to the driver and his passenger. He co-operated with police and pleaded guilty at the first opportunity.
20. The prosecutor referred me to the case of *Renack Mau & Others v The Republic (2015) NRSC 20* where Crulci J reduced a sentence of 6 months imprisonment for dangerous driving to 4 months imprisonment. The judgment does not give details of the offending but the prosecutor submits that he used a motor bike in a dangerous manner with the intent to attack a teenager as punishment for a wrong doing. Crulci J reduced the sentence on account of the reconciliation made between the offender and the victim, evidence of which was only introduced in the appeal pursuant to section 17(1) of the



Appeals Act 1972. That was an intentional act where no injuries or damage to property were caused.

21. The prosecutor also referred the Court to *R v Rosen Ribauw*<sup>1</sup>, the defendant was intoxicated and drove a vehicle dangerously causing the loss of 2 lives and injuries to others. He pleaded guilty to dangerous driving and was found guilty of 2 counts of manslaughter for which he was sentenced to 8 years imprisonment concurrent to each other; 2 counts of causing grievous harm for which he was sentenced to 3 years imprisonment and 6 months for the dangerous driving concurrent to the manslaughter sentences. The dangerous driving charge was not the head sentence.
22. I have taken account of the seriousness of this offence, the aggravating factors and the mitigating factors, in particular your guilty plea and I would sentence you to 3 months imprisonment for this offence.

#### **The Conviction**

23. Section 277 of the Crimes Act gives the Court the power to sentence an offender without recording a conviction in certain cases. I am convinced that the circumstances of this offending demand a conviction be recorded for each of the offences.

#### **The Totality Principle**

24. The totality principle requires the court to “stand back and look at the overall picture and decide whether the total of what would otherwise be the appropriate sentence is fair and reasonable total sentence to impose.” : *R v Creed (1985)*<sup>2</sup>
25. Your total sentence for each of the offences would, if served consecutively be :-
  - a. Count 1—Dangerous Driving—3 months;
  - b. Counts 2,4 & 6—Damaging Property—12 months each;
  - c. Counts 3 & 5—Recklessly Causing Harm—12 months each; and
  - d. Total 5 years and 5 months.
26. Applying the totality principle, I sentence you as follows
  - a. Count 1: Dangerous driving—3 months imprisonment;
  - b. Count 2: Damaging property—12 months imprisonment consecutive to count 1;
  - c. Count 3: Recklessly causing harm—12 months imprisonment consecutive to count 1 and concurrent to count 2;
  - d. Count 4: Damaging property—12 months imprisonment consecutive to count 1 and concurrent to counts 2 and 3;

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<sup>1</sup> [2017] NRSC 16; Criminal Case 51 of 2016 (25 February 2017))

<sup>2</sup> (1985) 37 SASR 556 (Court of Crim Appeal) per King CJ

- e. Count 5: Recklessly causing harm—12 months imprisonment consecutive to count 1 but concurrent to counts 2, 3 and 4; and
  - f. Count 6: Damaging property—12 months imprisonment consecutive to count 1 but concurrent to counts 2, 3, 4 and 5.
27. Your total sentence is therefore 15 months imprisonment to deter you and other members of the public from driving when intoxicated.
28. You have 14 days to appeal.

**Valuation of Damages**

29. This sentence has not been made easy by the fact that the prosecution has not led any evidence on the extent of the damage caused. For sentencing purposes, the court needs evidence of the extent of the damage caused or the cost of repairs when one is charged with the offence of damaging property.

**PENIJAMINI R. LOMALOMA**

**Resident Magistrate**

