

IN THE SUPREME COURT OF NAURU  
Criminal Jurisdiction  
Criminal Appeal No. 16 of 1978

HEMMING DAGABWEBWE

Appellant

v.

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

18th May, 1978 at 10.30 a.m.

In Court

Before Mr. Justice I.R. Thompson, Chief Justice

For the Appellant: -

For the Respondent: Mr. D.G. Lang

Appellant present.

Interpreter: Mr. Alec Harris, Clerk of Courts.

Appeal against severity of sentence.

APPELLANT: I am not guilty of the offence.

COURT: Do you wish to appeal against the conviction?

APPELLANT: Yes.

COURT: On what ground do you say that the conviction was wrong?

APPELLANT: I was not drinking.

COURT: You are saying that the magistrate came to the wrong decision. He believed the police and was biased.

ORDER: Leave granted to amend appeal to an appeal against conviction and sentence.

I.R. THOMPSON  
Chief Justice

APPELLANT: I am very sincere. On that night I did not drink.

COURT: Police Constable Henty gave evidence that he saw you with a case of Courage beer and drinking from it.

APPELLANT: It was a twist night. There were cases of beer and soft drinks on the table where I was sitting. I was drinking soft drinks.

COURT: Sgt. Aingimea also gave evidence that he saw you drink from a can of Courage beer.

APPELLANT: There are some policemen who tell lies. I am telling the truth.

COURT: On the evidence the magistrate was entitled to come to the conclusion he did, that the appellant was drinking beer. Two police officers gave evidence of actually seeing him drinking. It was for the magistrate to decide whether they or the appellant are telling the truth. The appeal against conviction must be dismissed. Do you wish to deal with the severity of the sentence?

APPELLANT: The sentence of imprisonment and a fine of \$100 was too severe. I ask the Court to be lenient. I ask the Court to give me a chance to turn over a new leaf. I will not repeat the offence.

COURT: It is unusual to impose both a prison sentence and a fine for such an offence, although legally possible.

MR. LANG: I consider it inappropriate. I submit that a sentence of imprisonment was justified. I do not ask that the sentence of the fine be upheld. The appellant has been before the District Court six times in the last twelve months for offences in connection with drink. Was convicted of an offence similar to the present one in November, 1977. He was fined then but repeated the offence.

JUDGMENT:

The appellant has twice flouted the order prohibiting him from drinking. He was fined the first time. There is, therefore, ample justification for a custodial sentence on this occasion. It is not apparent that there is need for a fine as well as the sentence of imprisonment. Also it is not apparent why a sentence as long as 3 months' imprisonment is required to demonstrate to the appellant that the Courts' orders must not be flouted. A shorter sentence may well be adequate; if it is not and the order is flouted again, a longer sentence will be justified then.

The appeal against conviction is dismissed for the reasons stated earlier. The appeal against sentence is allowed. The sentences of imprisonment and fine are set aside and a sentence of 4 weeks' imprisonment is imposed in their place.

I.F. THOMPSON  
Chief Justice

18/5/78