



IN THE SUPREME COURT OF NAURU

[CRIMINAL JURISDICTION]

Case No 46 of 2014

BETWEEN THE REPUBLIC

And SEREIMA NAMATA **DEFENDANT**

Before: Khan J
For the Prosecution Mr L Sovau
For the Accused Mr J Rabuku and Ms A Lekanaua

Date of Judgement 6 November 2014
Date of Sentencing Submission 6 November 2014
Date of Sentencing 7 November 2014

CATCHWORDS:

Negligent Act causing harm s.328 of the Criminal Code- 9 counts Defendant a nurse and a midwife at RON Hospital-working under difficult circumstances-mistakenly injected insulin to the 9 babies instead of HBV-no convictions recorded-sentenced to perform 120 hours community service work.

SENTENCING

1. You are charged with nine counts of negligent act causing harm contrary to section 328 of the Criminal Code of Queensland 1899(1st schedule adopted).
2. At the material time you were employed as a nurse and midwife by RON Hospital and you injected nine newly born infant with insulin instead of HEPVAX to prevent

Hepatitis B (HBV). As a result of your negligent act the infants were subjected to bodily harm.

3. This matter first came before the court on 3rd of November 2014 and you pleaded guilty to the charges at the very first opportunity.
4. Not only did you plead guilty at the very outset, you also admitted when you were questioned by your supervisor Losena Tuira; that you made a mistake and you subsequently attended an investigative panel and once again you admitted your mistake. You stated that you did not do so intentionally to hurt the nine infants. You said to the panel that you regret your actions and, you felt very guilty for what had happened.
5. I accept that you are extremely remorseful from the time you realized your mistake and continued to do so by pleading guilty and in court when you openly apologized to your colleagues and the people of Nauru for your mistakes, and all your colleagues present in court were reduced to tears.
6. I have not been provided with any victim impact report. I think the prosecution should have provided medical reports in respect of all the infants as to whether or not they have recovered fully from the incident and, if not whether they are likely to have any long term adverse effect. In the absence of any report I presume that all the infants have fully recovered.

PERSONAL BACKGROUND

7. You are a single mother and have a fourteen year old son who lives with your mother in Fiji, and attends school. Your mother is a widow and you support your child.
8. You graduated as a nurse from Fiji School of Nursing in 1996 and having obtained a Diploma in Nursing.
9. You were continuously employed as a nurse in various centers in Fiji since 1996 until November 2011 when you commenced employment as a nurse in Nauru at the RON Hospital.
10. You have no previous convictions either in Fiji or in Nauru.

EMPLOYMENT IN NAURU

11. Unfortunately, Nauru has limited resources as to it is a developing country and you were working under difficult circumstances and the international standards have been compromised on many occasions. On many occasions, nurses including yourself were made to work alone when the minimum requirement is that there should be always two nurses present at all times.
12. There were times when you and your colleagues were forced to work two eight hours shift which is very unfortunate and I recognize that by doing so you were prepared to sacrifice your leisure time to ensure that the patients at the Hospital were cared for.
13. As a result of acute shortage of nurses in Nauru the 5Rs checklist could not be fully implemented and or observed. The 5Rs are:

- Right Person
- Right drug
- Right dose
- Right time
- Right route

14. If there were two nurses on duty at all times then the 5Rs checklist would have been observed, and you may not have been before this court facing these charges.
15. When you came to Nauru you would have realized that you were working in a very different environment to what you were accustomed to. You should therefore have been more diligent in the discharge of your duties. If you only had cared to discuss matters with your colleagues you would have known the difference between HBV and the insulin. You failed to do so and that in my view is not good work ethics.

YOUR SUSPENSION

16. You were suspended on 13th September 2013 and you still continue to be on suspension with a reduced pay.
17. Prior to your suspension, you were paid a salary of \$600 dollars per fortnight (\$15,600 per annum) and since the suspension you have been only paid subsistence

allowances of hundred dollars per fortnight (\$2,600). I accept that you have suffered a loss of \$13,000.

18. You have continued to live in the nurse's quarters since the suspension.

YOUR FUTURE

19. Your counsel has urged upon me not to enter a conviction against you as that will effectively close all employment for you in the nursing field. Mr. Sovau counsel for the Republic concedes that I should not impose a conviction.
20. I am informed by your counsel that you are in the midst in seeking employment as nurse in the Marshall Islands. He has also place documents before me to support your job application to Marshall Island. If I were to enter convictions against you, then you will not be considered for this position.
21. In the circumstances having regard to all the matters including your early admission to your superior, to the investigative panel, to the fact that you have been extremely remorseful and to the conditions under you were working, I will not enter a conviction against you. I order that under section 22(2) of the Criminal Justice Act 1999 that you shall perform 120 hours of community service work.
22. You will be required to take lawful instructions from the Chief Probation Officer, Lena Porte, in relation to the performance of the community service work and upon satisfactory completion thereof you will be required to attend before the Registrar who shall release your passport.
23. Your passport is currently held by the Police and I order that the Police to deposit your passport with the Registrar of this Court. I further order that the Chief Probation Officer shall produce you to the Registrar at an appropriate time to advise him as whether or not you satisfactorily perform your community service work.

DATED this 7th day of November 2014

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Mohammed S. Khan
Judge