



**IN THE SUPREME COURT OF NAURU AT YAREN
[CRIMINAL JURISDICTION]**

Criminal Case No. 15 of 2023

BETWEEN: THE REPUBLIC
PROSECUTION

AND: IGNAZIO-IYONGO AUBIAT
ACCUSED

BEFORE: Keteca J

Date of Submissions: 09th August 2024

Date of Judgment: 16th August 2024

Case may be cited as: Republic v Ignazio-Iyongo Aubiat

Catchwords: Indecent Acts: Contrary to Section 106(1)(a)(b)(c)(ii) of the Crimes Act 2016; Evidence of Accused Unchallenged

Appearances:

Counsel for the Prosecution: **S. Shah**

Counsel for the Accused: **R. Tom**

SENTENCE

BACKGROUND

1. On 12th July 24, you were found guilty on two Counts of Indecent Acts: Contrary to Section 106(1)(a)(b)(c)(ii) of the Crimes Act 2016.
2. The facts are that on two separate occasions, you indecently touched a fellow police officer, Joy Tokaibure without her consent.

MAXIMUM PENALTY

3. The penalty for this offence-
 - (i) If aggravating circumstances apply- 20 years imprisonment; or (ii)
In any other case- 10 years imprisonment.
4. There were no aggravating circumstances in this case.

ANTECEDENT

5. You are married with four children:
 - (i) Hawkins-(M)- 11years old
 - (ii) Mely-rose(F)- 10 ""
 - (iii) Rose-mely-(F) -8 ""
 - (iv) Peter (M)- 6 ""
6. You were employed with the Nauru Police Force for two years, having previously worked for Digicel for 3 years. Your wife is employed in the family shop, earning \$400 a fortnight. From this amount, she pays \$200 for a loan.
7. You did not complete your years at school. You are a powerlifter.

PRE- SENTENCE REPORT

8. No injuries were caused to the victim. You are remorseful and asking for forgiveness.
9. On your prospects of rehabilitation-you actively participate in sporting activities and you cooperate with the Correctional staff.
10. On the effect of the sentence on family members and dependents- The children will be devastated if a custodial sentence is imposed;
11. The family will be greatly impacted financially and a big burden on the wife to look after the children by herself.
12. The report concludes that you be given another chance as it is unlikely that you will reoffend.

SUBMISSIONS BY THE PROSECUTIONS

13. Mr Shah submits that an aggravating factor here is that you were a colleague of the complainant. She trusted you and there is a breach of trust here.

14. Counsel refers to *R v Thoma [2017] NRSC 86* where Va'ai J said:

'There is no fixed legal definition of indecency. Indecency is that which offends against current accepted standards of decency.: *A-G v Hunter (1971) SASR*. If what was done is something that the community generally regard as indecent then the act is indecent.'

15. Counsel also refers to the following cases:

- i. *R v Wajeeh Uddin NRSC 21*; Criminal Case 06 of 2020- 'the accused had indecently touched the complainant and attempted to pull down her pants while she was intoxicated-accused sentenced to 18 months imprisonment;
- ii. *R v Pickering [2023] NRDC 10*, accused was sentenced to 42 months imprisonment for touching the nipple of the complainant; and
- iii. stresses the need 'to impose harsh custodial sentences where men in society prey on vulnerable women.'

SUBMISSION BY DEFENCE COUNSEL

16. Counsel refers to Section 4A of the Bail Act 2016. **It isn't relevant in a sentencing submission!!**

17. Counsel also refers to a 'community service order' under Section 22 of the Criminal Justice Act 1999 but does not submit any cases where the courts have granted the same for a Section 106- Indecent Act offence or any submissions why such an order would be appropriate here.

18. For mitigation, counsel submits:

- i. the defendant has no previous convictions;
- ii. he is well mannered and attends church with his family;
- iii. 'the defendant is a former police officer and leader in the community and is willing to assist his community *as part of his rehabilitation in terms of delivering awareness for indecent acts towards females.*

19. A non- custodial sentence should be imposed;

20. 'A hefty fine should be imposed with a community service order for 1 year.

SENTENCING GUIDELINES

21. I have considered the following provisions of the Crimes Act 2016:

- i. Section 277- Kinds of sentences;
- ii. Section 278- Purposes of sentencing;
- iii. Section 279- Sentencing considerations;
- iv. Section 280- Sentencing considerations- imprisonment;

- v. Section 282- Power to reduce penalties
- vi. Section 282A- Pre-trial detention not to be considered for offences under Part 7

DISCUSSION

22. *In Republic v Uddin [2023] NRSC 3*; Criminal Case 6 of 2020 (3 February 2023), where the accused removed the pants of the complainant and attempted to climb on top of her, he was sentenced to 18 months imprisonment. Of this, 4 months were deducted for his time on remand. The offence was committed before the sentence was increased by parliament to 20 years and 10 years respectively. The new penalties came into effect on 23rd October 2020.
23. *In Republic v Pickering [2023] NRSC 15*; Criminal Appeal 1 of 2023 (30 May 2023), the accused, who touched the complainant's nipple, was sentenced to 42 months imprisonment at the District court. This was reduced to 20 months by the Supreme Court.
24. Considering all the provisions under the sentencing guidelines in [21] above, the nature and circumstances surrounding the offending, I order that a **conviction** should be recorded against the accused here.

SHOULD AN IMPRISONMENT TERM BE AWARDED HERE?

25. I refer to Section 280 in [21] above and note the following- this offence was committed by a serving police officer against a female fellow officer. The offences were committed during working hours when the accused and the complainant were alone in a police vehicle. After the first incident, the complainant was shocked. She swore at the accused. The accused 'just laughed.'
26. The second time the accused committed the offence, he touched PW1 between her thighs. As given in evidence- he touched my private part against my crotch- top corner of my thighs. The accused then told her to 'stop complaining.'
27. Both incidents show a male police officer, an instructor with the Nauru Police Training Centre, taking advantage of the smaller female officer, without any regard at all to the indecency of his unwelcome conduct. The accused did not do it once. You did it twice knowing full well that the complainant did not consent to the indecent touching.
28. Further, you did not deny the charges laid against you. Even though you chose to give evidence on oath, your Counsel did not put the allegations and evidence of the complainant to you. The court accepted the testimony of the complainant as it was not challenged at all.

29. In addition to the above, I note that Parliament has increased the penalty for this offence to 10 years imprisonment- where no aggravating circumstances apply. It reflects how Nauruan society frowns upon such conduct.

30. An imprisonment term is appropriate here.

HOW LONG SHOULD THE TERM OF IMPRISONMENT?

31. Considering the cases that have been dealt with by the Nauru Courts, the sentences range from 14- 20 months imprisonment.

CONCLUSION

32. You are sentenced as follows:

Count 1- 14 months imprisonment;

Count 2- 14 months imprisonment concurrent to Count 1.

DATED this 16th day of August 2024



**Kiniviliame T. Keteca
Acting Chief Justice**

