



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

Criminal Case No. 09 of 2023

BETWEEN: THE REPUBLIC

PROSECUTION

BANIS DENGEA

ACCUSED

BEFORE: Keteca J

Date of Hearing: 07th – 10th April 2025

Closing Submissions: 08th May 2025

Date of Judgment: 11th July 2025

Catchwords: Driving Under Influence of Liquor: contrary to Section 69(1) and 2(c) and section 79(1)(a)(i)(ii) or (iii) of the Motor Traffic Act 2014; Risking harm with intent to commit offence or avoid apprehension contrary to section 84(1)(a)(b)(ii)(c)(d) of the Crimes Act 2016; Causing harm to police officer: contrary to section 77(a)(b)(c)(d) and (ii) of the Crimes Act 2016.

Appearances:

Counsel for the Prosecution: **M. Suifa'asia**

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

JUDGMENT

BACKGROUND

1. The accused is charged as follows:
 - a) Count 1: Driving under Influence of Liquor, contrary to section 69(1) and 2(c) and section 79(1) (a) (i)(ii) or (iii) of the Motor Traffic Act 2014.
 - b) Count 2: Risking harm with intent to commit offence or avoid apprehension contrary to section 84(1) (a) (b) (ii) (c) (d) of the Crimes Act 2016;
 - c) Count 3: Causing harm to police officer: contrary to section 77 (a) (b) (c) (d) and (ii) of the Crimes Act 2016.
 - d) Count 4: Causing harm to police officer: contrary to section 77 (a) (b) (c) (d) and (ii) of the Crimes Act 2016.
 - e) Count 5: Causing harm to police officer: contrary to section 77 (a) (b) (c) (d) and (ii) of the Crimes Act 2016.
 - f) Count 6: Causing harm to police officer: contrary to section 77 (a) (b) (c) (d) and (ii) of the Crimes Act 2016.

2. The prosecution called the following witnesses:
 - a. PW1 PC Gianni Kameatu
 - b. PW2 PC Deniko Scotty
 - c. PW3 PC Christender Adam
 - d. PW4 PC Kum-on Dake
 - e. PW5 PC Rex Adam
 - f. PW6 Senior Constable Anton Iga
 - g. PW7 Sergeant Marvin Tokaibure
 - h. PW8 Sergeant Pancia Depoudu
 - i. PW9 Doctor David Bill
 - j. PW10 Junior Akibwib

3. The accused opted to give sworn evidence.

THE LAW

4. Driving under the influence of liquor'
 1. Section 69(1) of the Motor Traffic Act 2014 provides:
 - i. No person
 - ii. Shall drive a motor vehicle
 - iii. While he is under the influence of intoxicating liquor or drug

5. Risking harm with intent to commit offence or avoid apprehension'

Section section 84(1) (a) (b) (ii) (c) (d) of the Crimes Act 2016 provides:

 - i. A person
 - ii. Intentionally engages in conduct; and
 - iii. The person intends to avoid lawful arrest; and
 - iv. The conduct causes risk of harm to another person; and
 - v. The person is reckless about causing the risk

6. Causing harm to police officer
Section 77(a)(b)(c)(d) of the Crimes Act 2016 provides:
'A person commits an offence, if:
 - (a) the person intentionally engages in conduct;*
 - (b) the conduct causes harm to another person without the person's consent;*
 - (c) the person intends to cause harm to the other because the person believes the other person is a police officer; and*
 - (d) the other person is in fact a police officer.'*

Penalty;

- (i) If aggravating circumstances apply- life imprisonment of which at least 12 years imprisonment to be served without parole or probation; or
- (ii) In any other case- 20 years imprisonment, of which imprisonment term at least one third to be served without parole or probation.

THE PROSECUTION CASE

7. Count 1: Driving under the influence of liquor

- a. **PW1 PC Gianni Kameatu** was on traffic duty on 25th March 23 with PW2, PW3, PW4 and PW5 from 11pm – 7am. A motor-bike rider approached their duty station. PW5, Rex Adam told him and PW4 PC Kum-on Dake to check it out. The rider was Banis Dengea, the accused who *appeared drunk*. When asked to accompany them to the police vehicle, the accused complied. *The accused was staggering and swaying*. He told the accused that she can't drive the motor bike as she's drunk. She also told the accused to come and rest in the police vehicle and they (the police) will drive her home. PW5 called another police vehicle to come and assist them. PW7, Sgt Marvin arrived in another vehicle and asked for 'Banis' the accused. The accused who was in a police vehicle heard that and ran away into the sea. He, PW2-PC Deniko Scotty, PW3 PC Christender Adam, and PW10 Junior Akibwib ran after the accused into the sea.
- b. PW2 shone her torch at the accused. He took off his uniform and swam towards the accused. The sea was very rough. He kept telling the accused to return. She refused. They reached the deep end. He decided to return. **Banis, the accused, asked for help**. He swam towards her, held her under her arm and swam back. Whilst swimming towards the shore, the waves pushed them to the pinnacles. He received scratches on his back from the pinnacles. Halfway towards the beach, PW10 Junior Akibwib came to assist him. The accused kicked PW10 in the groin. PW10 groaned.
- c. As they reached the shore, other police officers took over. He saw PW3 PC Christender Adam speak to the accused. The accused punched PW3 and pushed her into the water- by grabbing her hair and trying to drown her. He pulled PW3 up as she was gasping for breath.

8. On cross- examination he said:

- Ques- You told the accused to come and rest and you'll drive her home?
- Ans- Yes.
- They did not have a breathalyser machine.
- He heard Sergeant Marvin say that he was looking for the accused.

9. **PW2 PC Deniko Scotty**- She saw the accused on the roadside- *'she was full drunk and staggering'*. She wanted her bike returned to her. She advised the accused that she'll be arrested for DUI. The breathalyser machine is at the police station. PW5 asked for police assistance and the accused fled from the police vehicle and ran into the sea. PW1 went after her. The sea was rough. It was high tide. PW1 was struggling but went to assist the accused. PW10 also swam out to assist them. They brought the accused ashore. She and PW3 PC Christender Adam tried to assist the accused onto her feet. The accused punched PW3. PW6 Senior Constable Anton Iga, **(standing by the water tank several meters away)** gave her a pair of handcuffs. PW4 PC Kum-on Dake handcuffed the accused. **She saw the accused punch PW3.**

10. On cross- examination:

- The accused complied when taken to police vehicle. She knows the 'Impairment Test' for DUI. It's the same as breathalyser.
- No 'eye assessment' walk and turn' 'finger to nose' or 'one leg stand' assessments were done on the accused.
- PW5 PC Rex Adam, who was in charge did not instruct her to conduct any test on the accused.

11. **PW3 PC Christender Adam**- she saw PW1 talk to the accused who is a PPS officer. She identified Banis Dengea as the accused. The accused was brought to the police van. When the accused ran into the sea, it was high tide and the sea was rough. She told PW1 to go after her. She told PW10 to go and assist. She took over when the accused was brought ashore. She touched the accused's left shoulder. The accused punched her face, grabbed her hair and pulled her down. **The accused tried to drown her.** She tried to get up. The accused kicked her in the stomach and she fell into the water. She blacked out. She was dizzy. **(Witness is sobbing).** She swallowed seawater. PW1 picked her up and she got her breath back. She assisted PW2 PC Deniko Scotty put the accused in the police van. PW7 Sergeant Marvin Tokaibure and PW6 Senior Constable Anton Iga waited for the accused to be handed to them.
12. On cross- examination, she did not see any breathalyser test conducted on the accused.
13. **PW4 PC Kum-on Dake** was on traffic duty on the day in question. He approached the accused and asked her- 'You've been drinking? There was no response. He took the motor bike away. **The accused was full drunk, swearing and smelt of alcohol.** Any breathalyser test was to be done by the response team. When the response team arrived, the accused fled into the sea. The accused was swearing, calling them corrupt. PW1 went after the accused. The tide was high. The sea was rough. PW10 got into the water to assist. PW1 and PW10 brought the accused to the shore. He jumped into the water trying to help PW1 and PW10. He and PW3 tried to calm the accused down. **The accused punched PW3 and she fell.** The accused kicked his groin area. He was in pain and fell into the sea. He got up and 'cuffed' her. PW6 Senior Constable Anton Iga, PW7 Sergeant Marvin Tokaibure and he lifted the accused up and put her in the police 'can cage'. PW6 and PW7 took the accused to the police station.
14. On cross- examination, he cannot recall whether Sergeant Marvin brought the breathalyser machine.
15. **PW5 PC Rex Adam** – he too saw the motor bike rider. He was in charge of the police traffic team. He told PW1 and PW4 to check the rider. They brought her to the police van. When the accused ran to the sea, he told PW1 and PW4 to assist PW3 whilst he remained on the road. He does not know what happened with the accused on the seaside. Those suspected of DUI are tested at the police station.
16. **PW6 Senior Constable Anton Iga**-he was on vehicle patrol with PW7 Sergeant Marvin Tokaibure when informed that a suspect needed to be taken to the police station. PW1 told him that the suspect swam out to sea. "I told Officer Gianni (PW1) to go after her.' PW1 brought the accused ashore. PW2 and PW3 assisted PW1. He provided the handcuffs to PW2 & PW3 (both female officers) to handcuff the suspect.
17. PW6 did not see anything happen to PW3 and PW4. He was standing next to the water tank several meters from where the accused was brought ashore. PW2 had to walk to him to get the handcuffs. When questioned by the court as to why, **as a senior constable, he stood 15 meters away** and just watched- he responded that he just let the junior officers deal with the accused. **He had to show PW2 how to use the handcuffs.**
18. **PW7 Sergeant Marvin Tokaibure** took photos and drew a sketch of the scene. He escorted the accused to the police station. He does not recall any breathalyser test being done on the accused. He does not know how many Dragger machines are with the Nauru Police Force.

19. **PW9 Doctor David Bill** attended to PW3 on the day. Her findings are- 'Slight tender- no swelling, no bruises, no redness' on PW3's head. She prescribed her Panadol- oral painkiller. The patient was advised to rest.
20. **PW10 Junior Akibwib** resigned from the Nauru Police Force because of this case. He was also on duty on that morning. PW5 told the accused to go to the police van and the police will drop her home. PW5 stopped a police vehicle and asked the police officers in the vehicle to drop the accused home. PW3 arrived and said that the accused had gone. PW1 took his uniform off and went into the sea- after the accused. He, in his full uniform, followed PW1 into the sea. He grabbed the accused first as he's taller than PW1. The sea was rough. They told the accused to go ashore. She said that she wanted to die. The accused kicked his nuts. They handed the accused over to PW2 and PW3. He saw the accused punch PW3. In his words- 'I saw it happen.' PW7 kept shouting at her and hit the accused with his elbow. In his words- 'That night, the police were unprofessional.' PW7 picked the accused up and threw her on to the dry ground. PW7 grabbed her and threw her into the police cab. **He kicked her and punched her too.** At the police station, PW7 told them to keep their mouth shut as it will ruin the Nauru Police Force. He is related to the accused through her mother. In his words- 'I didn't complain about what I saw. Something bad will happen to us if we talk- that's why we kept our mouth shut for 2 years.'
21. When asked by the court whether the accused lodged a complaint against police- he responded- 'The accused complained against us. The case was closed.'

DEFENCE CASE

22. Counsel for the accused agreed that there was a case to answer. The accused opted to give sworn evidence.
23. She is 48 years old and works for the Land Transport. She was stopped on that morning. When told she was going to be booked, she complied. The police told her that they will take her home. PW1 said – 'We are going to book you and we'll take you home.' She heard them calling the response unit. She knew then that they were lying. She ran into the sea. She nearly reached the reef edge.
- Ques- You realised the danger you put yourself in?
 - Ans- I really don't care- my concern was to escape the arrest. I was swimming to go over the break.
24. She was brought ashore by PW1 and PW10. When she got her breath again, she got up and ran. She kicked PW10. She was taken to the police vehicle.
- Ques- Were you sober or drunk?
 - Ans- I sobered up after that swim.
 - Ques- Were you tested?
 - Ans- No
 - Ques- Any tests at the police station?
 - Ans- No

25. On cross- examination, the accused admitted that she had been drinking the night before and was driving her bike home. She admits swearing at the police officers. She was angry as the police officers lied to her. Her words- '**I was very drunk,**' '**I was too drunk to remember;**'. She recognised PW10 as her nephew. Her words- 'I struggled with PW1 and PW10 and kicked them at the shore. She does not recall any female police officers dealing with her at the shore.
26. She admits the following:
 - i. Kicking PW1, PW4 and PW10;
27. She denies the following:
 - i. Punching PW3's face and kicking her; and
 - ii. Trying to drown PW3.

SUBMISSIONS BY PROSECUTION

28. Ms Suifa'asia submits that the accused was lawfully arrested for contravening the Motor Traffic Act 2014. She submits that although the accused did not undergo any breathalyser or an 'Impairment test', there is sufficient evidence, as in *R v Fritz* [2021] NRDC 4 to find the accused guilty on Count 1.
29. Counsel submits that for count 2, '*the act of the defendant swimming out to the sea in the dark of the morning and the condition of the tide and rough seas, to escape police lawful duties to take to the station posed a risk to herself, PW1 and PW10*' is sufficient to find the accused guilty.
30. For Count 3, Counsel submits that though there is no strong evidence of harm caused to PW1, there is sufficient evidence of 'Obstructing public official: contrary to section 242 of the Crimes Act 2016 as an alternative offence.
31. For Count 4, Counsel submits that the elements of the offence are met based on the evidence of PW10 and the admission by the accused.
32. On Count 5, Counsel submits that the evidence of PW3 is supported by PW1, PW2 and PW10. The medical report provided by Dr Bill, PW9 also supports the evidence of PW3 on the harm suffered by PW3.
33. For Count 6, PW4's testimony that the accused kicked his private part is supported by PW1 and admitted by the accused.
34. Counsel concludes that there is sufficient evidence, both direct and circumstantial to prove the offences in Counts 1-6.

SUBMISSION BY THE DEFENCE

35. Mr Tagivakatini has raised two issues on the arrest of the accused being unlawful and the availability of 'Self-Defence' under Section 51 of the Crimes Act 2016.

36. On Count 1, Driving Under the Influence of Liquor- Section 69 of the Motor Traffic Act 2014, Counsel submits that the following need to be proved:
- i. A person is found driving or in charge of a motor vehicle while;
 - ii. The proportion of alcohol in his breath exceeds the prescribed limit;
 - iii. The percentage of alcohol in his or her blood exceeds the prescribed limit; or
 - iv. Under the influence of intoxicating liquor and in the assessment of a police officer fails an impairment test
 - v. commits an offence
37. Since no tests were conducted on the accused- breathalyser or impairment test, 'the element of Driving under the influence of Liquor' has not been satisfied and the accused ought to be acquitted.
38. On Count 2- Risking Harm with Intent to Commit Offence or Avoid Apprehension, Counsel questions the lawfulness of the accused's arrest in this case. He refers to *R v Agege* [2021] NRSC 29; Criminal Case 20 of 2020 (03 August 2021) and raises to questions:
- i. Was Banis under lawful arrest when she was escorted to the police van NPF 122?
 - ii. Was Banis under lawful custody when she was inside the police van NPF 122?
39. Mr Tagivakatini submits that based on the evidence, the element of '*the person intends to avoid the lawful arrest or detention of a person*' has not been made out against the accused, and the accused should be acquitted on this count.
40. For Counts 3- 6: Causing Harm to Police Officer, Counsel refers again to *R v Agege* where Fatiaki CJ looked at self -defence. Based on the *Agege case*, Counsel submits that the accused '**acted in self- defence when she escaped from the police van and struggled with the police officers.**' As the accused was unlawfully arrested, she was 'unlawfully imprisoned.' They rely on 'self-defence' under Section 51(2)(1)(ii) of the Crimes Act 2016 and the accused ought to be acquitted on Counts 3-6.
41. Counsel also notes a trend that I had observed in the past of how junior officers 'are being pushed into investigative roles in criminal cases, especially for sexual offences. He submits that the same applies in this case 'where nearly all the officers on duty were police reserve officers with barely any training on how to conduct impairment tests and on the procedure on how to make proper arrests.'

DISCUSSION

42. I thank both Counsels for their helpful submissions.

Count 1- Driving under the influence of liquor.

Section 69 of the Motor Traffic Act 2014 provides:

(1) A person who drives a motor vehicle while he or she is under the influence of intoxicating liquor or drug, commits an offence and is liable to a penalty under Section 79.

(2) A person who is found driving a motor vehicle while:

- (a) The proportion of alcohol in his or her breath exceeds the prescribed limit;
- (b) The percentage of alcohol in his or her blood exceeds the prescribed limit; or
- (c) Under the influence of intoxicating liquor and in the assessment of a police officer fails an impairment test,
- (d) commits an offence...

(3) Where a person is arrested for contravening this Section after being tested for the level of alcohol in the blood, he or she shall be held in custody for up to 12 hours before being interviewed or charged for an offence.

43. There is no evidence that the accused was tested for the 'proportion of alcohol in her breath' or the 'percentage of alcohol in her blood.' She did not undergo an 'impairment test' either. Does this mean that the accused was not under the influence of alcohol? Under Section 75A of the Motor Traffic Act 2014 it provides:

'Where there is no prescribed instrument at hand, it shall be sufficient evidence that a person is under the influence of alcohol if the police officer finds that:

- (a) the person is unsteady on his or her feet;
- (b) the person is not able to walk along a straight line;
- (c) the person's speech is unclear; or
- (d) the person otherwise appears affected by alcohol.

44. From the evidence, PW1 said that the accused appeared drunk and was 'staggering and swaying.' PW2 said, 'she was full drunk and staggering.' Even the accused, in her evidence referred to her condition and said- 'I was very drunk,' 'I was too drunk to remember.' In her examination in chief, when asked whether she was sober or drunk; she replied- 'I sobered up after that swim.' Based on this, I find that even though there was no 'prescribed instrument' to test the accused, there is sufficient evidence before the court for me to find that she was 'under the influence of alcohol' when she was driving her motor bike on that particular morning.

45. **I find the accused guilty as charged on Count 1.**

Count 2- Risking harm with intent to commit offence or avoid apprehension

46. The elements of Section 84 Crimes Act 2016 are:

- (1) A person commits an offence, if:
 - (a) the person intentionally engages in conduct;
 - (b) either of the following applies:
 - i. the person intends to commit an offence; or
 - ii. the person intends to **avoid the lawful arrest or detention of a person;**
 - iii. **the conduct causes risk of harm to another person;** and
 - iv. **the person is reckless about causing the risk.**

Penalty: 8 years imprisonment.

- (2) To prove for subsection (1) (b) (i) that a person intends to commit an offence, it is not necessary to prove that the person intends to commit a particular offence.

47. Mr Tagivakatini raises the issue of ‘lawful arrest or detention of the accused. He relies on *R v Agege* [2021] NRSC 29; Criminal Case 20 of 2020 (03rd August 2021) where in paragraphs [14]-[1], Fatiaki CJ said:

‘ The arresting officer acting under section 270 of the Crimes Act must have in mind at the time of the arrest, “the alleged offence committed against (the Crimes Act)” and he should inform the person at the time of arrest, the factual basis and/or nature of the particular offence allegedly committed by him/her. Whatsmore the officer should be able to justify (if asked) why he considers that the arrest is “reasonably necessary”.

Fatiaki CJ noted- Section 51 Self-Defence

- (1) A person is not criminally responsible for an offence if the person engages in the conduct constituting the offence in self-defence.
- (2) A person engages in conduct in **self-defence only** if:
 - “(a) **the person believes the conduct is necessary:**
 - (i) to defend (Smart Hubert); or
 - (ii) to **prevent or end the unlawful imprisonment of (Smart Hubert);**
 - (b) **the conduct is a reasonable response** in the circumstances as the (named defendants) perceives them.”

Notable in the above provision is the entitlement of a person to engage in criminal conduct which is reasonably necessary “*self-defence*” of another person who is being assaulted or who is unlawfully arrested and/or being wrongfully detained as perceived by the defendants as rescuers.

48. On the question of whether the arrest of the accused in this case was lawful, Counsel refers to the following paragraphs of CJ Fatiaki’s verdict in the *R v Agege* case:

[71] In the leading case of *Christie v Leachinsky* [1947] UKHL 2; [1947] AC 573 Viscount Simon observed of a policeman’s right to arrest a suspect without a warrant (at p587):
“The above citations and others.... seem to me to establish the following propositions:
(1) **If a policeman arrests without warrant on reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words, a citizen is entitled to know on what charge or on suspicion of what crime he is seized.** (2) If the citizen is not so informed, but is nevertheless seized, the policeman, apart from certain exceptions, **is liable for false**

imprisonment. (3) The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained. (4) **The requirement that he should be so informed does not mean that technical or precise language need be used. The matter is a matter of substance, and turns on the elementary proposition that in this country a person is, prima facie, entitled to his freedom and is only required to submit to restraint on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed.** (5) The person arrested cannot complain that he has not been supplied with the above information as and when he should be, if he himself produces the situation which makes it practically impossible to inform him, e.g., by immediate counter-attack or by running away.”

and later (at p 588):

“No one, I think, would approve a situation in which, when the person arrested asked for the reason, the policeman replied: "That has nothing to do with you. Come along with me." Such a situation may be tolerated under other systems of law, ...(but)...which the executive in this country happily does not in ordinary times possess.” ‘

[76] In *Murray v Ministry of Defence (Northern Ireland)* [1988] UKHL 13; [1988] 2 All ER 521 Lord Griffiths in discussing an illegal arrest said (at p. 526):

“It has been well-settled law,....., that a person must be informed of the reason for his arrest at or within a reasonable time of the arrest. There can be no doubt that in ordinary circumstances, the police should tell a person the reason for his arrest at the time they make the arrest. **If a person's liberty is being restrained, he is entitled to know the reason.** If the police fail to inform him, the arrest will be held to be unlawful, with the consequence that if the police are assaulted as the suspect resists arrest, he commits no offence, and if he is taken into custody, he will have an action for wrongful imprisonment.”

[79] *A similar question was helpfully decided by the House of Lords in O'Hara v. Chief Constable of the R.U.C. [1996] UKHL 6; [1997] 1 All ER 129 where it was held that obeying orders is not enough. Lord Steyn said (at p134) :*

“Certain general propositions about the powers of constables ...(to arrest on suspicion)...can now be summarised.

(1) In order to have a reasonable suspicion the constable need not have evidence amounting to a prima facie case. Ex hypothesi one is considering a preliminary stage of the investigation and information from an informer or a tip-off from a member of the public may be enough: Hussien v. Chong Fook Kam [1969] UKPC 26; [1970] A.C. 942, 949.

(2) Hearsay information may therefore afford a constable reasonable grounds to arrest. Such information may come from other officers: Hussien's case, ibid.

(3) The information which causes the constable to be suspicious of the individual must be in existence to the knowledge of the police officer at the time he makes the arrest.

(4) The executive "discretion" to arrest or notvests in the constable, who is engaged in the decision to arrest or not, and not in his superior officers.

Given the independent responsibility and accountability of a constable under a provision such as section 12(1) of the Act of 1984 it seems to follow that the mere fact that an arresting officer has been instructed by a superior officer to effect the arrest is not capable of amounting to reasonable grounds for the necessary suspicion within the meaning of section 12(1). It is accepted,that a mere request to arrest without any further information by an equal ranking officer, or a junior officer, is incapable of amounting to reasonable grounds for the necessary suspicion."

49. The importance and significance of the lawful arrest of a suspect is tied to the protection of personal liberty of all persons on Nauru as enshrined in the Constitution. Article 5 provides:

'Protection of personal liberty

5 (1) *No person shall be deprived of his personal liberty, except as authorized by law.....;*

(3) *A person who is arrested or detained shall be informed promptly of the reasons for the arrest or detention.*

50. Section 10 of the Criminal procedure Act 1972 provides for 'Arrest without Warrant:

'Arrest without warrant

10 (4) *Where a police officer, with reasonable cause, suspects that a cognisable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence."*

51. In the exercise of this power, the relevant "cognisable offence" must be identified in ordinary language without any need to identify the particular provision contravened.

Mode of Making Arrest

11 (1) *In making an arrest the person making it shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.*

(2) *A person may use such force as is reasonable in the circumstances or in effecting, or assisting in, the lawful arrest of offenders or suspected offenders*

(3) *The last preceding subsection shall replace the rules of the common law on the question when force used for a purpose mentioned in that subsection is justified by that purpose.*

In this instance "the circumstances" that authorise the use of reasonable force to effect an arrest are:

"....in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or persons unlawfully at large."

52. Arrests without warrant is also provided under Section 270 of the Crimes Act 2016 for offences committed under that Act.

53. For offences under the Motor Traffic Act 2014, the police powers of arrest are provided for under Section 114. It provides:

‘For the purposes of this Act, a police officer may arrest without warrant any person whom the police officer has reasonable cause to believe is:

- (a) Driving or attempting to drive a motor vehicle without a driver’s licence or has had his or her driver’s licence cancelled or suspended;
- (b) Contravening the provisions of this Act dealing with driving under the influence of alcohol or drugs;**
- (c) Responsible for the death of a person due to dangerous driving; or
- (d) Obstructing a police officer or any other person carrying out his or her duties pursuant to this Act.

54. Was the accused lawfully arrested on the morning in question? The following came out in the evidence:

- i. PW1 PC Gianni Kameatu said-. The rider was Banis Dengea, the accused who appeared drunk. When asked to accompany them to the police vehicle, **the accused complied**. The accused was staggering and swaying. **He told the accused that she can’t drive the motor bike as she’s drunk. She also told the accused to come and rest in the police vehicle and they (the police) will drive her home.**

PW1 clearly did not arrest the accused.

- ii. PW2 PC Deniko Scotty- she was in the police vehicle when informed by PW1 that the suspect was drunk. PW2 got off the police vehicle and ‘saw that she was full drunk.’ **I advised her that I’ll arrest her for drinking under the influence.’**

In cross examination-

Ques- The accused complied when taken to the police vehicle?

Ans- Yes- correct

Ques- You did not tell her that she was being arrested for drinking under the influence?

Ans- Incorrect.

From the evidence, **PW2 clearly arrested the accused.**

55. Having found that the accused was lawfully arrested, I further find that she was in lawful custody when placed in the ‘can cage.’ There is sufficient evidence that the accused fled from the ‘can cage’ and swam into the sea. PW1 and PW10 endangered their own lives in not only trying to apprehend her but to save the accused from the strong waves and rough seas. As stated by PW1, whilst encountering the strong waves and nearing the edge of the reef, he decided to return to shore. **He said-** ‘They reached the deep end. He decided to return. **Banis, the accused, asked for help. He swam towards her, held her under her arm and swam back.’**

56. The above shows that by fleeing from the police vehicle and swimming into the seas, the accused intended to avoid her lawful detention after being lawfully arrested. The seas were rough. PW1 and PW10 had to swim after her despite the strong waves and imminent peril. The accused's conduct 'caused risk of harm' to the police officers. Further, when asked about her rather idiotic escapade, she said this-

- **Ques- You realised the danger you put yourself in?**
- **Ans- I really don't care- my concern was to escape the arrest. I was swimming to go over the break.**

I find that the conduct of the accused was 'reckless' as the accused was aware of the 'substantial risk' to the police officers. Such recklessness satisfies the definition of the term under Section 19 of the Crimes Act 2016. I find that all the elements of Section 84 in Count 2 are satisfied. **I find the accused guilty as charged on Count 2.**

57. **COUNTS 3- 5** Causing Harm to Police Officer contrary to Section 77(a)(b)(c)(d) and (ii) of the Crimes Act 2016

58. The elements that the prosecution must establish against the accused in Count 3-6: Causing Harm to Police Officer contrary to s.77(a)(b)(c)(d)(ii) Crimes Act 2016 are as follows:

- (a) The accused;
- (b) intentionally "*engaged in conduct*";
- (c) which caused "*harm*" to Police Reserve Officer Gianni Kameatu, Police Reserve Officer Junior Akibwib, Police Reserve Officer Christender Adam, Police Reserve Officer Kum-on Dake;
- (d) who did not consent to such conduct; and
- (e) the accused believed Police Reserve Officer Gianni Kameatu, Police Reserve Officer Junior Akibwib, Police Reserve Officer Christender Adam, Police Reserve Officer Kum-on Dake were police officers;

59. **Count 3-** Police Reserve Officer Gianni Kameatu was the first respondent when the accused decided to take an early morning dip in the sea on that morning. At the outset, PRO Kameatu acted beyond the call of duty. I will come back to that in this judgment. In his examination in chief, after describing how the accused was brought back to shore, he was asked-

Ques- Anything happened to you?

Ans- No.

There is no evidence before the court that the accused 'kicked Police Reserve Officer Gianni Kameatu while in the sea.' **I find the accused not guilty on Count 3.**

60. **Count 4-** Police Reserve Officer Junior Akibwib went to assist PW1. He is related to the accused. He seemed like an unwilling witness. When referred to his police statement, he agreed that the accused kicked his 'nuts' and punched his face while in the sea. It was not clear in the evidence whether the accused intentionally kicked and punched PW10 or it was a consequence of trying to save herself whilst swimming in the rough seas. There is also no evidence before the court that PW10 suffered 'harm' as defined under Section 8 of the Crimes Act 2016. **I find the accused not guilty in Count 4.**

61. **Count 5-** Police Reserve Officer Christener Adam was on shore to receive the accused when she was brought to shore by PW1 & PW10. Her testimony that the accused punched, kicked and tried to drown her are supported by PW1, PW4 & PW10. **PW9 Doctor David Bill attended to her and assessed the harm caused to her- ‘Slight tender- no swelling, no bruises, no redness’ on PW3’s head. She prescribed her Panadol- oral painkiller. The patient was advised to rest.** The intention of the accused to punch, kick and trying to drown PW3 is clear. The harm caused to PW3 is documented and she did not consent to the assault. The accused knew that PW3 was a police officer as she was in uniform. I find that all the elements of Section 77(a)(b)(c)(d)(ii) [Crimes Act 2016](#) are satisfied. **I find the accused guilty as charged on Count 5.**
62. **Count 6-**Police Reserve Officer Kum-on Dake tried to assist in the apprehension of the accused when she was brought ashore. The accused kicked his groin area. He was in pain and fell into the sea. The intention of the accused to engage in the conduct of kicking PW4 is clear from the evidence. PW4 being **in pain** fits the definition of physical harm under Section 8 of the Crimes Act 2016. I find that all the elements of Section 77(a)(b)(c)(d)(ii) [Crimes Act 2016](#) are satisfied. **I find the accused guilty as charged on Count 6.**
63. Before I conclude, I make the following observations. This is another case where Police Reserve Officers are on the frontline on their own. They did not have any handcuffs. The pair that were used on the accused in this case were provided by the onlooker, Senior Constable Anton Iga who was standing 15 meters away. He let the subordinate officers risk their lives on their own. There was no portable breathalyser equipment available at the scene. None of the police officers knew what an ‘impairment test’ was.
64. Secondly, the actions of **PW1 Police Reserve Officer Gianni Kameatu was and PW10 former Police Reserve Officer Junior Akibwib** can be described as heroic and beyond the call of duty. They risked their lives, in the midst of high tide, strong winds and rough seas to bring the accused safely ashore. Nauru could have lost 3 lives on that morning. Fortunately, it was not so.
65. Thirdly, evidence of police brutality meted out on the accused by the most senior police officer on the scene is a concern. As PW10 testified-
66. ‘In his words- ‘That night, the police were unprofessional.’PW7 picked the accused up and threw her on to the dry ground. PW7 grabbed her and threw her into the police cab. **He kicked her and punched her too.** At the police station, PW7 told them to keep their mouth shut as it will ruin the Nauru Police Force. He further stated that he kept his mouth shut for 2 years. In his words- **‘The accused complained against us. The case was closed.’** These types of cases need to be looked into by the relevant authorities.
67. I remind myself that the burden of proof under Section 25 of the Crimes Act 2016 rests with the prosecution. Am I satisfied beyond reasonable doubt that the accused committed the offences as charged? What does the term ‘beyond reasonable doubt mean? In *Keeley v Brooking* 1979) 143 CLR 162; 25 ALR 45 Barwick CJ said:
‘To be satisfied beyond all reasonable doubt is, for the purposes of the law, to be certain.’

CONCLUSION

68. Considering the totality of all the evidence I find as follows:

- i. Count 1- Guilty;
- ii. Count 2- Guilty;
- iii. Count 3- Not Guilty;
- iv. Count 4- Not Guilty;
- v. Count 5 -Guilty; and
- vi. Count 6- Guilty.

DATED this 11th Day of July 2025


Kiniviliame T. Keteca

Judge.

