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

Criminal Case No. 05 of 2023

BETWEEN: THE REPUBLIC

PROSECUTION

SUMICH DETENAMO

ACCUSED

BEFORE: **Keteca J**

Date of Submissions: **01st August 2025**

Date of Sentence: **15th August 2025**

Catchwords: Intimidating or Threatening a Police Officer: Contrary to Section 77A of the Crimes Act 2016 (the Act); Causing Harm to Police Officer: Contrary to Section 77(a)(b)(c)(d)(i) of the Act.

Appearances:

Counsel for the Prosecution: **S. Shah**
Counsel for the Accused: **R. Tom**

RULING

BACKGROUND

1. The accused is charged with the following offences:

COUNT 1

Statement of Offence

Intimidating or Threatening a Police Officer: Contrary to Section 77A of the Crimes Act 2016 (the Act).

Particulars of offence

Sumich Detenamo on the 22nd of Dec 2022, at Aiwo District in Nauru, threatened Constable Kinte Harris in the execution of Constable Kinte Harris' duties.

COUNT 2

Statement of Offence

Causing Harm To Police Officer: Contrary to Section 77(a)(b)(c)(d)(i) of the Crimes Act 2016.

Particulars of Offence

Sumich Detenamo on the 22nd of December 2022, at Aiwo District in Nauru, intentionally engaged in conduct that is punching Officer Marvin Tokaibure and the conduct caused harm to Sergeant Marvin Tokaibure without his consent and Sumich Detenamo intends to cause harm to Sergeant Marvin Tokaibure because Sumich Detenamo believes that Sergeant Marvin Tokaibure is a police officer and that Sergeant Marvin Tokaibure is in fact a police officer.

2. The prosecution called 5 witnesses. The Defence Counsel made an application of no case to answer under Section 201 of the Criminal Procedure Code 1972.

THE APPLICATION

3. Counsel refers *R v Jeremiah* [2016] NRSC 42 as the relevant authority on no case to answer applications. At paragraph [22] of the judgment:

   [22] 'Taking the above matters into consideration, the following are guidelines when a submission of no case to answer is to be made at the end of the prosecution case:
   1) If there is no evidence to prove an element of the offence alleged to have been committed, the defendant has no case to answer.
   2) If the evidence before the court the evidence has been so manifestly discredited through cross-examination that no reasonable tribunal could convict upon it, the defendant has no case to answer.
   3) If the evidence before the court could be viewed as inherently weak, vague or inconsistent depending on an assessment of the witness's reliability, the matter should proceed to the next stage of the trial and the submission of no case to answer be dismissed.

4. Counsel summarised the evidence of the prosecution witnesses and submits the following:
    - PW1 did not state what offence was alleged against the accused when held by PW4.
    - The accused was unlawfully arrested as there *'was no clear offence, no caution, no lawful instruction to accompany officers, and no reasonable basis for the use of force. The arrest amounted to an unlawful detention.'*
    - PW1 was not prevented from carrying out his duties.
    - PW2's evidence does not support PW1's version of what happened and nothing on the words said by PW4 (supposed arresting officer) to the accused.
    - PW3 said that the accused had driven the bike for about 5 meters. This is contrary to what PW1 said.
    - There was no sobriety test carried out on the accused.
    - PW4 was informed by PW3 and PW1 that the accused was *'evading and obstructing them and that there were no other offences.' Therefore, the charge of threats and intimidating to police officer was not the purpose of the arrest,'*
    - PW4 'did not state what the allegations were when he approached the accused.'
    - When cross- examined, PW4 stated that the assault could have been an accidental hit and he has forgiven the accused.
    - There is no evidence of 'Intimidating or threatening a police officer Kinte Harris to have been committed' that led to the initial arrest. The arrest was therefore unlawful and the charge of 'Causing Harm' be dismissed.

SUBMISSIONS BY THE STATE

5. Counsel also referred to the *R v Jeremiah* case mentioned above as the relevant authority on strike out applications. Referring to a Fiji Magistrates Court case from the **1970s** are clearly not persuasive nor relevant here.

6. He referred to the elements of the offences as charged.
    i. **Count 1**-Section 77A of the Act-
        - The accused
        - Threatened Officer *Kinte Harris* in the due execution of his duties

    ii. **Count 2**- Section 77(a)(b)(c)(d)(i) of the Act-
        - The accused
        - Intentionally engaged in conduct
        - The conduct caused harm to Sgt Tokaibure police officer; and
        - The accused believed that Sgt Tokaibure is a police officer.

7. For Count 1, Counsel refers to the 'first and second elements of the offence' under Section 77A of the Act and the evidence of PW1. Counsel does not include what the Act says regarding the words- **'intimidation' or 'intimidates' and 'threat.'**

8. For Count 2, Counsel submits:
    - The identity of the accused is not in dispute
    - The accused 'punched PW4 with a closed fist.'
    - Third element, PW4 felt pain.
    - PW4 was in police uniform so the accused knew that PW4 is a police officer.

9. Counsel then looks at the lawfulness of the arrest. 'Sergeant Marvin at the time had reasonable suspicion that an offence **(what offence?)** had been committed.' The arrest was therefore lawful under Section 11 of the Criminal Procedure Act 192.

10. Mr Shah concludes that the accused has a case to answer.

DISCUSSION

11. I note that the elements of both offences identified by Counsel for the State are quite economical. How certain words in the offences are defined under the Act need to be included in the submissions.

12. In Nauru, the guidelines on no case to answer applications ae succinctly summarised by Crulci J in *Republic v Jeremiah* [2016] NRSC 42; Criminal Appeal Case 119 of 2015 (17 March 2016). At paragraph [20], Crulci j said:

    20. 'In Nauru, section 201(a) *Criminal Procedure Act* 1972 has the requirement of 'sufficiency', rather than that of 'no evidence'. In considering 'sufficiency', some assistance may be found in a Practice Note[20] dated 9 February 1962, Queen's Bench Division. Here Lord Parker, CJ issued guidelines in relation to justices faced with submissions of no case to answer:

    'A submission that there is no case to answer may properly be made and upheld: (a) when there has been no evidence to prove an essential element in the alleged offence; (b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it.

    Apart from these two situations a tribunal should not in general be called on to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it. If, however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer.'

13. At paragraphs [21] & [22], he said:

> 21. 'The law requires that two different tests to be applied by the Court when ruling on an application of no case to answer submission, and that of final determination guilt at the end of the trial. At the conclusion of a trial the court has the benefit of addresses by counsel or pleaders on the issues of witness credibility and sufficiency of evidence, issues which are not germane to the consideration of a no case submission. These different tests are applicable whether the matter is tried by judge alone, or whether with assessors/ a jury.
> 22. Taking the above matters into consideration, the following are guidelines when a submission of no case to answer is to be made at the end of the prosecution case:
>
> - (1) If there is **no evidence to prove an element** of the offence alleged to have been committed, **the defendant has no case to answer.** (My emphasis)
> - (2) If the evidence before the court the evidence has been so manifestly discredited through cross-examination that no reasonable tribunal could convict upon it, the defendant has no case to answer.
> - (3) If the evidence before the court could be viewed as inherently weak, vague or inconsistent depending on an assessment of the witness's reliability, the matter should proceed to the next stage of the trial and the submission of no case to answer be dismissed.

14. In my assessment, the evidence before the court is inherently weak and vague.

15. Based on guideline 3, in paragraph [13] above I find that the matter should proceed to the next stage of the trial.

CONCLUSION

16. The submission of no case to answer is dismissed.

17. Explain options to the accused.

DATED this 15th Day of August 2025.

Kiniviliame T. Keteca

Judge

SUPREME COURT OF NAURU