



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

Criminal Case No. 09 of 2022

BETWEEN: THE REPUBLIC

SHALICO AGEGE

PROSECUTION

ACCUSED

BEFORE: Keteca J

Date of Submissions: 06th August 2025

Date of Sentence: 15th August 2025

Catchwords: Causing harm to Police Officer contrary to Section 77(a)(b)(c)(d) and (ii) of the *Crimes Act 2016 (the Act)*; Dangerous Driving contrary to Section 67(1)(a)(b)(c)(d) and (ii) of the *Motor Traffic Act 2014 (MTA)*; Failure to furnish breath sample contrary to Section 72(1) and (6) of the MTA.

Appearances:

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

Counsel for the Accused: **M. Degei**

RULING

BACKGROUND

1. The accused is charged with the following offences:
 - i. Count 1: Causing harm to Police Officer contrary to Section 77(a)(b)(c)(d) and (ii) of the *Crimes Act 2016 (the Act)*
 - ii. Count 2: Dangerous Driving contrary to Section 67(1)(a)(b)(c)(d) and (ii) of the *Motor Traffic Act 2014 (MTA)*;
 - iii. Count 3: Failure to furnish breath sample contrary to Section 72(1) and (6) of the MTA.

NO CASE TO ANSWER

2. At the end of the prosecution case, Mr Degei submitted as follows:
 - Section 201 of the Criminal Procedure Act 1972 is the relevant provision for the application.
 - *Republic v Jeremiah* [2016] NRSC 42; Criminal Appeal Case 119 of 2015 (17 March 2016). Counsel submits that this is the decision of Justice Khan. It should read Justice Crulci. Further, in the passages extracted by Counsel, he has left out the crucial paragraph [22] which provides for the guidelines for no case to answer applications in Nauru.
 - *Republic v Namaduk* [2024] NRSC 15; Criminal Case 24 of 2021 (02 August 2024)- where I referred to the guidelines in the *Jeremiah* case. Counsel has referred to the relevant paragraph [22] here.
 - **On Count 1**, referring to my judgment in *R v Harris* [2024] NRSC 1; Criminal Case 25 of 2021 (06th February 2024), Counsel submits that the –**‘There was no evidence that police officer namely Bronski Namaduk was harmed.’**
 - Bronski Namaduk stated- *‘I put him in the cage and we took him. Not that serious. He managed to release his hand. I didn’t get hurt. Nothing serious to hurt me. I managed to block. He tried to swing. He was resisting. I pushed him and shoved him inside the car.’*
 - On Count 2, Counsel refers to *DPP v Deaido* [1978] NRSC 9; [1969-1982] NLR (D) (25 September 1978) per CJ Thompson. He submits that there is no direct evidence that the *accused’ is the driver of the vehicle neither did the Republic produce or present evidence of any relation or link between the vehicle and the accused.’*
 - On Count 3, Counsel refers to the testimony of PW2- Christopher Amwano that- *‘he failed to follow the procedure in running the test.’* (On this brief and general contention, Counsel does not explain how this has any bearing on the elements of the offence.)

RESPONSE BY THE STATE

3. Counsel refers to the following:
 - Section 201 of the Criminal Procedure Act 1972.
 - *R v John Jeremiah & Renack Mau* [2016] NRSC 42 (applied in *R Obadiah Dabwido*, SC Criminal Case No. 13 of 2019; *R v Foreman Roland*, SC Criminal Case No. 4 of 2022) where Crulci J outlined the guidelines on no case to answer submissions in paragraphs [20]- [22].
 - **Count 1-** The elements of the offence of Causing Harm to Police Officer under Section 77(a)(b)(c)(d) and (i) of the Act.
 - Section 17 of the Act on the definition of *‘intention.’*
 - Section 8 of the Act on the definition of
 - i. *‘conduct’*
 - ii. *‘harm’*
 - iii. *‘physical harm’*
 - Section 9 of the Act on the definition of *‘consent.’*

- **Count 2-** Dangerous driving under Section 67 of the MTA
- Section 71 on ‘Submission to breath-analysis test in certain cases’
- Section 72(1) and (6) of the MTA on ‘Failure to Furnish breath Sample.’

The Law on Arrest:

- **Constitution-** Article 5(1) on the protection of personal liberty.
- **Arrest without Warrant-** Section 10(1) of the Criminal Procedure Code 1972. (CPC)
- **Mode of making an Arrest-** Section 11 of the CPC
- **Police powers of Arrest-** Section 114 of the MTA
- Counsel then provides a detailed summary of the evidence under the following:
 - i. The Report and Police Response Team;
 - ii. Identifying the defendant on the Scene;
 - iii. The assault of PW5 Bronski Namaduk;
 - iv. The Arrest;
 - v. Time of the Incident;
 - vi. Observation of the defendant;
 - vii. Examination of the vehicle; and
 - viii. The Breathalyser Test.
- Counsel then discusses the following:
 - i. Whether the defendant was lawfully arrested-she refers to *Western Australia v Gibson* [2014] WASC 240 on the principles of a caution.
 - ii. *Benjamin v Republic* [1975] NRSC 9 where the Court held- ‘*As the English law of evidence is applied to Nauru by the Custom and Adopted Laws Act 1971, the English Judge’s Rules should be observed in Nauru.*’
 - iii. PW5 Bronski ‘did inform the defendant that he is being arrested for being under the influence of alcohol and he will be taken to the police station. The accused was being taken to the station for breathalyser test as he had caused an accident and was reasonably suspected of being under the influence of alcohol. The accused was cautioned under Section 4 of PEX-3 after undergoing the breath analysis at the police station. He was arrested under Section 5 of PEX-3 for failing to provide a breath sample.
 - iv. The accused was lawfully arrested.
 - v. **Count 1-** The element of ‘harm’ under Section 77 maybe missing. The accused can be found guilty of an alternative offence.
 - vi. **Count 2-** The accused admitted being the driver of the vehicle. The accused was reckless as he drove into a post. PW4’s evidence is relevant here as the accident happened in front of her house.
 - vii. **Count 3-** PW2 explained that the breath analysis failed as ‘the defendant did not give enough sample of breath.’
- Counsel concludes that the third guideline on ‘no case to answer applications’ from the Jeremiah case applies here. ‘*...there is evidence before the court although weak or maybe ambiguous or inconsistent, the matter should proceed to the next stage.*’

DISCUSSION

4. In Nauru, the guidelines on no case to answer applications are 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.'

5. 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 of 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.**

6. Applying guideline 3 above to the evidence before the court, I find that this matter should proceed to the next stage of the trial.

CONCLUSION

7. The 'no case to answer' application is dismissed.
8. Explain the options to the accused

DATED this 15th Day of August 2025



Kinivilame T. Keteda

Judge

