



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

**Criminal Case No. 02 of 2023**

**BETWEEN: THE REPUBLIC**

**PROSECUTION**

**AND:**

**KAUWEN ALIKLIK**

**ACCUSED**

**BEFORE: Keteca J**

**Date of Hearing: 17<sup>th</sup> October 2025**

**Date of Ruling: 21<sup>st</sup> November 2025**

**Catchwords: No Case to Answer- Section 201, Criminal Procedure Act (the CPA)1972.**

**Appearances:**

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

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

**RULING**

**BACKGROUND**

1. The Accused is charged with the following:
  - i. 2 Counts of Causing Harm to Police Officer: Contrary to Section 77(a) (b) (c) (d) and (ii) of the Crimes Act (**the Act**) 2016.
  - ii. 1 Count of Risking Harm with Intent to Avoid Apprehension: Contrary to Section 84(1) (a) (b) (ii) (c) (d) the Act;

- iii. 1 Count of Damaging Property: Contrary to Section 201(a) and (b) of the Act.

## THE APPLICATION

2. At the end of the prosecution case, Counsel for the Accused made an application of 'No Case to Answer' under Section 201 of the CPA.
3. Counsel refers to the elements of the offence and Section 51 of the Act which provides for 'Self- Defence.'
4. Counsel considered the relevant case authority on applications dealing with Section 201 of the CPA- *R v Jeremiah* [2016] NRC 42; Criminal Appeal Case 119 of 2015 (17<sup>th</sup> March 2016) where Crulci J said (at para 22):  
*[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 has been manifestly discredited through cross-examination that no reasonable tribunal could convict on 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' reliability, the matter should proceed to the next stage of the trial and the submission of no case to answer be dismissed.'*
5. On the 2 Counts of Causing Harm to a Police Officer, Counsel refers to CJ Fatiaki's Ruling on No Case to Answer in the *R v Agege* [2021] NRSC 18; Criminal Case 10 of 2020 (28<sup>th</sup> May 2021). At paragraphs 3-8, his Honor said:  
*' 3. Mr Tagivakatini for the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> defendants advanced 5 issues for the Court's consideration. These may be summarized into two issues as follows:*
  - (1) *Whether the arrest of Smart Hubert was lawful? and*
  - (2) *The sufficiency of the evidence against the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> defendants.**4. As to issue (1): Counsel drew attention to the slight difference in the reason(s) given for the arrest of Smart Hubert between the arresting Const Taekauwea Taumea said he told Smart Hubert he was being arrested: ' for driving a bike like a drunkard in front of the President's house' and Francis Togage said Smart Hubert was informed that he was being arrested for: ' disturbing the President.'*
  5. *The other five (5) police officers who also attended at the scene of the arrest, were adamant that they had received a report and a briefing that they were inter alia, to go to Meneng District at Monty Dabwido's residence and arrest a young boy Smart Hubert who had caused a disturbance at the President's residence.'*
6. Article 5(2) of the Constitution relevantly provides that:  
*' A person who is arrested or detained shall be informed promptly of the reasons for the arrest or detention...'*

7. *The Article does not require the identification of the law that is being breached or the specification of an offence that has been committed by the arrested person.*

8. *In the circumstances, even accepting the slight variation in the reasons given to Smart Hubert at the time of his arrest, I am satisfied that he was given a reason for his arrest and therefore literally, there has not been any breach of Article 5(2) of the Constitution and the arrest was lawful.*

6. Counsel submits that 'PW1 and PW2 were relentless in their pursuit of Kauwen yet there was no communication made to Kauwen that he will be arrested nor were any reasons given for the arrest.' In contrast to the *Agege case*, a reason was given for the arrest of Smart Hubert and he had a case to answer.

7. Counsel refers to paragraphs [15] and [49] of Fatiaki CJ's Judgment in the *Agege case* where he said:

*[15] 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.'*

*[49] Needless to say a basis of the defendants defence to the charges is predicated on the perceived unlawfulness of Smart Hubert's arrest and of the defendants acting in defence of Smart Hubert pursuant to the provisions of 'self-defence' enacted in Section 51 of the Crimes Act 2016 ( op.cit)''*

8. Counsel submits that the injury suffered by PW2, Freeman is a consequence of Kauwen's unlawful arrest. The defence of self- defence will therefore apply in this case as the arrest of the accused was unlawful. For Count 1- As Article 5(2) of the Constitution was not complied with and self-defence has not been disproved by the Prosecution, Counsel submits that the accused should be acquitted. (On 14<sup>th</sup> November 25, I sought clarification from Counsel on this submission on self- defence. He agreed that self- defence can only be considered if the accused gave evidence and submitted that in his defence and not to be inferred at the 'no case to answer' stage.)

9. On the 'harm' suffered by PW1, Officer Irma, in Count 2, Counsel argues that the complainant Irma did not identify the person who caused her such harm. Under cross-examination on who caused her bruises on her arm and hips- she said- 'of course it was them.' She did not identify the accused of having caused her bruises.

11. For Count 2- Counsel submits that the accused has not been identified as the person who allegedly caused the harm.

12. On Count 3- Risking Harm with Intent to Avoid Apprehension under Section 84 of the Act, Counsel submits that an element of the offence is that 'the accused intends avoid lawful arrest or detention.' Counsel adds that since the accused was not under arrest or lawful detention, that element of the offence is not made out and the accused ought to be acquitted.

13. On Count 4- Damaging Property, Counsel submits that it was PW1 that accelerated her vehicle to 'block off Kauwen attempting to escape.' In this regard, the vehicle was used as an 'offensive weapon' as defined under Section 8 of the Act. As Counsel submitted- 'They intended to incapacitate Kauwen by ramming the police vehicle into Kauwen's motorbike.' 'This was reckless, risky and dangerous.' There was no 'quotation' of the damage to the police vehicle and PW7 could not recall why that was not done. Counsel adds that the element of the offence of 'reckless about causing damage to the property' is not satisfied and the accused ought to be acquitted.

14. Counsel has also raised valid points on the inaptitude of the investigation process and lack of knowledge on the basics of police powers of arrest that were aptly covered in the *R v Agege case*.

### **RESPONSE BY THE PROSECUTION**

15. Counsel refers to the *R v Jeremiah case* on the relevant guidelines on 'No Case to Answer submissions' and submits that there is a case to answer for Counts 1, 3 and 4. On the alleged offence committed by the accused, the evidence showed that the accused carried two female passengers on his motorbike and supposedly 'driving swerving on the road.' The accused dropped off the female passengers and drove off again. The alleged offence here is the accused 'carrying of two passengers 'on his motorbike.

16. On the accused's arrest, Counsel submits that after the police vehicle came into contact with the accused's motorbike and the accused fell off, PW2 got off the police vehicle and held onto the shirt of the accused. Other persons in the group came and attempted to free the accused. The accused bit PW2's thumb.

17. For Count 2, The complainant later discovered her bruises at the police station.

18. For Count 3, Counsel submits that PW1 had honked her horn at the accused to stop. PW2 told the accused to stop. He didn't and sped off. This amounts to the offence of Risking Harm with Intent to Avoid Apprehension.

19. For Count 4, PW1 tried to block the accused's motorbike. The motorbike scratched the police vehicle. This amounts to causing damage under Section 201 of the Act.

### **CONSIDERATION**

#### **The Alleged Offence**

20. PW2- On Cross examination-

Q- Did you tell the accused why he was being arrested?

Ans- Couldn't tell him because he was resisting arrest and obstruction by drunkards.

On Re- Examination-

Q- Did you tell the accused why he was arrested? Any other officer arrested the accused?

Ans- Don't recall.

21. When PW1 and PW2 initially saw the accused on the road, driving his motor bike with two female passengers, does the accused's conduct amount to an offence where the police may arrest the accused **without warrant**? Section 114 of the *Motor Traffic Act 2014* (MTA) 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.*

It is clear from the evidence of PW1 & PW2 that the alleged offence committed by the accused was the carrying of two passengers on his motor bike. Section 114 of the MTA is clear that the police power to arrest without warrant may only be exercised in circumstances where the police officer **has reasonable cause to believe** that a person-

- i. Is driving or attempting to drive a motor vehicle without a driver's licence;
- ii. Driving or attempting to drive a motor vehicle whilst his or her driver's licence has been cancelled or suspended;
- iii. Is driving under the influence of alcohol or drugs;
- iv. Has caused the death of a person by dangerous driving. *(Interestingly, the provision does not include being responsible for causing injury to another person by dangerous driving.)*
- v. Obstructing a police officer in carrying out his duties under the Motor Traffic Act.

PW1 said that she saw the accused 'driving swerving on the road.' She was not asked nor did she give any evidence as to what that conduct led her to believe. PW1 and PW2 did not state in their evidence that they 'had reasonable cause to believe' that the accused was driving under the influence of alcohol or drugs. Thus, the conduct of the accused in carrying two passengers on his motorbike did not give rise to a reasonable cause to believe that the accused had committed an offence where the Section 114 power of arrest without warrant may be exercised.

### **Was the accused Lawfully Arrested?**

22. From the evidence of the most senior officer on the scene, PW3- Inspector Ika Aliklik arrested a Athaldo for obstructing PW2. This Athaldo was not charged for any offence. According to PW3, he did not know what offence the accused allegedly committed. He didn't know who arrested the accused but it was Constable Sam Bill who brought the accused from the seaside.

23. Constable Sam Bill, PW4 said that he arrested the accused by telling him- 'stay down, don't move.' On examination in chief:

Q- Why was he being arrested?

Ans- I did not tell him why he was being arrested.

Q- What did Constable Panit say?

Ans- Nothing. Other police officers did not say anything.

24. The evidence show that PW3 Inspector Ika Aliklik and PW4, Constable Sam Bill were not aware as to what offence, the accused, allegedly committed. PW1 & PW2 referred to the traffic offence of carrying 2 passengers on a motorbike.

**Was the accused under lawful arrest or detention?**

25. For Count 3- Risking harm with intent to commit offence or avoid apprehension, Section 84 (1) (a) (b) (ii) (c) (d) of the Act provides:

(1) A person commits an offence, if:

(a) the person intentionally engages in conduct;

(b) either of the following applies:

(i) person intends to commit an offence; or

(ii) the person intends to avoid the lawful arrest or detention of a person;

(c) the conduct causes risk of harm to another person; and

(d) the person is reckless about causing the risk.

The particulars of the offence describes the conduct of the accused as- ' by speeding off in his motorbike in a dangerous manner on the public highway after being requested to stop by police officers PW1 & PW2 and such conduct being a high risk to other road users and the accused was reckless about causing the risk. The evidence show that the accused had not committed an offence where the Section 114 of the MTA police power of 'arrest without warrant could be exercised. PW1 and PW2 did not have **any reasonable cause to believe** that any of the offences stated in Section 114 (a)-(d) had been committed. It follows that the accused did not 'intend to avoid lawful arrest or detention.'

**Did the accused cause harm to PW2, Constable Freeman Deireragea?**

26. There is sufficient evidence that the accused caused harm to Constable Deireragea on the day in question. The circumstances that gave rise to such harm will need to be examined further. The accused has a case to answer on Count 1.

**Did the accused intentionally cause harm to PW1 as in Count 2?**

27. PW1 did not know that she suffered the bruises until she checked herself at the police station. She could not identify as to who caused her bruises. The element of the offence on the identity of the accused is not satisfied.

**Is there sufficient evidence that the accused caused damage to the police vehicle as per the particulars?**

28. For Count 4-Damaging property- Section 201 of the Act provides:

*'A person ( the defendant) commits an offenc, if the person:*

*(a) Causes damage to property belonging to another person, or to the defendant and another person; and*

*(b) Is reckless about causing damage to the property.*

The evidence show that it was PW1 that drove the police vehicle in such a manner that resulted in the vehicle colliding with the accused's motor bike.


29. From the above discussions, I find that the accused has a case to answer for Count 1 only.

### **CONCLUSION**

30. The accused is acquitted on Counts 2, 3 and 4.

31. The accused has a case to answer on Count 1. Explain the options to the Accused.

DATED this 21<sup>st</sup> Day of November 2025.

  
**Kiniviliame T. Keteca**  
**Judge**

