IN THE DISTRICT COURT OF NAURU

Crim Case No. 15 of 2017

REPUBLIC OF NAURU

-v-

MYKO OLSSON

Counsels: **Ms.**Laisani Tabuakuro for the DPP
Mr. Sevuloni Valenitabua for the Defendant

Date of Hearing: 12 September 2017
Date of Ruling: 12 September 2017

RULING

1. The accused stands charged with the following offence:

Statement of Offence

Disorderly Manner in a Correctional Facility: contrary to section 53 of the Correctional Services Act 2009

Particulars of Offence

Myko Olsson on the 31st December 2016 at Yaren, acted in a disorderly manner at the Nauru Correctional Centre.

2. He faces a second count of the same charge but for the 29th January 2017.
3. At the end of the prosecution case, Counsel for the accused made an application for a "no case to answer."

The Law

4. For the accused to be convicted, the prosecution must prove beyond reasonable doubt that the accused was acted in a disorderly manner on the 31st December 2016.

5. The test however at this stage when there has been a submission for a no case to answer is set out in the practice note in the Queen's Bench Division reported in [1962] 1 All ER 448 per Lord Parker CJ:[1]

> *"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; or*
>
> *(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 upon 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."*

6. In ***Republic v Olsson [2016]*** [2] Crulci J said this of the test in Nauru:-

> *The following are guidelines when a submission of no case to answer is made:*
>
> *(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 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 dismissed.*
>
> *(3) If the evidence before the court has been so manifestly discredited through cross-examination that no reasonable tribunal could convict upon it, the defendant has no case to answer ."*

7. The prosecution called one witness only, Bruce Lee Adam, a Correctional Services Supervisor who has been in the service for 8 years and has been in his present post for the last 7 years. He testified that on 31st December 2016, he was on the evening shift when the defendant was yelling at him from the High Risk Cell; that the defendant was yelling at him and swearing at him; that he was yelling because he wanted to drink but nobody gave him any water; that he did not give him any water as the defendant had been allocated 5 litres of water

[1] Approved by the Nauru Supreme Court in
[2] NRSC 27; Case 16 of 2016 (19 October 2016)

which he had used; that he would not be able to get any water until the kitchen opened at 6:00 a.m. the next morning.

8. In cross-examination, Mr. Lee agreed that on 31st December 2016 he was on night duty on the evening shift; that the defendant was yelling at him when he went to check the High Risk Area; and that he remembers giving a statement to the Police on 31st December 2016. He was then given a copy of his statement to Police which he identified as his from his signature and which was tendered as Defence Exhibit 1 (DE1). The statement clearly showed that he was not on duty that night but during the day and he admitted this in cross-examination.

9. Clearly, the evidence of the witness given in chief about what happened on the night of 31st December could not be true as he was not there that night. In re-examination, this witness said that he had mixed up the dates. Exhibit 1 describes events completely different from those given in examination in chief.

10. I find therefore that the prosecution evidence has been so discredited by the cross-examination and the evidence of the witness himself has become so manifestly unreliable that no reasonable tribunal could convict on it. I therefore find the accused has no case to answer in respect of Count 1 and acquit him of it.

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Penijamini R. Lomaloma
Resident Magistrate

THE SEAL OF THE SUPREME COURT
REPUBLIC OF NAURU