

IN THE SUPREME COURT OF NAURU

Criminal Jurisdiction

Criminal Appeal No. 17 of 1978

POUWA KAPUA

Appellant

v.

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

18th May, 1978 at 11.00 a.m.

In Court

Before Mr. Justice I.R. Thompson, Chief Justice

For the Appellant: Mr. C. Star

For the Respondent: ~~Mr.~~ D.C. Lang

Appellant present.

Interpreter: Mr. Alec Harris, Clerk of Courts

Appeal against conviction and sentence.

MR. STAR: I ask leave to withdraw the appeal against conviction and to proceed only on the appeal against sentence.

ORDER: Leave granted.

MR. STAR: The appellant was sentenced to 9 months' imprisonment. He had an accident, involving his motorcycle and another. They collided. He is an officer of the N.L.G.C. constabulary. His duty is to uphold the law of the land and he does not ignore it. The offence was an accident. The sentence is too severe.

COURT: He was convicted of driving under the influence of liquor. How is that not ignoring the law?

MR. STAR: He was in control of his driving.

He had been drinking but was in control of himself and his driving.

COURT: The sentence is in excess of the legal maximum.

MR. LANG: Yes, it is. It should be varied, I submit, to 6 months' imprisonment. The suspension should not be interfered with.

It was the appellant's 11th conviction in 13 years of driving under the influence of liquor.

COURT: He appears to have kept out of trouble for over 3 years.

MR. LANG: That is so. But he should have known that driving under the influence of liquor was an offence, because of his previous convictions.

MR. STAR: I have nothing more to say.

JUDGMENT:

Driving under the influence of liquor is a very serious offence in Nauru. It has played a major part in the large number of accidents and road deaths in the past year. The District Court was correct in imposing a sentence of imprisonment, But the sentence was greater than the legal maximum. Also, it did not reflect any allowance for the appellant's apparent effort to turn over a new leaf in 1974, after his appalling record up to then, to which Mr. Lang has referred. He cannot be regarded as a first offender but some allowance should be made for his **three years** free of convictions.

The appeal is allowed. The sentence is set aside and a sentence of four months' imprisonment with hard labour is imposed in its place.

The period of suspension of the appellant's licence is not excessive and will not be interfered with by this Court.

I.R. THOMPSON
Chief Justice

18/5/78