

IN THE SUPREME COURT OF NAURU
(APPELLATE JURISDICTION)

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CRIMINAL APPEAL NO. 1/2001

BETWEEN : **ADA QUADINA AND NIKON GAROA**
Paul Hubert , B.J, MENKE
APPELLANTS

AND : **DIRECTOR OF PUBLIC PROSECUTIONS**
RESPONDENT

Date of Judgment : 4 May 2001
Date of Hearing : 12 & 13 March, 2001
Paul Aingimea, Pleader for the Appellants
D.P.P. for the Republic.

DECISION ON APPEAL

In this Appeal, there were two Appellants, Ada Quadina and Nikon Garoa.

Before the Resident Magistrate, His Worship Mr. Leo Keke, on 14 February 2000, Ada Quadina pleaded guilty to three charges namely,

1. Person found in a dwelling house without lawful excuse.
2. Stealing
3. Damaging Property.

Each of these was an offence under the Criminal Code Act (Queensland) 1899, and the Resident Magistrate sentenced the Appellant Quadina to be imprisoned for one month with hard labour on each of the first two charges, and to a fine of \$500 on charge three. On charges one and two, the sentences were to be served concurrently.

Before the Resident Magistrate, His Worship Mr. Leo Keke, on 19 February 2000, Nikon Garoa pleaded guilty to two charges, namely,

1. Person found in a dwelling house without lawful excuse
2. Stealing.

Each was an offence under the Criminal Code Act (Queensland) 1899, and the Resident Magistrate sentenced the Appellant Garoa to be imprisoned for one month with hard labour on each of the Charges to be served concurrently.

The Appellants appealed on the ground of severity of sentence.

On behalf of Garoa, his Pleader submitted that the Appellant was nineteen years of age, was engaged to be married and had had to postpone the marriage due to the impending incarceration.

This was a first offence and all the property was recovered. He had readily helped the Police and had pleaded guilty.

Upon appearing in Court, the Appellant had not been subject to a report of a Probation Officer. He had sought forgiveness of the Court.

He had been retrenched from his employment with Nauru Phosphate Corporation. It was pleaded that he should be bound over rather than receive a custodial sentence.

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In regard to Appellant Quadina, it was emphasized that he was only seventeen years of age. It was also stated that he was also about to marry his fiancée.

He was presently employed by Nauru Phosphate Corporation earning \$200 per fortnight.

Quadina kicked the door down at the dwelling thus enabling entry of Garoa and two others.

He apologized to the Court for his behaviour and this was his first offence. As with Garoa, it was submitted that the custodial sentence imposed in the District Court was too severe.

The Court was concerned that no material was before the Court establishing the character and reputation of the

Appellants. The families of the Appellants, though minors, were not present and there was no material on school and employment history. As a result, the matter was stood down to enable the Appellants to put further material to the Court. Two other Appeals arising out of the same incident are pending in the Court.

Upon the Court's resumption of the Appeals, further material was placed before the Court on behalf of the Appellants. This material related to some 16 cases tried in the District Court in the past three years relating generally to crimes in the general classification of breaking and entering. It was pointed out to the Court that none of these cases resulted in a custodial sentence being imposed. The Appellants also called the former Speaker of Parliament, the Honourable Ludwig Scotty, to provide evidence of good character. The mothers

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of both Appellants were in Court.

Neither of the Appellants was at school, and presently Garoa was unemployed whilst Quadina worked as a labourer with Nauru Phosphate Corporation.

In determining these Appeals, the Court has given consideration as to the age of the Appellants as at the date of original sentence (R v Fallows [1954] 1 All ER 623). The Court has also taken into consideration that they were first offenders, that the Appellants were also before the Court.

The charges were heard before an experienced Magistrate who had the evidence of age and of first offenders before him.

Was the punishment for any of the offences manifestly

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excessive or inconsistent in quantification as punishment for the offence in question? Were the requirements of general deterrence fairly met?

In evaluating the range of punishment for each of these offences, it is worthy to note that the offence of damaging property, with which Quadina had been charged, carries a liability for up to three years imprisonment. On that matter, the learned Magistrate imposed a fine. Conceivably that too could have merited a custodial sentence.

It was emphasized to the Court that the learned Magistrate may well have been constrained in his options on sentencing by the fact that the other two accused taking part in the incident had also earlier pleaded guilty, were first offenders, and both had been sentenced to one month imprisonment on each charge

by another Magistrate. In other words, he had preferred consistency in dealing with this matter. For that reason, amongst others, the Court determined that it would not give its decision on these Appeals before the other two Appeals were heard which were set down for the following day. As both Appellants were on bail this was continued until the date of judgment on all four Appeals.

The decision on this Appeal in relation to both Appellants is contained in the decision on Appeal Nos. 1 and 2/2000 at pages 3 to 7.

ORDER

The Court orders that the sentences imposed by the District Court upon the Appellants in Criminal Appeal No. 1/2001 will be varied as follows: -

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1. NIKON GAROA

Charge One - Person found in dwelling house without lawful excuse.

The sentence of one month imprisonment with hard labour is deleted and, in substitution, a community services order of three months, in default, one month imprisonment with hard labour.

Charge Two - Stealing.

The sentence of one month imprisonment with hard labour is deleted and, in substitution, a community services order of three months, in default, one month imprisonment with hard labour, the Community Service order to be served concurrently with the

sentence on Charge One.

2. **Ada Quadina.**

Charge One - Person found in a dwelling
house without lawful
excuse.

The sentence of one month imprisonment with hard
labour is deleted and, in substitution, a Community
Services order of three months, in default, one month
imprisonment with hard labour.

Charge Two - Stealing.

The sentence of one month imprisonment with hard
labour is deleted and, in substitution, a

Community Services order of three months, in default, one month imprisonment with hard labour, the Community Service order to be served concurrently with the sentence of Charge One.

Charge Three - Damaging Property.

Fine \$500.

The Court further orders that until the Acting Chief Probation Officer has in place a programme for the community services order, the Appellants will remain on bail;

And further orders that notification of the commencement of the programme be given by the Registrar and served on each

of the Appellants, who will be required to report immediately to the Acting Chief Probation Officer and the Probation Officer.



CHIEF JUSTICE

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of the Original:**



S. B. ABAYAKOON
REGISTRAR, SUPREME COURT