



IN THE SUPREME COURT OF NAURU  
AT YAREN  
CRIMINAL JURISDICTION

CRIMINAL CASE NO. 2 of 2020

BETWEEN

REPUBLIC

Prosecution

AND

KURR ALIKLIK

First Defendant

AND

NUMERO THOMA

Second Defendant

Before:  
Sentencing Submissions:  
Sentence:

Khan, ACJ  
21 October 2022  
18 November 2022

*Case to be known as: Republic v Aliklik and Thoma*

**CATCHWORDS:** Sentence for murder and manslaughter – Where death caused by a hammer to execute a plan to steal.

**APPEARANCES:**

Counsel for the Prosecution:  
Counsel for the First Defendant:  
Counsel for the Second Defendant:

R Talasasa (DPP)  
E Soriano  
R Tagivakatini (PLD)

## SENTENCE

### INTRODUCTION

1. You are both charged with the offence of murder. The information stated as follows:

#### Statement of Offence

Murder: contrary to section 55(a), (b) and (c) of the Crimes Act 2016.

#### Particulars of Offence

Kurr Aliklik and Numero Thoma on the 15<sup>th</sup> day of February 2020 intentionally engaged in conduct, that is to say, by hitting James Bako on the head with a hammer and that caused the death of James Bako, who died on 20 February 2020 and that the said Kurr Aliklik and Numero Thoma intended to cause or were reckless about causing the death of James Bako by their consent.

2. You were tried by Fatiaki CJ and your trial took a period of 19 days commencing on 30 April 2021 and was completed on 13 August 2021.
3. On 23 October 2021 Fatiaki CJ delivered his judgement and found you Kurr Aliklik (Kurr) guilty of murder and Numero Thoma (Thoma) guilty of manslaughter.

### PENALTIES

4. The penalty for murder is life imprisonment and the penalty for manslaughter is 25 years imprisonment.
5. On 4 June 2022 Fatiaki CJ resigned from his position without sentencing you and this matter is now before me and I will be sentencing you for the offences of murder and manslaughter.

### KURR ALIKLIK(KURR)

6. I shall refer to the judgement of Fatiaki CJ and His Honour stated as follows at [113], [114], [115], [116], [117], [118] and [119]:

#### ANALYSIS & DECISION

[113] It is trite that a person's intention cannot be seen like his actions or heard as in his utterances. Nevertheless the best indicators of a person's intentions are his behaviour, actions and utterances as well as the likely and probable consequences of his actions in the ordinary course of events.

[114] The evidence against Kurr is as follows:

- On the night before the incident which occurred in the early morning hours of 15 February 2020, Kurr had a "hang-over" which was the after-effects of

drinking alcohol on the day before namely; 14 February 2020. After waking, he freshened up, ate before leaving home in search of some company ;

- He had also smoked some “*marijuana*” at a garage beside “*E4-store*” on the night of the incident before it occurred;
- He master-minded a plan to steal a bike and any valuables he could find that night and had headed with a group of young boys from “*E4 Store*” into the nearby Golf Course area where a drinking party was being held by Bako and a few friends;
- At this time, Kurr asked for and received the hammer that Mero was holding at the time;
- At the Golf Course area, the group of young boys hid under tree cover while Kurr and Mero prepared to go out to look for an something to steal;
- Mero encountered Bako heading back to the drinking party and turned to run away when Kurr went past him and swung the hammer at Bako;
- The hammer struck Bako on his forehead causing him to fall onto the ground;
- “*Jonabbot*” on seeing the fracas yelled out and ran towards the young boys;
- Kurr told the young boys to run and they all fled from the scene towards the basketball court at Location Compound;
- Bako was taken to the RON Hospital and admitted into the Emergency Ward with:

*“open multi fragmental fracture of the frontal bone with the cerebral involvement and internal bleeding Brain edema. Coma III”* caused by:  
*“Acute high energy trauma....”*
- Two (2) days after the incident on 17 February 2020, Kurr gave himself up at the Police Station;
- Bako died on 20 February 2020, from his injuries.

[115] Although Kurr consistently denied any intention of causing Bako’s death when he struck him on the forehead with the hammer, his admitted intention was “*to knock him out*” so they could steal from him. To knock someone out is to render the person unconscious and incapable. In doing so, it would be necessary to target the victim’s most vulnerable area such as the head. Moreover, the use of a hammer with its solid iron head on the unprotected skull of a person is bound to cause serious injury including the very real likelihood of life-threatening fractures.

[116] In light of the highlighted evidence and after considering counsel’s submissions, I am satisfied beyond a reasonable doubt in the words of section 19, that Kurr was

aware of a substantial risk that Bako's death would result from striking him on the head with a hammer, even if he didn't desire it, or wished that it would not occur.

[117] Additionally, I am satisfied beyond a reasonable doubt that having regard to all the circumstances that it was unjustifiable for Kurr to use the hammer in the manner and with the force that he applied when he struck Bako on the forehead.

[118] As was said by Lord Hailsham of St. Marylebone LC in Hyam's case (*op.cit*) (at p 79) :

***“ (iii) Where the defendant knows that there is a serious risk that death or grievous bodily harm will ensue from his acts , and commits those act deliberately and without lawful excuse , with (sic) the intention to expose a potential victim to that risk as the result of those acts. It does not matter in such circumstances whether the defendant desire those consequences to ensue or not ....., ”.***

[119] Accordingly I find the prosecution has proved its case against Kurr beyond a reasonable doubt, and I convict him of the Murder of James Bako as charged.

#### NUMERO THOMA (THOMA or MERO)

7. In respect of you, Chief Justice Fatiaki stated as follows at [120], [121], [122], 123], [124], [125], [126], [127] and [128]:

[120] I turn next to consider the case against Mero who is jointly charged with Kurr but who, it is common ground, did not strike Bako with the hammer or at all, during the fateful incident. The following is part of Mero's verbatim cross-examination answers to the DPP:

***“Q : Why didn't you return home when you weren't part of the plan ?***

***A : I don't know why I didn't return home.***

***Q : Put you didn't return home because you were part of the plan to steal from the drunkards at the Golf Course area ?***

***A : When they planned to steal I accepted also the plan and joined them***

***Q : Plan was to steal from drunkards at Golf Course area ?***

***A : Yes***

[121] Earlier in chief, Mero described the incident as follows:

***“A : ..... I was watching the car and bent over to see and I saw someone come towards me. I was near the car.***

***Q : Know who it was ?***

***A : I thought it was Sidpolo and later I learnt who it was.***

***Q : Who was the person ?***

***A : Bako***

***Q : What was Bako doing when he approached ?***

***A : I don't know he was just moving along and uttering words. I don't know what***

***he was saying. I don't know whether he was trying to recognise who I was or coming up to me to fight with me.***

**Q : How close did he get to you ?**  
**A : He came from my right and he was about three (3) metres away from me.**  
**Q : What did you do ?**  
**A : I was backing up then I turned to run.**  
**Q : Why turn to run ?**  
**A : Because he was coming towards me.**  
**Q : Then what happened ?**  
**A : When I turned round someone else came up to him. I don't know who was but late I found out.**  
**Q : Who was it.**  
**A : Kurr**  
**Q : Then what happened?**  
**A : I don't know what he did but when I turned around I saw Bako on the ground.**  
**Q : What did you do ?**  
**A : I ran up to him to check his pockets .....**  
**Q : Why check his pockets ?**  
**A : Looking for money or anything to steal.**  
**Q : Find anything ?**  
**A : Nothing.**

[122] Mero admitted in his police record of interview [ExP(8)] and confirmed in cross-examination , that he had known Bako sometime before the incident because Bako used to hang around in Baitsi District.

[123] In further cross-examination by the DPP, Mero confirmed that: “***Kurr hit Bako***” and after that Kurr told them to run. Mero also confirmed that Bako did not fight or assault him and when asked if Bako spoke to him as he approached, Mero said :

***“A : Yes he spoke to me but I don't know what language , I know he spoke to me because he was trying to recognize me.”***

[124] Mero confirmed he was holding a hammer at “*E4-Store*” which he later gave to Kurr at the Golf Course area. He said : “*Kurr told me he had used the hammer*” and finally when it was put to him :

***“Q : If Bako saying something you didn't understand its not fair for Kurr to hit him***

***with a hammer, Agree?***

***A : Yes its not fair that happened to him.”***

[125] In his case the evidence against Mero may be summarised as follows:

- He had entered into an “*arrangement*” with Kurr and others to steal from the drunkards at the Golf Course area;
- He had willingly accompanied Kurr and the other young boys into the Golf Course area and had hidden under the tree shade close by to where the drunkards were;

- He had carried a hammer with him from “E4-Store” into the Golf Course area and had given it to Kurr when he asked for it a short time before the unfortunate incident occurred;
- He had left his hiding place and covered his head as he went out to look for an opportunity to steal;
- He encountered Bako and turned to run away and was aware of someone moving quickly from behind him towards Bako;
- After Bako fell and lay motionless on the ground, he went and rifled through Bako’s trousers pockets for something to steal;
- He fled from the crime scene when Bako’s drinking companions yelled and ran toward him.

[126] In light of the foregoing which is largely admitted by Mero in his testimony, I am satisfied in the words of section 32, that Mero and Kurr agreed and intended to steal from the drunkards at the Golf course area and to assist one another to steal and in the words of paragraph (c)(ii) , “..... *an offence is committed in the course of carrying out the stealing*”.

[127] Having said that, I am not satisfied that Mero was aware and agreed to Kurr using the hammer to “*knock out Bako*”. At most the evidence establishes beyond a reasonable doubt that Mero was a willing and active participant in the plan to steal and in handing the hammer to Kurr who was the mastermind and leader of their group, Mero would have been aware that there was a substantial risk that the hammer might be used in executing the plan to steal either by overcoming any resistance that might be offered by the victim or securing an escape. Accordingly, Mero is found not guilty of the Murder of Bako.

[128] In exercise however, of the Courts’ powers under Section 129 of the Criminal Procedure Act 1972, **Numero Thoma** is convicted of the offence of : Manslaughter contrary to Section 56 of the Crimes Act 2016.

8. I have perused the judgement to gain an insight as to the roles played by each of you when the incident took place which lead to the death of the deceased Bako.

KURR

9. For you paragraphs [113] to [119] of the judgement states the role that you played in this matter.

THOMA

10. For you paragraphs [120] to [128] of the judgement states the role that you played in this matter.
11. Both of you had planned to steal something and Kurr was handed over the hammer by you Thoma who subsequently used it to hit Bako on his head who fell to the ground and as he

lay “motionless on the ground”<sup>1</sup> you Mero went through his pockets to steal. The victim was later taken to RON Hospital and was admitted and he did not recover from his injuries. He went into a coma and died on 20 February 2020.

12. At the time of his death the victim was 19 years old and was doing a motor mechanic course. He was originally from the Solomon Islands and left Solomon Islands in 2008 when he was 5 years old and both his mother and his step-father went to the Marshall Islands and they arrived in Nauru in 2013.

#### SENTENCING SUBMISSIONS - KURR

13. At the time of the offending, you were 18 years old. You were born on 20 January 2002. You had education up to year 10 in Fiji.
14. You were unemployed and lived with your mother.
15. From the evidence in the trial, you used to consume alcohol and drugs. Your counsel submits that this was as a result of the people that you associated with and peer pressure.
16. You surrendered to police on 17 February 2020 and have remained in custody since.
17. You are a first time offender. Your mother is old and sickly and needs support.

#### THOMA

18. You were born on 20 January 2001 and at the time of the offending you were 18 years old. You lived with your parents at Denig District and at the time of the offending you were unemployed.
19. Your counsel submits that idleness and peer pressure lead you to commit this offence.
20. You are a first time offender.
21. You also surrendered to police on 16 February 2020 a day after the incident and have been in custody since.
22. Your counsel submits that you have accepted that what you did was wrong and that you are very remorseful for your actions which lead to the death of the deceased.

#### PRE-SENTENCE REPORT - KURR

23. In the pre-sentence report, it is stated that you were very keen to read the Bible in the Correctional Centre and you were baptised on 17 October 2021 to confirm your commitment to your religious beliefs.
24. Your mother suffers from acute arthritis which is getting worse and the doctor suspects that she may have cancer in the neck and she needs you to assist her.

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<sup>1</sup> [125] of the Judgement dated 22 October 2021

## THOMA

25. According to the pre-sentence report you dropped out of school in year 5 as your parents could not afford to pay your school fees.
26. You are very keen to read the bible and have been encouraging your family members to attend the church regularly.
27. You have improved on your reading skills with the assistance of your inmates.
28. The pre-sentence report states that you preferred to remain in prison as you feel safe and fear that if you are released you may re-offend, but your counsel, Mr Tagivakatini, later submitted that you have full family support and would like to be released from prison as soon as possible.
29. In the sentencing submissions made by the Director of Public Prosecutions he submits that Kurr should be sentenced to life imprisonment and Thoma should receive a sentence close to the 25-year mark which is the maximum sentence for manslaughter.
30. In the sentencing submissions made by the counsel for Kurr it is urged upon me that I should not impose a sentence of life imprisonment but should instead impose a sentence for a stated term as provided for in s.282 of the Crimes Act 2016 (the Act); and that I imposed a sentence of 19 years for murder in the case of *R v Engar*<sup>2</sup>.
31. For you Thoma, your counsel submitted and relied on the case of *R v Ribauw*<sup>3</sup> a local case where a sentence of 8 years imprisonment was imposed for manslaughter, however, he urged upon me to impose a sentence of 3 years imprisonment.

## CONSIDERATION

32. I accept that both of you had no plans to kill the deceased, but had plans to steal and the deceased was the first person you came across. You executed your plans to steal by striking the deceased with a hammer. As I stated earlier Kurr struck the deceased with the hammer and Thoma handed over the hammer (weapon) to him.
33. Having knocked out the deceased you Thoma went through his pockets to see if you could find anything valuable but found nothing. What is of real concern to me is that neither of you had any regard for his welfare as he lay motionless. For all it matters he could have been dead and instead of providing assistance to the deceased you two were still obsessed with the idea of stealing. Your actions lacked common human decency, which is very disturbing and reprehensible.
34. I imposed a sentence of life imprisonment in *Republic v Baguga*<sup>4</sup> in which death followed a pre-meditated act and in *R v Engar* the actual circumstances of how the death took place was not known as the case was on circumstantial evidence and I imposed a sentence for a stated term of 19 years imprisonment.

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<sup>2</sup> [2018] NRSC 26 Criminal Case No. 3 of 2017 (1 May 2018)

<sup>3</sup> [2017] NRSC 16 Criminal Case No. 51 of 2016 (25 February 2017)

<sup>4</sup> [2022] NRSC 16 Criminal Case No. 18 of 2019 (8 June 2022)



35. For you Thoma your counsel has submitted that you have shown remorse but that is in direct conflict with the trial judge's findings as his honour found you to be an evasive and untruthful witness. He stated at [46] of his judgement<sup>5</sup> as follows:

[46] If I may say so, I listened closely to Mero's evidence and observed his demeanour in the witness box and I was unimpressed. Mero was evasive and selective in his answers. He struck me as being less than truthful and went to quite extraordinary lengths to deny seeing the attack on Bako and to avoid mentioning Kurr's name.

#### PRINCIPLES OF SENTENCING

36. Section 278 of the Act states that the Court in imposing a sentence should ensure that the following matters inter alia are taken into consideration:

- 1) That the sentence imposed is adequate;
- 2) Deterrence;
- 3) Protection of community;
- 4) Rehabilitation of the offender;
- 5) Denounce the conduct.

#### SECTION 279

37. I have taken into account the sentencing considerations set out in s.279 of the Act as follows:

- a) The nature of the offending;
- b) The degree to which the accused has shown contrition for the offence;
- c) The degree of co-operation in the investigation
- d) The character, antecedent and age.

38. All kinds of violence are to be condemned in the clearest terms and in this case both of you committed the ultimate violence to achieve your plans to steal. This type of conduct will not be tolerated by the community and it is the Court's duty to denounce this. The message that I want to send to youths like you or people who are inclined to engage in this kind of conduct is that the Courts will not tolerate it. There is no substitute to a hard day's work and you cannot make a living by stealing from others. You were both able bodied persons and instead of seeking employment to make a living you decided to make a living by stealing from others.

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<sup>5</sup> Dated 22 October 2021

SENTENCE

39. Having taken all the matters into consideration I impose the following sentence:

- 1) Kurr – you are sentenced to a term of 19 years imprisonment for the offence of murder;
- 2) Thoma – you are sentenced to a term of 10 years imprisonment for the offence of manslaughter.

40. I order that the time that you have spent in custody awaiting trial and after judgment which is calculated at 2 year 9 months is to be deducted from the imprisonment term.

DATED this 18 day of November 2022



Mohammed Shafiullah Khan  
Acting Chief Justice

