



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

**Criminal Case No. 10 of 2021**

**BETWEEN:** THE REPUBLIC  
**PROSECUTION**

**AND:** LOVANI JEREMIAH  
**ACCUSED**

**BEFORE:** Keteca J

**Date of Submissions:** 23<sup>rd</sup> July 2024

**Date of Judgment:** 02<sup>nd</sup> August 2024

**Case may be cited as:** Republic v Lovani Jeremiah

**Catchwords:** Alternative verdict: Section 273, Obstructing public Official:  
Section 242 *Crimes Act 2016*

**Appearances:**

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

Counsel for the Accused: **S. Hazelman**

**SENTENCE**

**A. INTRODUCTION**

1. On 05<sup>th</sup> July 2024, the accused was found guilty of Obstructing Public Official: contrary to Section 242 of the Crimes Act 2016.
2. The circumstances surrounding the offending are, that you resisted and hindered a police officer in the exercise of his functions as a public official. From the evidence:

*'She did not comply with PW1's instructions despite being asked three times to leave the area. According to the evidence, other members of the group were about to*

*comply, except the accused. She swore at PW1. Not once, but twice. She resisted being arrested. She was aggressive.*

#### **B. ANTECEDENT HISTORY**

3. The accused is 22 years old. She has no previous convictions and is unemployed. She resides with her mother and four other siblings.

#### **C. AGGRAVATING FACTORS**

4. The accused resisted being arrested by a police officer.

#### **D. MITIGATING FACTORS**

5. The accused was raised by both parents. She was studying in Fiji when her parents separated. She was eighteen years old at that time. After the separation, the accused chose to live with her mother.
6. The accused represented Nauru in rugby 7s to the Oceania 7s (Paris Olympic Games Qualifiers) in Brisbane and the Pacific Games in the Solomon Islands.
7. The accused is remorseful for her reckless and careless actions. During her time in remand, the accused has had time for self- reflection and resolute to focus on her rugby career.
8. She has stopped drinking alcohol. She has undergone counselling and has been selected and offered a job placement in Australia under the Pacific Australia Labour Mobility (PALM) programme. She is the remaining candidate for her cohort to depart Nauru for the programme.
9. According to her references, the accused is of good character, hardworking and reliable.

#### **E. PRE- SENTENCE REPORT**

10. The report notes that there were no injuries to the police officer in this case.
11. On the degree of contrition, the report notes- the accused is remorseful and asking for forgiveness. She is willing to change her life.
12. On the prospects of her rehabilitation, the report notes- ‘there is a very high chance of rehabilitation as she is actively participating in church and sports activities.’ She has represented Nauru in rugby on two previous occasions.
13. The accused helps her mother in selling cakes. She has quit drinking.

14. On the effect of sentence on family members, the report notes- that her mother will be the one that will be mostly affected and the accused will also lose the opportunity to work in Australia under the PALM scheme.

15. The report recommends that the accused be awarded a non- custodial sentence.

## **F. THE LAW**

16. Section 242 of the Crimes Act 2016 provides:

*'A person commits an offence, if:*

*(a) the person obstructs, hinders, intimidates, resists another person in the exercise of the other person's function as a public official; and*

*(b) the person believes the other person is a public official.*

*Penalty: 2 years imprisonment*

## **G. SENTENCING CONSIDERATIONS**

### Kinds of Sentences under the Crimes Act 2016

17. Section 277 provides:

*Where a court finds a person guilty of an offence, it may, subject to any particular provision relating to the offence and subject to this Act, do any of the following:*

*(a) record a conviction and order that the offender serve a term of imprisonment;*

*(b) with or without recording a conviction, order the offender to pay a fine;*

*(c) record a conviction and order the discharge of the offender;*

*(d) without recording a conviction, order the dismissal of the charge for the offence;  
or*

*(e) impose any other sentence or make any order that is authorized by this or any other written law of Nauru.*

### Purposes of Sentencing

18. The purposes for sentencing provided under section 278 are:

*a) to ensure that the offender is adequately punished for the offence;*

*b) to prevent crime by deterring the offender and other people from committing similar offences;*

*c) to protect the community from the offender*

- d) *to promote the rehabilitation of the offender;*
- e) *to make the offender accountable for the offender's actions;*
- f) *to denounce the conduct of the offender; and*
- g) *to recognize the harm done to the victim and the community*

19. The general sentencing considerations are set out in section 279. These are:

- (1) *In deciding the sentence to be passed, or the order to be made, in relation to a person for an offence against a law of a Nauru, a court shall impose a sentence or make an order that is of a severity appropriate in all the circumstances of the offence.*
- (2) *In addition to any other matters, the court shall take into account whichever of the following matters are relevant and known to the court:*
  - a) *The nature and circumstances of the offence;*
  - b) *Any other offences or required or permitted to be taken into account;*
  - c) *If the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character, the course of conduct;*
  - d) *Any injury, loss or damage resulting from the offence;*
  - e) *The personal circumstances of any victim of the offence;*
  - f) *The effect of the offence on any victim of the offence;*
  - g) *Any victim impact statement available to the court;*
  - h) *The degree of which the person has shown contrition for the offence by taking action to make reparation for any injury, loss or damage resulting from the offence or in any other way;*
  - i) *If the person pleaded guilty to the charge for the offence, that fact;*
  - j) *The degree to which the person cooperated in the investigation of the offence;*
  - k) *The deterrent effect that any sentence or order may have on the person or on anyone else;*
  - l) *The need to ensure that the person is adequately punished for the offence;*
  - m) *The character, antecedents, age, means and physical or mental condition of the person;*
  - n) *The prospects of rehabilitation of the person;*
  - o) *The probable effect that that any sentence or other order under consideration would have on any of the person's family or dependants;*
  - p) *If the offence was committed by an adult in circumstances where the offending conduct was seen or heard by a child, other than another offender or a victim of the offence, those circumstances;*
- (3) *For the purposes of subsection (1), the appropriate severity of a sentence not only include mitigating factors but other aggravating considerations such as:*
  - (a) *Deterrence of prevailing nature of common crimes;*
  - (b) *The impact on the victim and the community; or*

- (c) *Matters that in the opinion of the court are appropriate for the prevention of prevailing or certain nature of offences or protection of the vulnerable members of the community.*

## **H. DISCUSSION**

20. Ms Suifa'asia, the prosecutor, has referred to the following cases:

- i. *R v Jonathan Gadeanang* [2023] NRSC Criminal Appeal No. 1 of 2021- for Obstructing a Public Official: Contrary to Section 242 of the Crimes Act 2016- the 14 months imprisonment imposed by the Magistrate was reduced to 5 months.
- ii. *Kepae v R* [2023] NRSC Crim. Appeal 2 of 2020- for Obstructing a Public Official- under the same section, the accused was sentenced to six months imprisonment.

21. Counsel recommends 'an appropriate sentence fitting for this case should reflect specific deterrence to send a message that offences against police authority is frowned upon by the Courts in the Republic of Nauru.'

22. Counsel adds- "Community standards of respect and adherence to the law also involves respect for authority such as police officers.'

23. Ms Hazelman for the accused refers to the following cases:

- i. *Mosese Nariva v The State* [ 2006] FJHC; HAA0148J. 2005 (09 Feb 2006) where justice Shameem said;  
*"The courts must always make every effort to keep young offenders out of prison... Non-custodial measures should be carefully explored first to assess whether the offender would acquire accountability and a sense of responsibility from such measure in preference to imprisonment."*
- ii. Counsel also refers to *R v Jonathan Gadeanang* and *Kepae v R* mentioned above.
- iii. Counsel submits that this case is less serious as it involves – 'refused to comply with a police request to move from a place of drinking.' There is no threat to public safety here nor escape from custody.
- iv. Counsel concludes that the offending here- 'while serious, involved no harm to others and borne out of a momentary lapse rather than malice or criminal intent.'
- v. The court has the discretion not to record a conviction and 'a significant fine within her means can serve as a sufficient deterrent...'

## **I. SHOULD A CONVICTION BE ENTERED HERE?**

24. In *R v B.R.* [2024] NRSC 4 (26<sup>th</sup> April 24), a case involving a juvenile offender, I said this-

- '38. *I refer to R v DBU [2021] QCA 51 [CA 124/2020] where the Queensland Court of Appeal considered the statutory presumption of not recording a*

- conviction under the provisions of the Youth Justice Act 1992. The court considered that "there can be no doubt that employment and rehabilitation are pivotal in reducing the risk of future offending."*
39. *On the impact of recording a conviction, the court observed- "Clearly there is a connection between his chances of finding or retaining employment and his chances of rehabilitation."*
40. *Bearing the above in mind, I note that if a conviction is recorded against you, it will remain in the Register of Records of Criminal Convictions for 15 years. Section 98(5) of the Criminal Procedure Act 1972, provides for this.*
41. *This means that you will be 30 years old before your conviction record becomes a 'spent conviction.' If you have a conviction against your name, it would be difficult, bordering on impossible for a young person to get scholarships, visas to travel abroad for educational pursuits or for work opportunities. In short, many doors of opportunities both local and beyond the shores and pinnacles of Nauru will be closed to you. This will surely impact your rehabilitation, your chances of finding or retaining employment and your development to be a young productive adult.*
42. *The word 'conviction' is defined under the Interpretation Act 2011 to mean- "a finding of guilt by a court, whether or not the conviction is recorded."*
25. Although you are not a juvenile, being a first offender with a possible bright future, I believe that my observations above equally apply here. In the present case, if a conviction is entered against you, it will remain in the Register of Records of Criminal Convictions until you turn 37 years old **before it becomes a 'spent conviction.'**
26. As I said in para [41] of the *R v B.R case* above- 'If you have a conviction against your name, it would be difficult, bordering on impossible for a young person to get scholarships, visas to travel abroad for educational pursuits or for work opportunities. In short, many doors of opportunities both local and beyond the shores and pinnacles of Nauru will be closed to you. This will surely impact your rehabilitation, your chances of finding or retaining employment and your development to be a young productive adult.' A conviction will mean that you say goodbye to your employment prospects under the PALM project.
27. In that regard, I say here what I said in the *R v B.R case* above- 'In further considering that greater weight should be given to your prospects of rehabilitation and with the fervent hope that you develop into a law-abiding citizen, I find you guilty as charged **but I choose not to record a conviction against you.**
28. Should I order that you pay a 'significant fine' as suggested by your counsel? I note that to make a living, you assist your mother in baking and selling cakes. Your family relies on your sisters who are civil servants. As a punitive measure, you will need to pay a fine.

29. You spent 47 days in remand. I remind myself of *State v Ram* [2001] 2FLR 300- the court observed:

*“Any detention of persons who are presumed innocent is in effect a punishment...”*

30. In my view, this 47 days in remand is sufficient punishment.

## **J. CONCLUSION**

31. I have considered the relevant provisions under the crimes Act 2016 on the sentencing considerations, the totality of the circumstances surrounding the offending, the 47 days spent in remand, your prospects of rehabilitation, your employment opportunity in Australia, the remorse shown and positive references from the Director for Nauru Labour Mobility Division, (Ministry of Foreign Affairs & Trade) and Nauru Rugby.

32. In particular, I refer to the plea for leniency submitted by Mafa and Dogabe Jeremiah, your grandparents. As a lifelong reminder to you, I reproduce here a portion of their plea-  
“ Lovani is our granddaughter and we have been actively involved in her upbringing and development. Throughout Lovani’s upbringing we have observed her grow into a respectful, obedient and independent young woman. She has consistently exhibited good behavior and a strong sense of responsibility. We took an active role in ensuring Lovani received a good education, including sending her to Fiji for her studies, where she excelled academically. She successfully completed tertiary courses in hospitality demonstrating her commitment and capability in her chosen field.

Regarding the recent incident, we believe it to be entirely out of Lovani’s character. We understand she deeply regrets her actions and has shown remorse for her reckless behavior. She spent a period in remand, during which we observed significant changes in her attitude and lifestyle. She distanced herself from negative influences, focusing instead on her sports activities. Lovani’s dedication paid off as she was selected to represent Nauru in rugby at prestigious events such as the Oceania Games and South Pacific games as well as for her district’s football club.

Lovani has faced challenges in her personal life, particularly her parents’ divorce, which occurred while she was studying in Fiji. This undoubtedly affected her, but she has shown resilience in overcoming these difficulties. Upon returning to Nauru, she chose to live with her mother, a decision that also impacted her emotionally.

We firmly believe that Lovani has learned valuable lessons from this experience, lessons that will stay with her for a lifetime. Her progress and dedication to positive pursuits are evident and we have no doubt that she has a bright future ahead of her.

In light of these circumstances, we respectfully request leniency and ask that Lovani be given a chance to continue building on her promising future.”

33. Taking all the above into account and based on Section 277 (b) of the Crimes Act 2016, on the kinds of sentences that I may impose-without recording a conviction, I order that you pay a fine of \$500.

34. This is to be paid within 28 days.

**DATED** this 02<sup>nd</sup> of August 2024

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

