IN THE DISTRICT COURT OF NAURU
(CRIMINAL JURISDICTION)

CRIMINAL CASE NO. 18/98 **THE REPUBLIC V RENE HARRIS**

CRIMINAL CASE NO. 19/98 **THE REPUBLIC V MILTON DUBE**

CRIMINAL CASE NO. 20/98 **THE REPUBLIC V MELVIN DUBE**

JUDGMENT

Mr. Rene Harris (an Honourable Member of Parliament), Milton Dube and Melvin Dube have been prosecuted for having committed offences under sections 142, 340(2), 62, 63 Criminal Code Act of Queensland 1899 (First Schedule) Adopted (hereinafter to be referred as Criminal Code), Section 5(c) of the Police Offences Ordinance, 1967 and Section 48 of the Nauru Police Force Act,1972. In addition, there is another charge under Section 469 of the Criminal Code Act against Mr. Rene Harris. Milton Dube faces charge under Section 69 of the Criminal Code while Melvin Dube faces charges under Sections 69 and 335 of the Criminal Code in addition.

The circumstances in which the offences were allegedly committed are disclosed by PW1 (Ivan Notte Police Constable). According to him, it was Sunday 4 P.M. on 22 March 1998, when he was present in the Police Station, when Mr. Rene Harris came there and asked him and other Police Officer Ruskin Tsitsi to release one Tawaki Kam, who was under detention in an assaulting case. Ruskin Tsitsi told Mr. Rene Harris, that this could not be done, as the police investigation was not complete. Mr. Harris told them to get ready as he would get back his family to the Police Station to fight. This accused then left that place and again came back in the company of the other two accused Melvin Dube and Milton Dube, who were armed with grass cutters. Melvin Dube then proceeded towards Ivan Notte enquiring if he was ready. Mr. Harris then picked up the telephone lying in the Reception Desk and threw it down while Melvin started chopping the Reception Desk with the grass cutter. Melvin Dube then went near Ivan Notte and placed the grass cutter on the left side of his head and also spat at his face. Curtis Olsson then gave instructions to Const. Abana Hubert to release the three detainees, Tawaki Kam, Swoborick Kam and Paroro Kam. The detainees were then released and they were taken away by the three accused.

The matter was investigated and the three accused were made to stand trial for the various offences as mentioned in detail in the Charge Sheets served on them.

At the trial, the Prosecution examined police witnesses Ivan Notte, Joncole Bill, Curtis Olsson, Ruskin Tsitsi, Abana Hubert, Gavin Dekarube, Norio Tebouwa, Junior Dowiyogo, Marvin Tokaibure, Ralph Hiram, and Doneke Kepae. Two witnesses from the public namely, Rayong Itsimaera and Clarinda Olsson were also examined.

The two accused, Mr. Rene Harris and Milton Dube also entered the witness box to give sworn testimony, while Melvin Dube filed his statement without oath with a view to explain the facts and circumstances of the case. In addition, the accused examined Tawaki Kam, John Dube and Nemo Agadio in their defence.

I have given opportunity to the learned Defence Counsel and learned Public Prosecutor to make their submissions. Here below I will examine the evidence brought on record and the submissions made before me with a view to find if any charges are substantiated or not.

At this stage it will be useful to make a brief reference to the Statements made by various witnesses.

PW1 Ivan Notte has given the facts already noticed in the beginning of this Judgment.

PW2 Joncole Bill deposed that on 22nd March 1998 he, Curtis Olsson and Daniel Hedmon were on patrol duty when they received a radio message to reach the Police Station. When they came back to the Police Station Ruskin Tsitsi told them that Mr. Rene Harris had come to the Police Station and he would be back with his men. Mr. Harris then came to the Police Station along with five persons including Melvin Dube and Milton Dube and demanded the release of Kam. During shouting, Melvin Dube placed and pointed a grass cutter at Ivan and spat at his face. Mr. Harris lifted the telephone and smashed it on the ground. The detainees were then released by the Police who went with the accused. In cross-examination, the witness admitted that the Police Officers were also shouting when Mr. Harris was demanding release of Tawaki Kam. According to him, he did not hear Mr. Harris demanding release of Tawaki Kam as he was detained unlawfully. He also did not remember if Mr. Harris was asking that Senior Officers be rung up.

PW3 Curtis Olsson the other Police Constable has corroborated the same version. He added that Mr. Harris had entered the Police Station first and he was followed by the other two. Mr. Harris then asked him to release Tawaki Kam. The witness told the accused that he would ring up the Director of Police and Mr. Harris may discuss the matter with him. Meanwhile, Melvin Dube approached him and smashed his desk with

grass cutter. Mr. Harris then grabbed the telephone. The witness also did likewise and during this struggle the telephone fell. Earlier when Mr. Harris had come, he wanted to use the telephone but he was not permitted and when he came second time he lifted the phone telling the witness as to what was the use of the telephone if he was not permitted to talk to the Director. The witness admitted having given instructions to release the detainees and then he informed the Senior Police Officers as to what had happened. In cross-examination the witness admitted having told Mr. Harris that Tawaki was not yet charged and he was detained for investigation. He also admitted that Mr. Harris was alleging that Tawaki Kam was detained illegally and that Mr. Ruskin Tsitsi had also stated that Tawaki Kam was detained without reasons.

PW4 Ruskin Tsitsi deposed that on 22nd March 1998, he and Ivan were called back to the Police Station at about 12 noon to investigate the assault case against Tawaki Kam and others. When both of them were present in the Investigation Office Mr. Harris and Nemo Agadio came to enquire about Tawaki Kam and Mr. Harris wanted Tawaki Kam to be released to his care. The witness told Mr. Harris that he could not do so and further that Tawaki could be released at 4 P.M. Mr. Harris then threatened that if Tawaki was not released, he would come back again with his men and they would be bringing guns. According to him Mr. Harris again came in the company of the other two accused within

about 10 minutes and Mr. Harris approached Curtis and asked him to release the three detainees. At this time, the other two accused were armed with grass cutters. According to him Curtis told Mr. Harris that Tawaki would not be released and then Mr. Harris picked up the telephone and smashed it on the ground. Melvin smashed the table with grass cutter. The witness then tried to argue with Mr. Harris that it was not good of him and he should have talked to Senior Police Officers. They also told Mr. Harris how the three persons were detained and that they would be released before the period of 24 hours elapsed. The witness claims, that Mr. Harris then directed him to call the Senior Police Officers and tell them that Mr. Harris was waiting for them. The witness then went and informed Senior Officers i.e. Station House Officer and Officer-in-Charge of Investigation Branch Mr. Dowiyogo. By the time he and Mr. Junior Dowiyogo came to the Police Station, Mr. Harris and his companions had already gone with the detainees. In cross-examination, the witness admitted that earlier Mr. Harris did assert that Tawaki was being detained illegally. He denied that Mr. Harris and Mr. Curtis had struggled with the telephone. He further stated that he had recorded the statements of the complainants and the investigation was completed when Mr. Harris earlier came at about 12 noon, and he was also told that detainees would be released at 4 P.M. In answer to Court questions, the witness explained that even though the investigation was completed by 12 noon the detainees were to be released at 4 P.M. as they are told by Senior Officers

that the detainees are to be kept for twenty four hours and in this particular case there was written information against Tawaki Kam and others.

PW5 Abana Hubert says that Mr. Harris had come to the Police Station on 22 March 1998 and he and his companions wanted the release of Tawaki Kam and he had referred them to C.I.B. personnel i.e. Ruskin and Ivan. Mr. Harris again came after seeing the C.I.B. persons and pushed the gate of the prison and asked him to release the detainees. But he did not comply and then Mr. Harris left the place telling him to keep the guns ready as he was going to bring his family and there would be war and fighting. The witness then corroborated the account regarding the second visit of Mr. Harris in the company of the two accused. According to him, it was Milton who had gone to Ivan and threatened him with grass cutter and Melvin was banging the table and Mr. Harris smashed the telephone on the ground. He added that during all this commotion Mr. Harris was demanding the release of the detainees and Mr. Curtis asked him to release the detainees and thus he complied by opening the cell. The detainees then went in the company of Mr. Harris. In cross-examination, the witness stated that Mr. Ruskin had asked him to release Tawaki Kam and then he released the detainee and other two detainees followed him out.

PW6 Gavin Dekarube and PW7 Norio Tebouwa deposed to their attempt to cause arrest of the accused on the direction of Senior Police Officers and that they could not cause arrest on account of the conduct of Mr. Rene Harris. This aspect is not of much relevance insofar as the actual Charges are concerned and I do not feel the necessity of going into details. Likewise, PW11 Doneke Kepae deposed to the circumstances in connection with the arrest of the other two accused.

PW8 Junior Dowiyogo, Asst. Superintendent of Police, deposed that he was in charge of the investigation of the case against Tawaki Kam and he had given directions to Ruskin Tsitsi to investigate the said case. He added that Tawaki Kam and other accused were arrested on 21st March 1998 at 4:40 P.M. and they were detained in connection with the case against them. He added that there was police records to show that their detention was for less than 24 hours.

PW9 Marvin Tokaibure deposed to the actual arrest of Tawaki Kam and his brother Swoborick. This he did under the instructions of Mr. Curtis Olsson. In cross-examination the witness asserted that he had told Tawaki Kam that he was arresting him and this happened when the accused was in the company of Mr. John Dube. He says he had brought Tawaki Kam to the Police Station and left him with Sgt. Ralph and he

himself went away to arrest other two accused in that case.

Sgt. Ralph as PW10 corroborates the statement of PW9 Marvin that Kam brothers were arrested between 4 to 5 P.M. on 21.3.98 and he made entry in the Daily Crime Book in this respect. Ex.P2 is correct copy of the entry in the Crime Book. He says he had explained the Charges to Kam brothers. In cross-examination he explained that the Charges were explained to Kam brothers separately as they were brought to the Police Station separately and three separate entries were made in this respect.

PW12 Rayong Itsimaera deposed that his residence was near the Police Station and at about mid day, he heard some loud and angry voices coming from inside the Police Station and then two-three minutes thereafter, he noticed the three accused coming out of the Police Station along with other persons and they went away in a Nissan car which was standing outside. In cross-examination he conceded that from his house, he has been noticing some sort of commotion in the Police Station from time to time.

Miss Clarinda Olsson deposed that it was Sunday and she came to see her relative whose house is located near the Police Station. It was mid-day time and she noticed a big commotion inside the Police Station and Mr. Rene Harris was speaking very angrily. She

also saw that accused Melvin Dube had an iron bar in his possession. She also saw Milton Dube and one Mike Aroi and Tawaki Kam getting into the car. In cross-examination, she disclosed that her relative was Mr. John Olsson who is her father-in-law and she had been visiting this house even earlier but the commotion on that day was unusual which she did not observe earlier.

Mr. Rene Harris accused entered the witness box as DW1 and deposed that on 21 March 1998 he learnt that Tawaki Kam, a member of his Constituency, had been taken away by the Police for questioning and on 22.3.98 when he went to the house of his uncle, John Dube, for lunch after attending the Church, he learnt from the family that Tawaki had not been released even though Police had promised to release him at 7 P.M. on 21.3.98 and again at 11 P.M. that day. He also learnt that Tawaki had not been given food nor drinks and he was kept in a cell which was unclean having human excreta solid and liquid. Then he thought of going to the Police Station to verify the facts and as a precaution, he took with him another person Nemo Agadio as earlier, he was being misconstrued and misquoted by the Police in respect of his earlier visits in such matters. He then went to policeman on duty and enquired about Tawaki Kam and the policeman referred him to C.I.B. men next door where two officers were present and one happened to be Ruskin Tsitsi (PW4). He then enquired from Ruskin about Tawaki and told him that Tawaki was

detained unlawfully. Mr. Ruskin did not reply. Again the witness impressed upon the officer that he could detain a person if he was drunk or a danger to the Community and if Tawaki was detained for any such reason. Mr. Ruskin replied in the negative and when questioned as to why Tawaki was detained Mr. Ruskin told him that there was a law for it. The witness then gave details of his conversation with the Police Officer with a view to impress that Tawaki was in fact helping his brother who was assaulted by others and if those persons were arrested. Ruskin then showed ignorance about the circumstances of the incident and then Mr. Harris told Ruskin that if he was not aware of facts and the procedure, then he may permit him to talk to Director of Police or the officer may himself talk to him. Ruskin did not have the courtesy to reply and then Mr. Harris left the Police Station after suggesting to Ruskin that he should contact Director of Police and he would be back again and they had better get their guns ready. The witness deposed further that he and Nemo went to the residence of Nemo and dropped him there and advised him to collect some boys of the Constituency ready to seek release of Tawaki. He says, he himself went to his house and tried to contact Director of Police on phone and also the Minister but they were not available. He goes on to say that he then went to Nemo's place and with four other persons again came to the Police Station. On the way, he told his companions that it appeared that Tawaki was detained unlawfully. He says that he then came to the Police Station and met Mr. Curtis Olsson and he learnt from him that

Tawaki was not charged nor arrested but was held by C.I.B. At this stage, the witness claims he heard a bang from behind him. Ruskin then told him if he could wait he was going to contact Director of Police. The witness turned around and asked him as to why he had not contacted the Director of Police when earlier he was asked to do so. Then the witness lifted the telephone set from the Desk and told the Police Officer as to what was the use of the telephone if it was not to be used. According to him Curtis then grabbed the telephone from him and both of them struggled with the phone and the phone fell on the ground. The witness adds that he lifted the telephone set from the ground and placed it on the desk and no damage was done to the telephone set. At this stage, Ruskin told him that he should wait. But soon thereafter Tawaki himself came out of the prison and he asked him to get into the car and then they went away and after reaching home he noticed that along with Tawaki, two other persons Paroro Kam and Swoborick Kam also came out of the car. In cross-examination, the witness stated that he was aware that when a person was detained or arrested, an entry is made in the register. He further stated that Tawaki Kam was detained unlawfully as he was not charged. He had to concede that Tawaki was related to him and he happened to be the husband of his niece and further that on first occasion he remained in the Police Station for about twenty minutes. In answer to another question, the witness replied that when he told the Police to keep their guns ready he was convinced that the detention of Tawaki was unlawful and he must get

him out and Police must understand this. When further questioned he replied that he wanted to get back Tawaki by talking and the other two accused were picked up by him from their home. He goes on to explain that he brought other members of the family as otherwise there was risk of himself being locked up without reason. When questioned about the sound of 'Bang' and how it was caused the witness pleaded ignorance. He concedes that he did not wait for the Senior Officers on the second time. He concedes that no bail or recognizance was given when Tawaki came with him. When further questioned, he deposed that he asked Nemo to get the boys ready to go with him to the Police Station as he could not take the risk of being beaten up himself. At one stage, he mentioned that he had no intention to get Tawaki released with the help of other persons and he was simply arguing his case with the Police Officer that Tawaki be released.

Melvin Dube in his unsworn statement (Ex.D1) mentioned that on Sunday 23rd March (in fact 22nd March) he learnt about Tawaki being locked up by the Police under the pretense of recording his statement. Rene Harris and Nemo then went to Police Station and about 25 minutes later Nemo came and informed that Tawaki was being kept unlawfully. About 15 minutes thereafter, Rene Harris came and he left with him to convince the Police to let Tawaki out and that he did not carry with him any grass cutter nor any weapon. After reaching the Police Station, he left the car and accompanied Rene Harris

and he had lifted a timber stick from outside there somewhere as he was afraid the Police would assault them and particularly Rene Harris. According to this statement, he did so to make sure that Rene Harris may not be hurt as he had seen Police beating up his friends earlier. He claimed that he and Rene Harris had only wordy talk with policemen and he did not spit at any one's face nor he held the piece of stick against any policeman's head. They then left when the policeman in charge ordered Tawaki's release.

DW3 Milton Dube also entered the witness box to give evidence on oath. He practically gave the same account as Mr. Rene Harris (DW1) and claimed that on the way to Police Station Rene Harris had advised them that they were to stay at the Police Station and try to get Tawaki released and that they were not to cause any inconvenience to anybody. He goes on to say that after reaching the Police Station he picked up a piece of stick lying there on noticing large number of policemen there. He also saw Melvin Dube picking up a stick. He also gave the same reasons as Melvin Dube for picking up the stick. He then tried to give account of the conversation between Rene Harris and policemen and the police reacted to the questions of Mr. Rene Harris. This witness also narrated how the telephone had fallen without damage. He denied Melvin having spat at the face of any policeman.

Then we have the statement of DW4 Tawaki Kam who was the person concerned under detention. He gave an account as to how he was taken by the Police when he was in the company of John Dube and it was disclosed to him that his statement was to be recorded and then he would be sent back. He goes on to say that after he reached the Police Station, a Police Officer Ralph Hiram told him that there was a complaint against him and he would be locked up and before he was locked up, he was told that he would be released at 7 P.M. And again Ralph told him at 7 P.M. that he would be released at 11 P.M. Once again Ralph told him at 11 P.M. that he would be released at 7 A.M. next day. In the morning Curtis Olsson came to him and informed him that there was no information that he was to be released at 7 A.M. He also complained that he was not given any breakfast even though he was taken out for this purpose. He further says that he was let-out from the cell by Police Officer Abner. In cross-examination, he failed to tell the time when he was brought to the Police Station and that no person visited him in his cell at any time. According to him the police did not read any charges to him nor he was informed about the nature of complaint against him. He claims, he did not know if he was arrested on charges of assault and causing bodily harm and unlawful wounding. In re-examination, the witness stated that he was charged after he was released and also learnt that his mother had come to the Police Station.

John Dube DW5 deposed that on 21.3.98, his car was stopped by the police near N.P.C. Tennis Court and a policeman asked Tawaki to go to the Police Station as his statement was to be recorded.

DW6 Nemo Agadio gave an account of the incident of 22nd March 1998 when he accompanied Rene Harris to the Police Station. He tried to give an account of the nature of conversation between Rene Harris and Ruskin. He deposed that during the conversation Rene Harris had told Ruskin that Tawaki had gone to defend his brothers as some drunken persons had beaten up his brothers. The witness gave further details of conversation which are similar to those given already by Rene Harris.

Mr. David Aingimea has raised some technical legal objections in the course of his submissions, which he has also placed on record. With a view to find if these submissions have merit and if so to what extent, it is necessary, first to find as to what facts are really proved on record and whether these submissions are relevant to the facts of this case.

The first point which needs determination in the case is whether Tawaki Kam (and also his two brothers) were in legal custody of the police when the present occurrence took

place. The emphasis of Mr. David has been that Tawaki Kam and brothers were in unlawful custody and they were not legally arrested nor charged. The accused Mr. Rene Harris in his statement has tried to give the details of his conversation with the policemen and claims that he had told his companions on the way that police were holding Tawaki unlawfully. The other two accused also took the same line. In support of this, they highlight the fact that Tawaki had not been charged and as stated by defence witnesses and by Tawaki himself he was taken to the Police Station just for his statement.

In this respect, we cannot lose sight of the statement of PW9 Marvin Tokaibure who actually caused the arrest of Tawaki and Swoborick. He is emphatic that he told Tawaki that he was to arrest him and he must accompany him to the Police Station and this Tawaki did accompany him. We also have the clear statement of PW10 Sgt. Ralph Hiram on the point. He is categorical that Kam brothers were arrested between 4 and 5 P.M. on Saturday 21st March 1998. He himself made entry in the daily Crime Report. Ex.P2 is the copy of the entry regarding the arrest of Tawaki Kam. Sgt. Ralph also stated that he had explained the charges to Tawaki Kam and other brothers at different times as they were brought to the Police Station. All this is in cross-examination of this witness. He further asserts that separate entries were made in respect of the three Kam brothers. Mr. David Aingimea did not demand the specific entries in respect of the two

persons. The Prosecution proved only one Entry Ex.P2. In case the Counsel had any doubt, it was open to him to insist that other entries be shown to him. It will thus appear that Tawaki Kam and his brothers were certainly arrested and they were detained by the police in connection with the investigation of the case reported against them. The entry Ex.P2 does not admit of any doubt that Tawaki Kam was brought at 16:40 Hours. He was sober at that time and he was detained in custody on charges: (1) Entering a Dwelling House and (2) Assault Occasioning Bodily Harm.

Not only this Mr. Rene Harris also had definite idea regarding the entire background in which Tawaki Kam was brought to the Police Station. His own deposition indicates that he was trying to impress upon the police officers that in fact brother of Tawaki was assaulted by some drunk persons with a knife and Tawaki had gone only to defend his brother. As to what were the real circumstances of the said case, is not a matter which is relevant for this case. The relevant fact is that there was some incident involving Kam brothers and there was complaint lodged with the police which was being investigated. It is interesting to note that Mr. Harris pleaded ignorance if regarding that incident any complaint was also made by Tawaki or his brother against the opposite party. In the ordinary course, this fact ought to have been within the knowledge of Mr. Rene Harris. I am of the view that Mr. Harris has tried to suppress this information.

In the light of the above discussion, I am inclined to hold that Tawaki Kam and brothers were in lawful custody of the police and there is no satisfactory evidence to indicate that a period of 24 hours had already elapsed. Even the account given by Mr. Rene Harris indicates the same fact even though he does not commit himself as to the exact time when he came to the Police Station for the second time.

The second point which needs determination in this case is as to whether Mr. Rene Harris and his companions wanted the release of Tawaki Kam and brothers by arguments or show of force. Mr. Rene Harris happens to be a responsible person who is a sitting Member of Parliament and who has remained Member of Parliament for twenty-two years. He also held the office of Speaker and Deputy Speaker of the House. He has been instrumental in passing many laws in Parliament. He also held important position in Church as mentioned by him in his statement in Court. He has asserted that he was simply arguing his case with the police officer that Tawaki be released and when he took with him the other accused he was to get the release of Tawaki by talking. According to him, his co-accused did not carry with them any grass cutter or any other weapon. I wish I could find it possible to accept this account. The evidence which however has come on record tells a different story.

We can once again refer to some parts of the statement of Mr. Rene Harris himself. He claims to have learned about Tawaki Kam for the first time on 21st March 1998 in mid afternoon. In the examination-in-chief he describes Tawaki Kam just as a member of his Constituency who was taken away by the police for questioning. On 22nd March 1998 at lunch time, he noticed absence of Tawaki Kam at the lunch table and then on his enquiry the members of the family told him that the police had been promising to release Tawaki from time to time, that he was not given any food or drink and that Tawaki was kept in a cell having human excreta, liquid and solid. It was then that he asked Nemo Agadio to proceed with him to the Police Station to witness as to what he would do there as earlier he was being misconstrued and misquoted by the police regarding the real facts. In cross-examination, the witness admitted he did not go to the particular cell at any time when Tawaki was detained. He also admitted that Tawaki Kam was in fact married to his niece. Tawaki Kam as DW4 admits that no member of the family visited him in the cell at any time. It will appear that Tawaki Kam was not just a member of the Constituency for whose release Mr. Harris was anxious. In fact, he was husband of his niece and a close relative. There could be no basis for the knowledge of Mr. Harris or any body else that Tawaki was being kept without food or drink or the cell where he was kept was a place not fit for human stay.

Mr. Harris maintains that his co-accused were not having any weapons with them. The two co-accused who entered the Police Station with him, however, maintain that they had picked up timber sticks lying somewhere there. Mr. Harris says that he entered the Police Station first and he is not aware as to who else followed him. He conceded in his examination-in-chief that he had heard a bang from behind him when he was talking to Ruskin. When questioned in cross-examination about this "Bang" he replied, he did not know how this sound of "bang" was caused behind him. The explanation given by Mr. Harris is not convincing. In the ordinary course he could not fail to notice that his co-accused were standing near him armed with timber sticks, if not with grass cutters. He also could not fail to know that it were his co-accused who were responsible for the "Bang" which he heard.

Again it will be seen that it is in the statement of Mr. Rene Harris himself that he had left the Police Station after his discussion on the first visit suggesting to Ruskin that he should contact Director of Police and that "I would be back again and they had better get their guns ready". Not only this, he proceeded along with Nemo to the place of Nemo and dropped him there telling him that he should collect some boys of the Constituency ready to seek the release of Tawaki. When I consider this warning given by this accused to the Police Officer and his instructions given to Nemo to collect some boys of the

Constituency ready to seek the release of Tawaki, I am inclined to infer that this accused Mr. Harris had set his mind quite clearly that Tawaki was to be released from the Police in any circumstances and if need be by use of force.

Mr. Harris has certainly modified his stand in the course of his deposition by mentioning that he was to get the release of Tawaki only by talking. Mr. Harris had already adopted that course and failed. There was hardly any necessity of getting the "boys ready" if he was to again make an attempt for the release of Tawaki just by talking. An attempt has been made to show that on earlier occasions, the experience of Mr. Harris with the police was not very happy. It is also argued that the police have been in the habit of beating the people and Mr. Harris could have fear that he may be arrested himself or treated badly on the second occasion. His two co-accused also claim that they just lifted the timber sticks from outside the Police Station as a precaution so that Mr. Harris may not get beaten up at the hands of the police. If the police were to maltreat Mr. Harris then they could do so right on his first visit. It is difficult to believe that the police would go to the extent of manhandling a Member of Parliament when he was simply impressing upon them to release Tawaki as his detention was unlawful. I am of the considered view that the explanation which the accused have given is an after thought and has been introduced just to make out a possible defence. When the statements of these accused are appreciated in

the context of statements of police witnesses (PW4 Ruskin Tsitsi, PW1 Ivan Notte, PW2 Jonecone Bill, PW3 Curtis Olsson). The reasonable conclusion that can be drawn is that the accused did go to the Police Station fully determined that Tawaki Kam was to be got released by use of force. The version given by the police witnesses appears to be substantially correct.

It has been pointed out by learned Counsel that Abana Hubert (PW5) has named Milton accused being the person who went to Ivan and threatened him with a grass cutter while other witnesses have named Melvin being the person who threatened him. It is submitted that this would make the version doubtful. I do not agree with the learned Counsel. In a criminal trial some discrepancies in the statements of witnesses appear naturally in the ordinary course, as the witnesses depend upon their memory and the power of observation is also different from person to person. I am of the view that this discrepancy is not of any consequence and the case of the prosecution remains acceptable.

In this very context we may refer to the statement of an indpendent witness PW13 Ms. Clarinda who deposed that Mr. Melvin Dube had an iron bar in his possession. This witness has not been challenged in cross examination on this point.

With the above discussion, I hold that Mr. Melvin Dube and Milton Dube had armed themselves with grass cutters while accompanying Mr. Harris to the Police Station and Mr. Melvin Dube did make use of the grass cutter to smash the desk and to cause fear in the mind of Ivan Notte and other policemen. I also accept the statement of PW1 Ivan Notte when he says that this accused had placed his grass cutter on the left side of his head and spat on his face. This statement also gets corroboration from the other police witnesses, to which reference has already been made. It has been pointed out that grass cutters were not recovered nor produced in Court. I have considered this aspect also. In my view the prosecution case cannot suffer on any such account.

Another point which needs determination is whether Mr. Rene Harris did cause any damage to the Emergency telephone instrument. I have already made reference to the nature of evidence of various witnesses in this connection. It will be seen that it is in the statement of Curtis Olsson (PW3) that Mr. Harris lifted the telephone and he also grabbed it and there was struggle between them. Earlier this witness had not permitted Mr. Harris to use the telephone on the first occasion. Mr. Harris explains that he had lifted the telephone and had told the police officer as to what was the use of the telephone if it was not to be used and in the course of the struggle the telephone set fell on the ground without any damage. No precise report of any technical man has been placed on record

to show if the telephone set has become inoperative. At any rate there does not appear to be any mens rea on the part of Mr. Harris to cause any damage to the telephone set. It just fell in the course of struggle. I give the accused benefit of doubt on this point and I hold that he is not guilty for causing any damage to the telephone instrument and Charge No. 5 against Mr. Harris must fail.

In this very connection, I must observe that Mr. Curtis Olsson PW3, should have shown the courtesy to this respectable Member of Parliament to use the telephone on the first occasion and also for the second time if he wanted to talk to Director of Police in connection with Tawaki's case. It is quite probable that this course would have brought better results and the whole unhappy episode could be avoided.

Mr. David Aingimea has submitted before me that in respect of a number of charges filed against these accused, it was incumbent upon the police to obtain a warrant of arrest in the first instance. He has also submitted that only in cognizable offences, the police could arrest without warrant. He has also tried to highlight the distinction between crimes, misdemeanors and simple offences. With this background, he has submitted that the charges in respect of which the police could not arrest without warrant must fail merely because the warrant was not obtained and the arrest became unlawful. He,

however, concedes that against all the three accused there are some charges where the police could arrest without warrant. After considering his submissions I come to the conclusion that argument regarding necessity of warrant as a pre-requisite is faulty. The act of "Arrest" of a particular accused is one indivisible act. If the police were justified in arresting the accused in respect of one or more charges, then the accused will not become entitled to acquittal merely because as a result of investigation some other charges were made out and the accused were charged therefor. The learned Counsel submitted that the police could file charges only in respect of the offences where they could arrest without warrant and subsequently they should have filed charges with the permission of the Court by way of addition or amendment. I am of the view that the procedure indicated by the learned Counsel is illogical and the Criminal Procedure Act does not contemplate this course.

Another technical objection has been raised by the learned Counsel regarding joinder of charges. His submission is that the accused have been charged for aiding 3 prisoners to escape under one charge and even though there is nothing wrong with the forms of the charge, it is incumbent on the prosecution to prove that all the three detainees were under lawful custody and all escaped. His submission is that if the charge failed for any one detainee then the whole charge would fail. This argument in fact has no merit. The

charge would be treated as proved even if the evidence proved the case in respect of one prisoner. The proposition propounded by the learned Counsel is entirely untenable. I am convinced that the charges are in conformity with the provisions of Sections 90, 91, 92 and 93 of the Criminal Procedure Act. The purpose of framing these charges is to give clear notice of the nature of the offence and the charges as framed do not leave any ambiguity.

Similar argument was raised regarding joinder of charges regarding serious assault as against three police officers. My same remarks will apply in this respect as well. I am of the view that the argument is just an attempt at hair splitting without any legal basis.

Another legal argument advanced by the learned Counsel is that charges made under section 5 of the Police Offences Ordinance deserve to be dismissed because they happen to be in contravention of Article 10(3) of the Constitution of Nauru which lays down that a person charged with an offence shall be presumed to be innocent until proved guilty. The objection of the learned Counsel is that this charge as mentioned in Section 5 of the Police Offences Ordinance starts with the presumption that the man is guilty. For ready reference I would reproduce here below a part of this specific provision. It reads:

"Every person who is guilty: -
a) .....
b) .....
c) of any riotous, offensive, disorderly or indecent behaviour in any police station or
d) .....
Shall be guilty of an offence."

I have tried to appreciate the argument. Merely because the word guilty has been used in the beginning before describing the particular "act" which is made an offence, it cannot be said that the provision has become unconstitutional. Even in such a case the Court is to record a finding if the particular act is "riotous, offensive, disorderly or indecent" and only then the offence would be made out. At the most, it may be said that the provision of law is not happily worded. There is no merit in the submission of Mr. David Aingimea.

It is pointed out by the learned Defence Counsel that in this case it was the decision of the police officer themselves that Tawaki Kam be released. He specifically refers to the statement of PW3 Curtis Olsson who admitted that he gave the instructions to release the detainees. It is submitted by the learned Counsel that this decision could be a conscious decision of the police officer that there was no legal justification to keep the detainees in custody. I have carefully considered this argument. I do not find any merit in the same. We have to see the totality of circumstances in order to find if the police officer made a

decision of his own or he was compelled by force to take this decision. We cannot lose sight of the fact that Melvin was smashing desk. The police officer was asking the accused to wait so that he may contact the Director of Police. There was struggle with the telephone. Melvin Dube also placed grass cutter against the head of Ivan Notte and spat at his face. Milton Dube was also armed with grass cutter close by. When all the circumstances are taken together, there remains no manner of doubt that the police officers were forced to release the detainees on fear of physical harm and the normal procedure of release of a detainee or prisoner was not allowed to prevail. It will be seen that Tawaki and his two brothers were taken away without undergoing formalities of entering a recognizance or surety bonds. I hold that the accussed in fact paralysed the normal police functioning in the Police Station and forcibly obtained the release of the detainees.

My attention is invited to the relevant section 142 of the Criminal Code. It is submitted that the offence can be made out only if the prisoner is escaping or attempting to escape from lawful custody and in this case there is no evidence to show that Tawaki or his brothers really wanted to escape. The argument is that Tawaki's brothers may well have felt that they were being released in the ordinary course. This argument cannot be accepted. The detainees were taken away by the three accused in the curcumstances

already indicated. No recognizance or bail bonds were furnished in the Police Station. They could see that Melvin and Milton were duly armed with weapons and the whole environment was abnormal. There can be no doubt that the prisoners also intended to escape and they did escape with the aid of the accused.

It was also submitted by the learned Defence Counsel that if an officer wilfully permits a person in custody to escape, then he himself is guilty under section 144 of the Criminal Code and in this case the concerned Police Officers were not made co-accused. The argument is without merit and it cannot be a defence of the accused in the circumstances of the case. It was also argued that Tawaki Kam was also not charged for escaping from lawful custody. Section 143 of the Code certainly contemplates action against such a prisoner but it comes into play if the prisoner is undergoing sentence after conviction. It was not so in the present case. There may be some other provisions of law which may be invoked against Tawaki Kam. This, however, has no relevance so far as the present accused are concerned. The omission, if any, on the part of the prosecution to prosecute Tawaki for escaping is not a ground for defence of the accused.

It is then submitted that the evidence shows that the accused were demanding only the release of Tawaki and there is no reliable evidence to show that they also wanted the

release of the other two persons. Mr. David Aingimea points out that it is in the cross-examination of PW5 Abana Hubert that Mr. Curtis had asked him to release Tawaki Kam and the other two followed him out. The argument is that the accused cannot be held responsible for the release of the other two persons. Abana Hubert in his examination-in-chief has stated that Mr. Harris was demanding release of the detainees. Even if it is to be accepted that the accused wanted the release of only Tawaki it will not have any adverse effect on the case of the prosecution so far as the charges against them are concerned. There is no doubt that all the three accused were determined to get Tawaki released from police custody and they were successful in doing so.

It is now to be seen if the three accused did constitute unlawful assembly. Reference can be made to Section 61 of the Criminal Code where unlawful assembly has been defined. The requisite ingredients of an unlawful assembly are:

1) Assembly of three or more persons

2) Intention to carry out some purpose which is common.

3) Conducting in such a manner, as to cause persons in the neighborhood to fear that persons so assembled will tumultuously disturb the peace or such

assembly needlessly and without any reasonable occasion provoke other persons tumultuously to disturb the peace.

It is not necessary that the original assembling was lawful. It will become unlawful if the persons start conducting in the above manner. Such an assembly becomes a riot when it begins to act in so tumultuous manner that the peace is disturbed.

When the circumstances of the present case are appreciated in the total context, there remains no manner of doubt that all the ingredients to constitute an unlawful assembly are proved. The common purpose is clearly established. The number of persons who entered the Police Station happens to be three. Two of the accused had armed themselves. The police officials were threatened to get the release of Tawaki Kam. There was smashing and banging of the desk with weapons. The whole peace of the Police Station and its functioning was disturbed. The assembly did turn into a riot when the peace of the Police Station was disturbed. Mr. David Aingimea submits that Mr. Rene Harris was only arguing with the police officials and he was to have the release of Tawaki Kam in a peaceful manner. This argument cannot be accepted when we notice the determination of the accused, their preparation and conducting after coming to the Police Station where there was clear exhibition of force and violence by the two

companions of Mr. Harris. It is true that three of their companions remained outside the Police Station throughout. This fact will not alter the situation in any manner. It was pointed out that PW12 Rayong Itsimaera while describing the situation maintained in cross-examination that from his house some sort of commotion is noticed in the Police Station from time to time in the ordinary course and this being so it cannot be said that the peace was disturbed tumultuously. It may be noticed here that the other witnesses PW13 Ms. Clarinda Olsson stated that the commotion which she observed that day was abnormal. Mr. David Aingimea tries to treat this case as a case where the disturbance of peace by such an assembly takes place away from the Police Station in some public place or street. Here is a case where the Police Station which is expected to maintain peace elsewhere was itself disturbed in such a manner that its functioning came to a stand still and paralyzed. The policemen themselves became frightened and helpless. It is a clear case of an unlawful assembly and riot in a Police Station itself, unlike other cases when generally such offences are committed away from the Police Station.

The learned Counsel has also invoked a principle of law. His submission is that the common law principle of "Rescue" is also applicable in this case. He refers to 1996 Edition of Archbold to support his argument. His submission is that if a person is unlawfully imprisoned then an escape is excused by the use of reasonable force. My

attention is also invited to the case of **Wiltshore v Barret** [1966] 1Q.B.312. In view of my finding of fact that Tawaki Kam and others were lawfully detained, there can be no question of applying this principle to the facts of this case. It is also submitted that Mr. Rene Harris was acting under a bonafide belief that Tawaki Kam was detained unlawfully and he had no mens rea which may make his act culpable. Having regard to the entire circumstances of the case already dealt with I do not find it possible to agree with Mr. Aingimea.

At this stage, I would like to refer to the statements of PW2 Ruskin Tsitsi. After giving the entire details in the examination-in-chief, he stated in cross-examination that he had recorded the statement of the complainants and investigation was completed and he told Mr. Harris that the detainees would be released at 4'o clock as this is how they do with the detainees. He also stated that the investigation was over by 12 noon, when Mr. Harris had come about that time. In answer to Court questions the witness stated that the Senior Officers had told them that the detainees have to be detained for 24 hours. In answer to another question by the Court, the witness stated that he would keep a detainee in custody for 24 hours even if within a short time during investigation the man is found innocent. I do not know if the Senior Police Officers have really issued any such instructions which this witness claims. The witness, however, entertains a notion that it is not possible to

release a detainee before the period of 24 hours elapses. This is totally wrong view of the law. The police have duty to produce an accused before a magistrate within 24 hours after arrest. It is their duty to complete the investigation at the earliest and thereafter admit the accused to bail or get the necessary orders from the Magistrate for the nature of custody in which the accused is to be kept. In the present case, however, this wrong impression of law on the part of this witness does not provide a justification for the accused for their own unlawful actions. They should have waited so that the Senior Investigating Officer could take a decision. It is in evidence that this witness and Ivan were called to the Police Station to investigate the case of Tawaki Kam. There was a reported complaint against him and the complainants were Slade Benjamin & Jesse Uepa. PW8 Junior Dowiyogo, Asst. Superintendent of Police was, in fact, investigating the case of Tawaki Kam and it was under his direction that Junior Officer Tsitsi was investigating. It could not be possible for Ruskin Tsitsi to release Tawaki and others without the permission of PW8 Junior Dowiyogo. It is unfortunate that the accused even did not wait for the Senior Officers and they took the law into their own hands.

The learned Defence Counsel made reference to some reported cases in his written submissions. He also made available some photocopies of the judgments. I would like to make a brief reference to the same. One such judgment on which reliance is placed is

R v Scott [1967] V.R. 276. It was a case of an escape of a prisoner and there was evidence that he was attacked by another prisoner and struck on the head with a piece of timber. He claimed to have no recollection of leaving the place where he was working, or the events of the next two days and to have become conscious of his surrroundings at a place 10-15 miles from the prison. He took up the position that he was not conscious of his actions and had no intention of escaping. It was held in the circumstance of the case that there must be a conscious and intentional act of withdrawal from an actual custody and the offence was not committed as the act of withdrawal and the intention of escaping did not concur.

Another case on which reliance is placed is **R v Templeton** [1956] V.L.R. 709. It was a case of a prisoner who was held in custody in a particular jail pursuant to two warrants of commitment. The prisoner was transferred to another jail pursuant to a warrant issued by the Inspector General under Section 24(1) of the Gaols Act 1928. Subsequently, the prisoner was returned to the first mentioned jail and then he escaped. When he was tried neither any warrant nor any jail order was produced. It was held that it was a necessity to prove documentary chain of specific facts to show that the removal of a prisoner from one jail to another fell within one of the exceptions mentioned in Section 8 of the Habeas Corpus Act, 1679 to the prohibition against removal from a place of custody, and

that as the evidence was unsatisfactory on this aspect the conviction was quashed.

Another case on which reliance is placed is **Dillon v The Queen** [1982] 1 ALL ER. In this case a police constable while on duty on a Police Station lock-up guarding the cells, opened the cells occupied by two prisoners and negligently permitted them to escape. One of the prisoners was charged with shooting with intent and thereafter placed in custody in the lock-up. The other prisoner had been transferred from the penitentiary to the lock-up with a view to his being placed on an identification parade in connection with the murder case. The police constable was tried for negligently permitting a prisoner in lawful custody to escape. There was no evidence before the Court, whether from warrants or Court orders or other written documents of any authority for holding the prisoner in custody. It was held by the Privy Council that there was no presumption regarding lawfulness of custody and it was necessary to prove lawful custody as a pre-requisite.

It will be seen that the facts of these reported cases are entirely different and there is no parallel with facts of the present case as already discussed by me. The prosecution has been able to prove that Tawaki and others were in lawful custody.

Another case on which reliance is placed is **Wiltshire v Barrett** [1966] 1 Q.B.312. It

was a civil action brought by the plaintiff who had been stopped driving a car by a police constable. The plaintiff stopped the car but refused to give his name and address and to get out of the car. The constable felt that the driver was unfit to drive through drink and arrested him without a warrant. The plaintiff was injured while being forced out of the car, was taken to the police station where he was examined by a doctor who was of the opinion that he was not unfit to drive through drink. The officer in charge of the police station released him from custody without charging him or requiring him to enter into a recognizance to appear before a Magistrate. The plaintiff then brought a civil action for damages, and the claim was allowed on the ground that the arrest was unlawful. It will be seen that this case has no relevance vis-à-vis facts of this case.

Reliance has also been placed on **Inowe v King** [1921] W.L.R.52, where it was held that merely carrying a stick was not an offence. In this case the accused was charged under section 68 of the Criminal Code which can be invoked when the person goes armed without lawful occasion in such a manner as to cause terror. On these simple facts it was held that the offence was not proved. In the present case, however, the situation is entirely different where two of the accused were found armed with grass cutter and even if they had been armed with sticks and had used in the same manner in which they

did, they would become liable.

Another case referred to by the learned Counsel is of **Colin Chisam**. This was a case where a prisoner was charged with the killing of another person and he maintained that the killing took place in defence of a relative or friend. It was held that in order that the defence for plea of self-defence will be available, the prisoner must have believed that that relative or friend was in imminent danger and the belief must have been based on reasonable grounds. Reasonable grounds for such a belief may be found on a genuine mistake of fact. I do not find any relevance of this authority so far as the facts of the present case are concerned.

Another case on which reliance is placed **is J.W. Dwyer, Ltd. v Receiver for the Metropolitan Police District** [1967] 2 ALL ER. It was a case for claim of damages by the plaintiff whose jewellery shop had been robbed. The Manager's wife who was upstairs had heard an unusual noise and when she entered the shop she was also threatened and the robbers took away the property. The plaintiffs brought a claim against the Receiver for the Metropolitan Police District under section 2 of the Riot (Damages) Act, 1886. It was held that the claim failed because the thieves had not satisfied the requirement of section 2 that they should be assembled tumultuously as well as riotously.

It was a necessity to prove that a tumultuous assembly caused such a commotion that the forces of law and order should have been well aware of the threat which existed and they have taken steps to prevent damage being caused. I do not find any relevance of this case. Here is a case where the police officers were themselves threatened and made helpless in the Police Station itself as already discussed.

The learned Public Prosecutor, Mrs. N. Deo, has cited some case law in support of her arguments, and now I would like to make a brief reference to the same. The first case which is brought to my notice is **R v McNamara** [1954] V.L.R. p. 137. It was held that on the charge of assault based on the accused's threats of violence to some other person, the jury should be directed that it is necessary that the accused's conduct created fear or violence in the other person's mind. Another case **Hinchliff v Sheldon** [1955] 3 All ER p. 406. It was a case where the question was whether there was obstruction caused to the police when they were about to enter some licensed premises. The Court held that the term "obstructing" within the meaning of section 2 of the Prevention of Crimes Amendment Act, 1885, meant making it more difficult for the police to carry out their duties. The submission of the learned Public Prosecutor is that in section 340(2) also, the word "obstructing" is used and the same principle should apply and the accused should be held guilty for committing the offence of Serious Assault as clearly they made it

difficult for the police officers in the Police Station to discharge their normal duties. These cases certainly support the contention of the learned Public Prosecutor.

In respect of unlawful assembly, the case of **R v Kamara & Ors.** [1972] 3 ALL ER p.999 has been brought to my notice. In this case it was held that the danger to peace and tranquility of neighbourhood is to be established and it is to be seen whether rational and firm persons apprehended danger. It was further held that if persons inside a building were put in a fear, then it was immaterial that no one outside the building had been put to fear. It was held that like affray the offence of unlawful assembly could be committed inside the building provided that the assembly occurred in such circumstances as to lead rational and firm persons on the premises to apprehend the breach of the peace. This case is certainly helpful to the Prosecution inasmuch as in the present case the unlawful assembly occurred in the premises of the Police Station and the police themselves were put into fear and made helpless. Another case on which reliance is placed is **Roderick Alexander Ferguson & Others** [1970] Court of Appeal (Criminal Division) p.499. In this case, the Court held that any person who actively encourages or promotes an unlawful assembly or riot, whether by words, by signs or by actions, or by participating in it, is guilty of the offence. The principle of law laid down in these cases certainly

advances the case of the prosecution having regard to the facts and circumstances of the present case.

In the light of my foregoing discussions, I hereby conclude that the Prosecution has not been successful in bringing home the guilt to the accused Rene Harris in respect of Charge No. 5 relating to section 469 of the Criminal Code, and he is entitled to the benefit of doubt in respect of this charge. He is accordingly acquitted of this charge. I further conclude that the Prosecution has been successful in bringing home the guilt to all the three accused in respect of other charges. They are found guilty accordingly. As contemplated by section 207 of the Criminal Procedure Act, 1972, I call upon the accused to make any submissions regarding any mitigating circumstances and on the question of sentence, and they may lead any evidence, if they so wished.

G. L. CHOPRA
RESIDENT MAGISTRATE
18.6.98

ORDER

I have given the accused an opportunity of being heard regarding the mitigating circumstances. The learned Counsel, Mr. David Aingimea, has submitted before me that the Court is already well aware about the status and standing of the accused Mr. Rene Harris and also Mr. Milton Dube, who is Managing Director of Milton Ross Corporation. The learned Counsel submits that having regard to the entire circumstances of the case and the background in which the incident took place, this Court has discretion to show leniency in the matter of sentence. It is further submitted that the accused do not have any record of previous conviction. My attention has been invited by the learned Counsel to Section 19 of the Criminal Code and subsequent amendments applicable to Nauru.

I have given my serious thought to these submissions. In the ordinary course, the offences under Sections 142 and 340(2) have to be treated very seriously, especially when such an incident takes place in a Police Station and the police officers themselves become victims at the hands of the accused. At the same time, I am conscious of the entire background in which the incident took place. This is a case where a little more tact on the part of concerned police officers and a little more patience on the part of the accused could have averted the entire unpleasantness and pain which has been caused to the police officers. I feel that there has been a mishandling of the situation on the part of the concerned police officials and also Mr. Harris. Mr. Rene Harris has been a Member

of Parliament for many years and even now he is a member of the present Parliament.

The purpose of punishment is really to reform a wrong doer, if possible, and to restore order and discipline in society, and in the present case I am satisfied that all the three accused can be reformed to show proper conduct in the future.

Keeping in view Mr. Rene Harris' status and long public service as a Member of Parliament, I feel that sentence of imprisonment is not indicated. I further find that Milton Dube, who is also having a status of his own, and Melvin Dube, in fact, acted on the advice of Mr. Rene Harris and who himself may have been under a wrong impression that he was acting rightly within the law. In view of this, it will not be proper to impose any sentence of imprisonment in respect of these two accused as well.

I am satisfied that sentence of fine will serve the ends of justice. Accordingly, I hereby convict and sentence the three accused as under: -

1. **MR. RENE HARRIS:**

Under Section 142 of the Criminal Code - To pay a fine of $500

Under Section 340(2) of the Criminal Code - To pay a fine of $500

Under Section 63 of the Criminal Code - To pay a fine of $100

Under Section 62 of the Criminal Code No separate sentence as it is covered by Section 63 above

Under Section 48 of the Nauru Police Force Act, 1972 To pay a fine of $50

Under Section 5(c) of the Police Offences Ordinance, 1967

No separate sentence as it is previously covered by Section 48 of the Nauru Police Force Act, 1972.

In all $1150. I further direct that in default of payment of fines, the accused will undergo simple imprisonment for a period of one month.

2. **MR. MILTON DUBE.**

Under Section 142 of the Criminal Code - To pay a fine of $500

Under Section 340(2) of the Criminal Code - To pay a fine of $500

Under Section 63 of the Criminal Code - To pay a fine of $100

Under Section 62 of the Criminal Code — No separate sentence as covered by Section 63 above.

Under Section 69 of the Criminal Code - To pay a fine of $100

Under Section 48 of the Nauru Police Force Act, 1972 - To pay a fine of $50

Under Section 5(c) of the Police Offences Ordinance, 1967

No separate sentence as it is previously covered by Section 48 of the Nauru Police Force Act, 1972.

In all $1250. I further direct that in default of payment of fines, the accused will undergo simple imprisonment for a period of one month.

3. **MELVIN DUBE:**

Under Section 142 of the Criminal Code	-	To pay a fine of $500
Under Section 340(2) of the Criminal Code	-	To pay a fine of $500
Under Section 63 of the Criminal Code	-	To pay a fine of $100
Under Section 62 of the Criminal Code	-	No separate sentence

as it is covered by Section 63 above.

Under Section 69 of the Criminal Code - To pay a fine of $100

Under Section 335 of the Criminal Code - To pay a fine of $100

Under Section 48 of the Nauru Police Force Act, 1972 - To pay a fine of $50

Under Section 5(c) of the Police Offences Ordinance, 1967:

No separate sentence as it is previously covered by Section 48 of the Nauru Police Force Act, 1972.

In all $1350. I further direct that in default of payment of fines, the accused will undergo simple imprisonment for a period of one month.

I further direct that the two accused Milton Dube and Melvin Dube will enter into a Personal Recognizance of their own and one Surety each in the amount of $1000. Giving undertaking that they shall keep the peace and be of good behaviour for a period of one

year. I do not feel the necessity of demanding a similar undertaking from Mr. Rene Harris as I expect and I do hope that he will continue to use restraint and keep the peace.

G. L. CHOPRA
RESIDENT MAGISTRATE

12.6.98.