

IN THE DISTRICT COURT OF NAURU  
(Criminal Jurisdiction)

CRIMINAL CASE NO. 13 of 2015

BETWEEN:

**THE REPUBLIC OF NAURU**  
Complainant

AND:

**ADNAN CHOPANE**  
Defendant

*Mr. Livai Sovau for the Republic*

*Mr. Sevualoni Valenitabua Public Defender for the defendant*

*Date of hearing: 6, 7 and 13<sup>th</sup> June 2016*

*Date of Judgment: 24<sup>th</sup> June 2016*

Ruling on No Case to Answer Submission

**INTRODUCTION**

1. The defendant is charged with one count of unlawful assembly contrary to section 62 of the Criminal Code 1899.

2. Section 62 of the Criminal Code 1899 read:

*"Any person who takes part in an unlawful assembly is guilty of a misdemeanor, and is liable to imprisonment for one year"<sup>1</sup>*

3. Section 61 of the Criminal Code 1899 read:

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<sup>1</sup> Section 62 of the Criminal Code 1899

*"when three or more persons, with intent to carry out some common purpose, assemble in such a manner, as to cause persons in the neighborhood to fear on reasonable grounds that persons so assembled will tumultuously disturb the peace, or will by such assembly needlessly and without reasonable occasion provoke other persons tumultuously to disturb the peace, they are an unlawful assembly.*

*It is immaterial that the original assembly was lawful if, being assembled; they conduct themselves with a common purpose in such a manner as aforesaid.*

*An assembly of three or more persons who assemble for the purpose of protecting the house of anyone of them against persons threatening to break and enter the house in order to commit an indictable offence therein is not an unlawful assembly."*<sup>2</sup>

4. The defendant pleaded not guilty.

#### **THE EVIDENCE**

5. The evidence presented by the prosecution comprised the following:
- i) Agreed facts tendered
  - ii) Statements of witnesses tendered by consent.
  - iii) 10 individuals called to give evidence in court; and
  - iv) 3 CD's containing videos taken by various individuals marked as Zoe 1, Rachel 1 and Foulton 1.

#### **THE AGREED FACTS:**

6. The agreed facts are:-

- a) Adan Chopane (the accused) was in the assembly which assembled in front of the Beach House at Anibare District on the 27<sup>th</sup> February, 2015.
- b) The accused participated in the ensuing march on that day from the beach house to the Refugee Lodge at Anabare District.

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<sup>2</sup> Section 62 of the Criminal Code 1899

- c) The accused held a banner during the assembly and the ensuing March.
- d) The accused went to the police line in front of the Refugee lodge at Anabare and spoke with a police officer.
- e) The accused was later arrested by the police and taken to court; and
- f) He was also admitted to bail on the same day

**STATEMENTS TENDERED BY CONSENT**

7. The following statement were tendered by consent
- a) Statement by Constable Darryl Namaduk, dated 17.03.15 except the last paragraph of page 1 of that statement.
  - b) Statement by Sergeant Dan Botelanga, dated 18.03.15, except paragraphs 5 and 6 of page 1 of that statement.
  - c) Statement of Constable Dogalay Alefio dated 15.01.14
  - d) Statement of Inspector Czaristed Daniel, undated.
  - e) Statement of Senior Constable Vicromic Starr dated 27.02.15
  - f) Statement of Constable Alice Fritz dated 16.03.15
  - g) Both statements of Zoe Taleka, Community Liason Officer, dated 13.03.15 and 10.04.15 respectively.
  - h) Both statements of Junior Ollson one undated and the other dated 03.03.15.
  - i) Statement of Fulton Amram, undated.
  - j) Both undated statements of Inspector Raynor Tom
  - k) Statement of Commissioner of Police Corey Caleb
  - l) Statement by Inspector Sheeva Cook dated 05.04.15
  - m) Statement by Inspector Jacin Bop, undated
  - n) Statement by Sergeant Iyo Adam dated 19.05.15

**WITNESSES CALLED BY PROSECUTION TO GIVE EVIDENCE IN COURT.**

8. The prosecution also called 10 witnesses to give evidence in court.
9. At the close of the prosecution case Mr. Valenitabua representing the defendant made a no case to answer submission.
10. The upshot of the submission by Mr. Valenitabua is that the prosecution has not adduced evidence to prove the element of common purpose that is "*with intent to carry out a common purpose namely to walk to the Government Complex in Yarren to stage a protest*"<sup>3</sup>

**ASSESSMENT OF THE PROSECUTION CASE**

11. Four witnesses have given evidence that:
  - i) When the refugees arrived, our commanders (Inspector Raynor Tom and SP Gregor Garoa, about 5 meters in front of our skirmish line, were advising the refugees to stop but they gathered up and some of the male refugees did encouraged them all to continue on (walk) their peaceful protest to the Nauru Government Building<sup>4</sup>
  - ii) When the refugees arrived, our commanders (Insp Raynor Tom and SP Gregar Garoa), about 5 meters in front of our skirmish line, were advising the refugees to stop but they gathered up and some of the male refugees did encouraged them all to continue on (walk) their peaceful protest to the Nauru Government building.<sup>5</sup>
  - iii) When refugees arrived, our commanders (Insp Raynor Tom and SP Gregor Garoa), about 5 meters in front of our skirmish line, were advising the refugees to stop but they gathered up and some of the male refugees did

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<sup>3</sup> Particulars of the offence charged dated 3<sup>rd</sup> March 2015

<sup>4</sup> Paragraph 8 page 1 of statement of Senior Constable Vicromic Star dated 27<sup>th</sup> February 2015

<sup>5</sup> Paragraph 8 page 1 of statement of Constable Alice Fritz dated 16<sup>th</sup> March 2016

encouraged them all to continue on (walk) their peaceful protest to the Nauru Government building.<sup>6</sup>

iv) Going in clockwise direction to the government building. As they were walking they were chanting yelling freedom and justice offshore shut down<sup>7</sup>

12. None of the evidence as summarized in paragraph 11(i)(ii)(iii) and (iv) of this ruling was challenged by the defence by way of cross-examination or during cross-examination. It must therefore be taken to have been admitted by the defence. I reject the submission by Mr. Valenitabua that the element of common purpose or intention to march to the Government Complex at Yarren to stage a protest is not made out at this stage of the proceedings.

13. I find that the defendant has a case to answer.

Dated this 24<sup>th</sup> day of June 2016



Emma Garo  
Resident Magistrate



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<sup>6</sup> Paragraph 8 statement of Constable Darryl Namaduk dated 17<sup>th</sup> March 2015

<sup>7</sup> Evidence of Constable Jayjay Bop