

IN THE DISTRICT COURT OF NAURU  
(Criminal Jurisdiction)

CRIMINAL CASE NO. 28 of 2016

BETWEEN:

THE REPUBLIC OF NAURU  
Complainant

AND:

JESSE JEREMIAH AND OTHERS  
Defendant

*Mr. Filimoni Lacanivalu for the Republic*  
*Mr. Vinci Clodumar for the defendants*

*Date of hearing: 28 September 2016*  
*Date of Judgment: 19 October 2016*

**Judgment**

1. The defendants are charged with the following offences:

**First Count**

**Statement of Offence**

Dangerous: Contrary to section 67 of the Motor Traffic Act.  
2014

**Particulars of offence**

Joshilla Kepae on the 30<sup>th</sup> May 2016 at Nauru drove a white  
motor vehicle upon the public high way in a manner  
dangerous to the public

**Second Count**

**Statement of Offence**

Common Assault: Contrary to section 78(1) (a) (i), (b) and  
(i) of the Crimes Act 2016

Particulars of offence

Jesse Jeremiah on the 14<sup>th</sup> of June 2016 at Nauru caused damage to the motor vehicle belonging to Quinlon Akua and was reckless about causing to the said property

**Eight Count**

Statement of offence

Public Nuisance: Contrary to section 248(1)(a) and (b) of the Crimes Act 2016

Particulars of offences

Molina Kepae and Sally Jeremiah on the 15<sup>th</sup> of June 2016 at Nauru in a public place being the front of Government office engaged in a conduct namely encouraging a fight against Patrina Sasa Akua

2. Mr. Clodumar has submitted that the defendants in counts 1 and 8 ought to have been separately charged because the allegations in the two counts are separate incidents, that are alleged to have occurred on different dates. Therefore the institution of the charge as presented against all the defendants is a nullity.
3. The prosecution on the other hand insisted on proceeding with the charges as presented. Mr. Lacanivalu on the other hand submits that the charges as instituted are valid. Further submitting that the charges can be dealt at one time because this matter involve three families that have a history of fighting each other over the past years and months. There have been confrontations between these families, the Akuas on the one side and the Jeremiahs and Kepaes on the other side. The prosecution submits that the connection between the charges are in this history of confrontations between the two families and forms the series of events prosecution claim arise from or connected to this dispute.
4. In *Reg. v Kray*<sup>1</sup> the court observed that:

*"...Offences cannot be regarded<sup>2</sup> as of similar character for purposes of joinder unless some sufficient nexus exists between them. Such nexus is certainly established if the offences are so connected that evidence of one would be admissible on the trial of the other, but it is clear that the rule is not restricted to such cases."<sup>3</sup>*

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<sup>1</sup> *Reg. v Kray (Ronald) (C.A) QB 1970 1 125*

<sup>3</sup> *Reg. v Kray (Ronald)(C.A) QB 1970 1 125 at page 130*

Joshilla Kepae, Tyhani Jeremiah and Denton Jeremiah on the 14<sup>th</sup> of June 2016 at Nauru intentionally engaged in a conduct that resulted in a direct application of force by means of punching and kicking Ms. Shytrina Reweru without her consent.

**Third Count**

Statement of offence

Common Assault: Contrary to section 78(1) (a) (i), (b) and (i) of the Crimes Act 2016

Particulars of offence

Josh Kepae on the 14<sup>th</sup> of June 2016 at Nauru intentionally engaged in a conduct that resulted in a direct application of force by means of pushing the chest of Ms. Pina Stephen without her consent

**Fourth Count**

Statement of offence

Threatening to cause serious harm: Contrary to section 92(a), (b) (i)

Particulars of the offence

Josh Kepae on the 14<sup>th</sup> June 2016 at Nauru intentionally engaged in a conduct that resulted in a direct application of force by means of pushing the chest of Ms. Pina Stephen

**Fifth Count**

Statement of offence

Recklessly causing harm contrary to section 74(ii) of the Crimes Act 2016

Particulars of the offence

Josh Kepae on the 14<sup>th</sup> of June 2016 at Nauru threatened to cause harm to Ms. Pina Steven by showing her a bush knife and telling her "I will wack this in your ass" intending that she fear the threat will be carried out and the threat was made in circumstances in which a reasonable person would fear that the threat will be carried out.

**Sixth Count**

Statement of offence

Common Assault contrary to section 78(1) (a) (i) and (b) of the Crimes Act 2016

Particulars of the Offence

Josh Kepae on the 14<sup>th</sup> June 2016 at Nauru intentionally engaged in conduct that resulted in the direct application by means of pulling and slamming Ms. Indella Steven to the ground and dragging her without her consent.

**Seventh Count**

Statement of offence

Damaging Property: Contrary to section 201 of the Crimes Act 2016

The court in the case of R v Kray further held that:  
"It is not desirable, in view of this court that rule 3 should be given an unduly restricted meaning, since any risk of injustice can be avoided by the exercise of the judge's discretion to sever the indictment. All that is necessary to satisfy the rule is that the offences should exhibit such similar features as to establish a prima facie case that they can properly and conveniently be tried together...When the judge came to exercise his discretion to sever the indictment he had to recognize- and we think he did recognize-the inevitable prejudice which is created where a defendant had to face two charges of two murders instead of one. Nevertheless this consideration is not conclusive where the two cases exhibit two common features which render a joint trial desirable in the general interests of justice, regard being had to the interests not only of the defendants in question, but also of the Crown, the witnesses and the public"<sup>4</sup>

5. Mr. Clodumar has not shown any prejudice that the named defendants would suffer from a joint trial for the offences. I refuse to sever the charges. I find that the indictment as and in the form presented valid.

Dated this 19<sup>th</sup> day of October 2016



Emma Garo  
Resident Magistrate



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<sup>4</sup> Reg. v Kray (Ronald)(C.A) QB 1970 1 125 at page 131