

**IN THE DISTRICT COURT OF NAURU Criminal Case No. 30 of 2013
CRIMINAL JURISDICTION**

REPUBLIC

V

Eric Duburiya

Date of Hearing: 24 February 2016

Date of Judgement: 2nd March 2016

*Mr. Filimoni Lacanivalu of the office of the Director of
Public Prosecutions for the Republic*

*Mr. Sevualoni Valenitabua of the Office of Legal Aid for the
defendant*

RULING

AGREED FACTS

1. The defendant was charged in the District Court on the 25 February 2013.
2. He was charged with the first count of Common Assault and second of Dangerous Driving.
3. The Charge which was in the form of a Complaint by a Public Officer and was signed by the Resident Magistrate.
4. The charge under the second count, was laid under section 19(1) of the now repealed Motor Traffic Act 1937 (The 1937 Act)
5. The Motor Traffic Act 1937 was repealed by the Motor Traffic Act 2014 ("the 2014 Act").

ISSUES

6. The issues to be determined by the court are:
 - i) Whether the Charge laid under the 1937 Act and signed by the Resident Magistrate is invalid for not being counter-signed by a public officer.
 - ii) Whether the Transitional provision of the 2014 Act allows the charge of Dangerous Driving laid on 25.02

13 to be continued despite the repeal of the 1937 Act.

iii) Whether the charge laid under s 19 (1) of the 1937 Act could still be laid in an amended charge despite the repeal of the 1937 Act.

7. Mr. Valenitabua representing the defendant has pointed out that the 2014 Act was certified on the 10 September 2014 and that Section 3 of the 2014 Act repealed the whole of the 1937 Act.

WHETHER THE CHARGE LAID UNDER THE MOTOR TRAFFIC ACT 1937 AND SIGNED ONLY BY THE RESIDENT MAGISTRATE IS INVALID ON THE GROUND THAT IT WAS NOT SIGNED BY A PUBLIC OFFICER

8. Mr. Valenitabua representing the defendant submits that the charge dated 25 February 2013 is invalid due to non-compliance with section 51(3) of the Criminal Procedure Act 1972.

9. The starting point for consideration is section 51 which reads:

"(1) Proceedings may be instituted either by the making of a complaint to a magistrate or by the bringing before the District Court of a person who has been arrested without a warrant.

(2) Any person who believes from a reasonable and probable cause that an offence has been committed by any person may make a complaint thereof to a magistrate.

(3) A complaint may be made orally or in writing, but if made orally shall be reduced to writing by the magistrate: and in either case it shall be signed by the complainant and the magistrate:

Provided that, where proceedings are instituted by a police officer or any other public officer acting in the course of his duty, a formal charge duly signed by the officer may be presented to the magistrate and shall, for the purposes of this Act, be deemed to be a complaint.

(4) The magistrate, upon receiving any such complaint, shall, unless the complaint has been laid in the form of a formal charge under the last preceding section, draw up, or cause to be drawn up, and sign a formal charge containing a statement of the offence with which the accused is charged.

(5) Where an accused person who has been arrested without a warrant is brought before the District Court, **a formal charge, containing a statement of the offence with which the accused is charged, shall be signed and presented by a police officer**"¹ Emphasis mine.

10. "The terms of section 51 (3) of the Criminal Procedure Act is very clear in that, a complaint made by a public officer or a policer must be signed by the said officer and presented to the Magistrate to be deemed a complaint. This would then have the effect of triggering the criminal process by way of filing a charge or a complaint. A failure to comply with section 51 (3) of the Criminal Procedure Act 1972, is therefore fatal to any charges lodged by a public officer or a police officer. This is because no complaint can be deemed to have been made, and therefore no charge is on foot if it is not signed by a public officer or police officer. And such a failure cannot be rectified by way of an amendment. One cannot amend or change something that has not yet come into existence."²

11. Section 51(4) of the Criminal Procedure Act 1972 reinforces the need for complaints to be signed by persons lodging the complaint or instituting the criminal process. Section 51(4) of the Criminal Procedure Act 1972 provides for the situation where a defendant is arrested without a warrant and is brought before the District Court, **a formal charge containing a statement of the offence with which the accused is charged, shall be signed and presented by a police officer**³. Emphasis mine

12. I find that the failure to comply with the provisions of section 51(3) of the Criminal Procedure Act 1972 is fatal to the effect that no charge was legally on foot against the defendant on the 25 February 2013.

WHETHER THE TRANSITIONAL PROVISION OF THE MOTOR TRAFIC ACT 2014 ALLOWS THE CHARGE OF DANGEROUS DRIVING LAID ON 25 FEBRUARY 2013 TO BE CONTINUED DESPITE THE REPEAL OF THE MOTOR TRAFIC ACT 1937.

¹ Section 51 of the Criminal Procedure Act 1972

² R v Ranin Akua and Daniel Itsimera District Court Criminal Case No. 74 of 2013 paragraphs 9 page 4.

³ Section 51(4) Criminal Procedure Act 1972

13. Section 131(4) of the Motor Traffic Act 2014 reads:

*"Any proceedings instituted or action began under the repealed Act before the commencement of this Act which has not been determined before the commencement of this Act continues until determined under the repealed Act"*⁴

14. Mr. Valenitabua has submitted proceedings have to be properly and validly instituted before section 131(4) of the Motor Traffic Act 2014 can have any effect and as such the proceedings purported to have been instituted against the defendant under the now repealed Motor Traffic Act 1937 cannot therefore continue under the transitional provisions of the 2014 Act.

15. I accept that the submission urged upon the court by Mr. Valenitabua is a proper construction of the effect of Section 131(4) Motor Traffic Act 2014. Because of my finding in paragraphs 10,11, and 12 of this judgment, I rule that the charge of dangerous driving purported to have been instituted against the defendant on 25 February 2013, is not a proceeding to which the transitional provision of section 131(4) of the Motor Traffic Act 2014 applies.

WHETHER OR NOT THE CHARGE LAID UNDER SECTION 19(1) OF THE 1937 ACT COULD STILL BE LAID IN AN AMMENDED CHARGE DESPITE THE REPEAL OF THE 1937 ACT

16. Having ruled that the failure to comply with the provisions of section 51(3) of the Criminal Procedure Act 1972 is fatal to the effect that no charge was legally on foot against the defendant on 25 February 2013, the submission by Mr. Valenitabua that non-compliance with section 51(3) of the Criminal Procedure Act cannot now be pursued under the Motor Traffic Act 2014 is the only logical and reasonable conclusion to accept. There is no charge on foot upon which an amendment can be sought or allowed. To now attempt to file a fresh charge under the repealed Motor Traffic Act 1937 cannot be allowed for the simple reason that said Motor Traffic Act 1937 is no

⁴ Section 131(4) of the Motor Traffic Act 2014.

longer in existence. And section 131(4) of the Motor Traffic Act 2014 does not cover the situation as is present in this case. As properly pointed out by Mr. Valenitabua, the accused's liability did arise under the repealed law. That liability was to have been the subject of the charge dated 25 February 2013. That charge was not in compliance with section 51(3) of the Criminal Procedure Act 1972. So that liability collapsed with the invalidity of the charge and it cannot be now pursued any further even under the Motor Traffic Act 2014.

17. Section 158 of the Criminal Procedure Act 1972, confers the powers that can be exercised by the Supreme Court to quash information for being defective on the District Court. I find that the charge purported to have been lodged and filed against the defendant on 25 February 2013 is defective and cannot be altered by any alteration that could be authorized by the provisions of section 191 of the Criminal Procedure Act 1972. The only just order to make is to quash the charge purported to have been filed by the prosecution with the court on 25 February 2013 and discharge the defendant under section 192 of the Criminal Procedure Act 1972

Dated this 2 March 2016

Emma Garo
Resident Magistrate

