



**DATE OF JUDGMENT:** 12 December 2025

**APPEARANCE:**

**PROSECUTION:** M Suifa'asia

**DEFENDANTS:** R Tagivakatini

## **JUDGMENT**

### **INTRODUCTION**

1. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants had pleaded guilty to the charges laid against them and were dealt with accordingly.
2. Nikalus Garoa was charged as follows:

#### **Count 1**

#### **Statement of offence**

**UNLAWFUL POSSESSION OF AN ILLICIT DRUG:** *Contrary to Section 6 of the Illicit Drugs Control Act 2004.*

#### **Particulars of Offence**

**NIKALUS GAROA** on the 3<sup>rd</sup> day of May, 2025, at Yaren District in Nauru, did unlawfully possess illicit drugs namely, cannabis, also known as marijuana, in a motor vehicle he was driving namely, a black-door Toyota Harrier sedan, registration number TT1394, in 2 separate compartments namely, dashboard underneath the gear box and a black rectangular box on the back seat, weighing in at 0.3 grams and 0.4grams respectively.

#### **Count 2**

#### **Statement of offence**

**DRIVING UNDER INFLUENCE OF LIQOOR:** *Contrary to Section 69(1) and 79(1)(a) of the Motor Traffic Act 2014.*

### **Particulars of Offence**

*NIKALUS GAROA on the 3<sup>rd</sup> day of May, 2025, at Yaren District in Nauru, did drive a motor vehicle namely, a black-door Toyota Harrier sedan, registration number TT1394, while he was under the influence of intoxicating liquor.*

3. The 1<sup>st</sup> defendant pleaded guilty to count 2 and pleaded not guilty to count 1 of the charges laid against him.
4. The prosecution opened its case on 11 November 2025. The prosecution filed a Memorandum of Agreed Facts and informed me that, in light of the agreed facts, it would not call any of its witnesses and would rely on the Memorandum of Agreed Facts. Thereafter, the prosecution closed its case. The defendant's counsel agreed to this because the defendant did not dispute the circumstances under which the cannabis was found in the motor vehicle that he was driving. His main contention is that he did not have the necessary knowledge and intention to possess the cannabis that was found in the motor vehicle.
5. On the same day, the 1<sup>st</sup> defendant was put on his defence. Directions were given to him in relation to his right to remain silent, give evidence under oath or make an unsworn statement in court. The defendant chose to give evidence under oath. Further, he also called a witness to give evidence on his behalf. Thereafter, he closed his case.
6. The parties sought time to file written closing submissions. The defendant's counsel filed his closing submissions on 12 November 2025. The counsel for the prosecution filed her closing submissions on 5 December 2025. I heard the parties' closing submissions on 5 December 2025.
7. I am to determine whether the prosecution has proven beyond a reasonable doubt that on 5 May 2025, the 1<sup>st</sup> defendant unlawfully possessed 0.3 grams and 0.4 grams of cannabis in contravention of section 6 of the *Illicit Drugs Control Act 2004* ("the Act")?
8. The following are my reasons for this judgment.

### **PRINCIPLES RELEVANT TO THE DECISION-MAKING**

9. I will outline my role before I proceed to consider the evidence of the witnesses.
10. I am required to decide whether the prosecution has proven the essential elements of the alleged offence beyond a reasonable doubt. The prosecution has the onus to prove

the elements of the charge beyond a reasonable doubt. The defendant is not required to prove or disprove anything. I cannot find the defendant guilty unless the evidence which I accept satisfies me beyond a reasonable doubt of his guilt. If there is an explanation consistent with the defendant's innocence, or if I am unsure where the truth lies, then I must find that the charge has not been proven beyond a reasonable doubt.

11. A reasonable doubt will result if, in my mind, I am left with an honest and reasonable uncertainty about the guilt of the defendant after I have given careful and impartial consideration of the evidence.
12. While the burden of proof is on the prosecution, it does not mean that every fact in dispute is to be proved beyond a reasonable doubt; only the elements of the charge need to be proven beyond a reasonable doubt. However, evidentiary facts must be clearly proved before they are treated as established.
13. I have considered all the evidence placed before me. I must determine whether each witness is honest, reliable, and credible. By doing so, I can rely on the evidence provided and make a finding that the facts have been proven. In this regard, I can accept part of the witness's evidence, reject part of it, or accept or reject it all. I am not required to give all evidence the same weight.
14. In assessing the credibility of a witness, I examined the veracity and/or sincerity of the witness to see whether he or she was trying to be truthful. Furthermore, to assess the witness's reliability, I examined the witness's ability to recall accurately. The following are the factors that I considered:
  - a) *ability and opportunity to observe events*
  - b) *firmness of memory*
  - c) *capacity to resist pressure to modify recollection*
  - d) *factors which might have resulted in reconstruction or mistaken recollection*
  - e) *willingness to make concessions where recollection may be faulty, especially when favorable to the other party*
  - f) *testimony that seems unreasonable, impossible or unlikely*
  - g) *partiality/motive to lie*
  - h) *general demeanor*
  - i) *Internal consistency: does testimony change during direct or cross examination?*
  - j) *External consistency: does testimony harmonize with accepted,*

*independent evidence?*<sup>1</sup>

15. I remind myself that inaccuracy about secondary, marginal or unimportant facts often arises in cases because the witnesses are focused on central facts, and may differ on what evidence they give based on what they perceive to be essential. Furthermore, witnesses have different abilities to observe and recall their memories.
16. I must deliver my judgment in accordance with the evidence, which would require me to make findings of fact upon considering the evidence before me. With this regard, I am to carefully consider the evidence logically and rationally, bringing an open and unbiased mind to the evidence. Still, I may use my common sense and experience in assessing the evidence before me. I must do this dispassionately, impartially, without prejudice, and without favour or ill-will.
17. From the established facts, I may draw a reasonable inference, which must be justifiable and drawn beyond a reasonable doubt. I must not draw an inference from the direct evidence unless it is a rational inference in all the circumstances.
18. The defendant did not have to give evidence and call a witness to give evidence on his behalf during his trial; however, he gave evidence in his defence and called a witness to give evidence on his behalf. His evidence is no better or worse than the evidence of the other witnesses, just because he is the defendant. I must approach his evidence in the same way that I would approach the evidence of any other witness. I must also remind myself that the defendant did not assume any onus to prove anything at the hearing when he decided to give evidence in his defence. I can only find the defendant guilty of the alleged offences after I have considered all the evidence, and having done so, I have rejected the defendant's evidence, and accept beyond a reasonable doubt the prosecution's evidence in relation to the essential elements of the alleged offences.
19. I must emphasise that in reaching my decision, I am not required nor is it necessary for me to articulate findings about every part of the evidence. All I have to do is determine whether the prosecution has proven all the elements of the alleged offence beyond a reasonable doubt. In that regard, I may have to resolve some primary factual disputes.
20. I have considered all the evidence before me. I will summarise most of the evidence before me, and discuss the parts of the evidence which are essential to

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<sup>1</sup> *R v Killman* [2024] BCPC 104

my analysis.

#### **WHAT ARE THE ESTABLISHED FACTS?**

21. The 1<sup>st</sup> defendant does not dispute that he was driving the motor vehicle, namely, a black-door Toyota Harrier sedan, registration number TT1394, on 3 May 2025, and that when the police officers stopped him at Yaren District, they found cannabis in the said motor vehicle. The 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants were in the said motor vehicle when the police officers stopped it in Yaren District.
22. The 1<sup>st</sup> defendant does not dispute that the substance seized in the above-mentioned motor vehicle was cannabis.
23. The 1<sup>st</sup> defendant also does not dispute that Manah Namaduk rented the above-mentioned motor vehicle. She is Job Namaduk's sister.
24. The 1<sup>st</sup> defendant gave evidence that the night before 3 May 2025, he was drinking alcohol with Job Namaduk until 12.49 am. He then dropped Job at his home and picked up the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants and drank alcohol until 4 am on 3 May 2025. They were riding the abovementioned vehicle around the island while drinking alcohol. At 4 am, the 1<sup>st</sup> defendant was dropped off at his home. At around 10 am on the same day, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants picked the 1<sup>st</sup> defendant from his house to drive them to get food. They were intoxicated and couldn't drive.
25. The 1<sup>st</sup> defendant drove to Meneng District and bought food. He was stopped by police officers in Yaren District and then taken to the police station with the other defendants. He further gave evidence that the cannabis was not his and that he did not know about it. None of the other defendants knew to whom the cannabis belonged. The other defendants told him that two older guys had entered the above-mentioned vehicle at the place where they had been drinking alcohol before they came to pick him.
26. It was put to the defendant that Job Namaduk had been charged with being in unlawful possession of cannabis in another matter. It was also put to the defendant that he knew about the cannabis found in the car. He denied having knowledge of it. He said that he did not see it when he came into the car.
27. The 3<sup>rd</sup> defendant gave evidence on behalf of the 1<sup>st</sup> defendant. He corroborated the evidence of the 1<sup>st</sup> defendant. He also gave evidence that before picking up the 1<sup>st</sup> defendant at around 4 am they were drinking alcohol at Anibare District. The above-mentioned motor vehicle was there and left open. The 3<sup>rd</sup> defendant saw two unknown, larger guys enter the above-mentioned vehicle. He did not say anything to them because he was smaller than they were and afraid to speak up.

28. During cross-examination, the 3<sup>rd</sup> defendant agreed that he knew that the 4<sup>th</sup> defendant had been charged in another matter for unlawful possession of cannabis. It was put to the 3<sup>rd</sup> defendant that he was smoking cannabis with the other defendants. He denied it. However, he did give evidence that he saw the cannabis in the above-mentioned motor vehicle, but did not tell the other defendants about it.
29. I accept the 1<sup>st</sup> defendant's evidence as being reliable. There was consistency in his evidence. Further, I also accept the evidence of the 3<sup>rd</sup> defendant.

**WHETHER THE PROSECUTION HAS PROVEN BEYOND A REASONABLE DOUBT THAT THE 1<sup>ST</sup> DEFENDANT UNLAWFULLY POSSESSED 0.3 GRAMS AND 0.4 GRAMS OF CANNABIS?**

30. The 1<sup>st</sup> defendant is charged with unlawful possession of an illicit drug in contravention of section 6 of the *Illicit Drugs Control Act 2004*, which provided that:

***Unlawful possession***

*A person who, without lawful authority, possesses any illicit drug commits an offence and is liable on conviction to a term of imprisonment of not less than 12 months but not exceeding 3 years.*

31. The starting point is that the prosecution must prove beyond a reasonable doubt that the defendants unlawfully possessed 0.3 grams and 0.4 grams of cannabis.
32. The Act does not define the term “possession”. However, many case authorities from jurisdictions with similar legislative provisions hold that the term “possession” requires a physical and mental element to be established before a finding of possession can be made. Most, if not all, refer to the leading authority of the House of Lords in *Warner v Metropolitan Police Commissioner* [1968] 2 All ER 356 as a starting point, in which Lord Wilberforce made the following observations at pages 391, 392, 393, and 394 of the judgment with regard to the term “possession” in the context of unlawful possession of an illicit drug:

*The Act of 1964 refers to possession, a concept which is both central in many areas of our legal system, and also lacking in definition. As Viscount Jowitt has said of it “the English law has never worked out a completely logical and exhaustive definition of possession” (United States of America v Dollfus Mieg et Compagnie SA ([1952] 1 All ER 572 at p 581 [1952] AC 582 at p 605)). In relation to it we find English law, as so often, working by description rather than by definition. Ideally, a possessor of a thing has complete physical control over it; he has knowledge of its existence, its situation and its qualities; he has received it from a person who intends to confer possession of it and he has himself the intention to possess it exclusively of others. But these elements are*

*seldom all present in situations with which the courts have to deal, and where one or more of them is lacking, or incompletely present, it has to be decided whether the given approximation is such that possession may be held sufficiently established to satisfy the relevant rule of law. As it is put by Pollock and Wrightj, possession is defined by modes or events in which it commences or ceases, and by the legal incidents attached to it.*

...

*The Drugs (Prevention of Misuse) Act 1964, penalises the “possession” of drugs; it makes it unlawful to “have in possession” a specified substance. ...*

*What is prohibited is possession—a term which is inconclusive as to the final shades of mental intention needed, leaving these to be fixed in relation to the legal context in which the term is used. How should the determination be made?*

*If room is to be found, as in my opinion it should, in legislation of this degree of severity, for acquittal of persons in whose case there is not present a minimum of the mental element, a line must be drawn which juries can distinguish. The question to which an answer is required, and in the end a jury must answer it, is whether in the circumstances the accused should be held to have possession of the substance rather than mere control. In order to decide between these two, the jury should, in my opinion, be invited to consider all the circumstances—to use again the words of Pollock and Wright—the “modes or events” by which the custody commences and the legal incident in which it is held. By these I mean relating them to typical situations, that they must consider the manner and circumstances in which the substance, or something which contains it, has been received, what knowledge or means of knowledge or guilty knowledge as to the presence of the substance, or as to the nature of what has been received, the accused had at the time of receipt or thereafter up to the moment when he is found with it. his legal relation to the substance or package (including his right of access to it). On such matters as these (not exhaustively stated) they must make the decision whether, in addition to physical control, he has, or ought to have imputed to him the intention to possess, or knowledge that he does possess, what is in fact a prohibited substance. If he has this intention or knowledge, it is not additionally necessary that he should know the nature of the substance. I see no difficulty in making clear to the jury what is required in order to establish possession and on this point I desire to associate myself with the observations of my noble and learned friend Lord Pearce.*

*...I think that the line was drawn here at the right point. On the same lines is the South African decision of R v Langa. There the drug (“dagga”) was contained in a suitcase. The court held that mere physical control of it was not*

*enough but it was the opinion of Watermeyer J that the necessary knowledge—viz guilty knowledge—might have been inferred from the fact that the accused took the suitcase to a witness by night and asked him to keep it, and that on arrest he told an implausible story about the suitcase and later in the box denied all knowledge of it. The Canadian case of Beaver v Reginam was another package case, and, as here, the question for the court was whether mere custody (control) was sufficient. The accused's story was that he believed the package to contain an innocent substance. The majority of the Supreme Court, with whose judgment I agree, held that mere custody (control) was not sufficient and it was clearly their view that if the accused had proved that he honestly believed the contents of the package to be innocent, he should have been acquitted of the charge of possession.*

33. Wylie J in **R v L HC Hamilton CRI 2007-019-9621** [2009] NZHC 1586 (25 March 2009) at [27], [28], and [29], while referring to the **Warner v Metropolitan Police Commissioner**, made the following observations concerning the elements of the offence of unlawful possession of an illicit drug:

*[27] Here both accused have been charged as principals. To obtain a conviction or convictions it is necessary for the Crown to adduce evidence sufficient to prove beyond reasonable doubt that either Mr L or Mr L or both of them were in possession of the methamphetamine.*

*[28] The concept of possession in the context of the Misuse of Drugs Act 1975 was explained in R v Cox [1990] NZCA 13; [1990] 2 NZLR 275. Hardie Boys J in the Court of Appeal's judgment observed as follows at 278:*

*Possession involves two, not three, elements. The first, often called the physical element, is actual or potential physical custody or control. The second, often described as the mental element, and which may be called the element of mens rea, is a combination of knowledge and intention: knowledge in the sense of an awareness by the accused that the substance is in his possession (which is often to be inferred or presumed); and an intention to exercise possession. In the leading case of R v Warner [1969] 2 AC 256, Lord Morris of Borth-y-Gest expressed it this way at p 289:*

*“In my view, in order to establish possession the prosecution must prove that an accused was knowingly in control of something in circumstances which showed that he was assenting to being in control of it:”*

*[29] To establish the mental element of possession there must be knowledge of the presence of the drug, an intention to exercise possession over it, and a willingness to exercise that possession. There can of course be joint possession by more than one person of a drug, e.g. where the drug is shared or where two or more people have an interest in the drug.*

34. In light of the above authorities, I find that for a person to be guilty of an offence for unlawful possession of an illicit drug he or she must have:

- i. Custody or control of the illicit drug (that is, he or she must have physical possession of the illicit drug); and
- ii. The necessary mens rea to establish possession.

To establish the necessary mens rea, it needs to be proved that he or she has:

- i. Sufficient knowledge of the presence of the illicit drug; and
- ii. The intention to possess it exclusively for him or herself, except for those he or she is in concert with.

35. Section 41 of the Act makes provision for a presumption of fact as follows:

***Presumption relating to possession of illicit drugs***

*Where in the prosecution of a person for an offence under this Act or the regulations, it is proved that an illicit drug, controlled chemical or controlled equipment was found:*

- (a) in the immediate vicinity of the accused; or*
- (b) on any animal, vehicle, craft and that the accused was at the time on or in charge of, or that he or she accompanied, any such animal, vehicle or craft,*

*it is presumed, until the contrary is proved, that the accused was found in possession of the illicit drug, controlled chemical or controlled equipment.*

36. Section 27 of the ***Crimes Act 2016*** provides as follows:

***27 Legal burden of proof on defendant***

*(1) A burden of proof that a written law imposes on the defendant is a legal burden if the Act expressly:*

- (a) specifies that the burden of proof in relation to the matter in question is a legal burden;*
- (b) requires the defendant to prove the matter; or*
- (c) creates a presumption that the matter exists unless the contrary is proved.*

*(2) A legal burden of proof on the defendant shall be discharged on the balance of probabilities.*

37. The cannabis was seized from the above-mentioned motor vehicle, which the 1<sup>st</sup> defendant drove, and the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants were the passengers. Section 41(b) of the Act is engaged; therefore, a presumption of possession is established. Interestingly, the presumption of possession applies to all the defendants because they were in the above-mentioned motor vehicle when the police officers stopped it. However, only the 1<sup>st</sup> defendant was charged with unlawful possession of cannabis.
38. As per section 27 of the *Crimes Act 2016*, section 41 of the Act places a legal burden on the 1<sup>st</sup> defendant, which is to be discharged by him on a balance of probabilities. When determining whether the defendants have displaced the presumption of possession, I would need to consider all the evidence before me to decide, upon the balance of probabilities, that the 1<sup>st</sup> defendant has proved that he did not possess the cannabis.
39. The evidence before me is that the 1<sup>st</sup> defendant did not exclusively use the above-mentioned vehicle on 3 May 2025. Job Namaduk had used it. So did the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants.
40. The prosecution brought into evidence that Job Namaduk has been charged with unlawful possession in another matter, and so was the 4<sup>th</sup> defendant. Further, the 4<sup>th</sup> had pleaded guilty to unlawful possession of cannabis in another matter.
41. When considering all the evidence before me, I am mindful that the prosecution bears the onus to prove its case beyond a reasonable doubt. Further, in the current matter, the prosecution must prove beyond a reasonable doubt that the 1<sup>st</sup> defendant possessed the cannabis exclusively for himself, except for those with whom he has entered into a joint enterprise to possess cannabis. There was also an onus on the prosecution to negate possession by any other person who had access to the above-mentioned motor vehicle. This is what the prosecution did not do. Instead, cross-examination questions opened the possibility that the other persons who had access to the above-mentioned motor vehicle possessed the cannabis
42. The prosecution's failure to charge all the defendants for unlawful possession of cannabis creates a lot of doubt as to who was actually in possession of the cannabis, especially when the 4<sup>th</sup> defendant had pleaded guilty to unlawful possession of cannabis in another matter at around the same time when this matter was filed, especially when there is no evidence that the cannabis "*formed a common pool from which all had the right to draw at will, and whether there was a joint enterprise to consume drugs together*".<sup>2</sup> This issue could have been appropriately addressed if all the defendants

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<sup>2</sup> *R. v Searle* [1971] Crim L R 592

had been charged with unlawful possession, as required by section 41(b) of the Act.

43. This inherently weakens the prosecution's case, and when balanced with all the evidence before me, it makes the 1<sup>st</sup> defendant's version of events more likely. Therefore, I find that the 1<sup>st</sup> defendant has displaced the presumption of possession on a balance of probabilities.
44. In light of the above, I find that the prosecution has not proved beyond a reasonable doubt that the 1<sup>st</sup> defendant unlawfully possessed 0.3 grams and 0.4 grams of cannabis as charged.

### **VERDICT**

45. For the foregoing reasons, I find the 1<sup>st</sup> defendant not guilty of count 1 of the charge laid against him.

### **ORDERS**

46. The 1<sup>st</sup> defendant is to be released from remand custody with immediate effect.

Dated this 12<sup>th</sup> day of December 2025.

  
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Resident Magistrate  
Vinay Sharma

