



**IN THE DISTRICT COURT OF NAURU  
AT YAREN  
CRIMINAL JURISDICTION**

Criminal Case No. 2 of 2023

**BETWEEN:                      REPUBLIC OF NAURU**

**PROSECUTION**

**AND:                              MAHLONE ENGAR**

**DEFENDANT**

**BEFORE:                      Resident Magistrate Mr. Vinay Sharma**

**DATE OF TRIAL:              7 August 2024 and 30 September 2024**

**DATE OF JUDGMENT:      14 February 2025**

**APPEARANCE:**

**PROSECUTION:              W Deiye**

**DEFENDANT:                 R Tagivakatini**

# JUDGMENT

## INTRODUCTION

1. The defendant is charged as follows:

### COUNT 1

#### Statement of offence (c)

**BREACHING BAIL CONDITIONS:** *Contrary to section 27(1) of the Bail Act 2018*

#### Particulars of Offence (d)

**MAHLONE ENGAR** on the 09<sup>th</sup> day of October, 2022 at Denig District in Nauru, had been released on bail for Criminal Case No. 49 of 2020 and without reasonable cause had breached the condition no. 8 of his bail for the said case which was imposed by the court and committed another offence which is Criminal Case No. 69 of 2022.

2. On 7 August 2024 the prosecution called two witnesses for its case against the defendant. Thereafter, the prosecution closed its case. There was sufficient evidence against the defendant. The defendant was put to 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. He chose to remain silent. The parties sought time to file their written closing submissions.
3. The defendant's counsel filed his closing submissions on 15 August 2024. The counsel for the prosecution filed her closing submissions on 24 August 2024. Subsequently, on 4 September 2024 the defendant filed submissions in support of an application to reserve my judgment pending the determination of District Court Criminal Case No. 69 of 2022. The counsel for the prosecution filed her submissions in reply on 18 September 2024. I heard both parties on their submissions on 30 September 2024.
4. I reserved my judgment pending the determination of District Court Criminal Case No. 69 of 2022 by consent of the parties
5. I am to determine if the prosecution has established the charge against the defendant beyond reasonable doubt.
6. The following are the reasons for my judgment.

## PRINCIPLES RELEVANT TO THE DECISION-MAKING

7. I will outline my role before I proceed to consider the evidence of the witnesses.
8. I am required to decide whether the prosecution has proven the essential elements of the alleged offence beyond reasonable doubt. The prosecution has the onus to prove the elements of the charge beyond reasonable doubt. The defendant is not required to prove or disprove anything. I cannot find the defendant guilty unless the evidence which is accepted by me satisfies me beyond reasonable doubt of his guilt. If there is an explanation consistent with the innocence of the defendant, or I am unsure of where the truth lies, then I must find that the charge has not been proven beyond reasonable doubt.
9. 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.
10. While the burden of proof is on the prosecution, it does not mean that every fact in dispute is to be proved beyond reasonable doubt, only the elements of the charge needs to be proven beyond reasonable doubt. However, evidentiary facts must be clearly proved before they are treated as established.
11. I have considered all the evidence placed before me. I must determine whether each of the witnesses are an honest, reliable and credible witness, and in doing so I can rely on the evidence that the witness has given and make a finding that the facts about which the witness has given evidence on has been proven. With this regard, I can accept part of the witness's evidence and reject part of that evidence or accept or reject it all. I am not required to give all evidence the same weight.
12. 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. Further, to assess the reliability of a witness, I examined the witness's ability to accurately recall a memory. The following are the factors that I considered:
  - i. *ability and opportunity to observe events*
  - ii. *firmness of memory*
  - iii. *capacity to resist pressure to modify recollection*
  - iv. *factors which might have resulted in reconstruction or mistaken recollection*
  - v. *willingness to make concessions where recollection may be faulty, especially when favorable to the other party*
  - vi. *testimony that seems unreasonable, impossible or unlikely*
  - vii. *partiality/motive to lie*
  - viii. *general demeanor*

ix. *Internal consistency: does testimony change during direct or cross examination?*

x. *External consistency: does testimony harmonize with accepted, independent evidence?*<sup>1</sup>

13. 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. Further, witnesses also have different abilities of observation and recollection of their memories.
14. I must deliver my judgment in accordance with the evidence, which would require me to make findings of facts 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 but I may use my common sense and experience in my assessment of the evidence before me. I must do this dispassionately, impartially, without prejudice, and without favour or ill-will.
15. From the established facts, I may draw a reasonable inference, which must be a justifiable inference and drawn beyond reasonable doubt. I must not draw an inference from the direct evidence unless it is a rational inference in all the circumstances.
16. The defendant did not give evidence in his defence, and he did not have to do so. I may not draw any adverse inference against the defendant for not giving evidence, unless the law permits me to do so. I can only find the defendant guilty of the alleged offence after I have considered all the evidence, and have accepted beyond reasonable doubt the prosecution's evidence in relation to the essential elements of the alleged offence.
17. I must emphasize 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 reasonable doubt. With that regard, I may have to resolve some primary disputes over the facts.
18. I have considered all the evidence before me. I will summarize most of the evidence before me, and discuss the parts of the evidence which are essential to my analysis.

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

## PROSECUTION'S CASE

19. The prosecution called 2 witnesses, namely, Acting Inspector Vicromic Starr ("PW1"), and Senior Constable My-Girl Cecil ("PW2")
20. I have considered all the evidence given by the prosecution witnesses. There is no substantial dispute with regard to the evidence given, and I find it to be established. I will provide a very brief summary of it.
21. PW1 and PW2 gave evidence in relation to District Court Criminal Case No. 49 of 2020 in which the defendant was released on bail with several bail conditions, including the condition that he was "to be of good behavior". The bail document was tendered in evidence. In 2022 the defendant was charged for intimidating a police officer and damaging property, in District Court Criminal Case No. 69 of 2022. PW1 and PW2 were the investigating officers in relation to the charge in District Court Criminal Case No. 69 of 2022.

## DEFENDANT'S CASE

22. The defendant did not give evidence. However, he maintained through his counsel that the determination of District Court Criminal Case No. 69 of 2022 is essential to determination of this matter.

## ANALYSIS

23. Section 27(1) of the Bail Act 2018 provides as follows:

***Penalty for absconding, giving false residential address or breaching bail conditions***

*(1) An accused person who has been released on bail and who fails without reasonable cause to surrender to custody, gives a false residential address, or otherwise without reasonable cause, breaches any condition of bail imposed by a court, commits an offence and upon conviction is liable to a fine of \$2,000- or 12-months imprisonment or to both.*

24. The defendant is charged for committing an offence, that is, his alleged offending in District Court Criminal Case No. 69 of 2022. The bail condition requiring the defendant "to be of good behavior" is akin to a good behavior bond, which is only breached when the person subject to such a condition reoffends or in other words commits a crime during the period of the condition of "good behavior".
25. The counsel for the prosecution and the counsel for the defendant agree that in the current circumstances the charges against the defendant can only be made out if the defendant is convicted of the charge laid against him in District Court Criminal Case

No. 69 of 2022. Both refer to the Supreme Court's judgment in **Republic v Agege** [2021] NRSC 13; Criminal Case 23 of 2020 (5 March 2021), in which the Supreme Court made the following observations at [3] of its judgment:

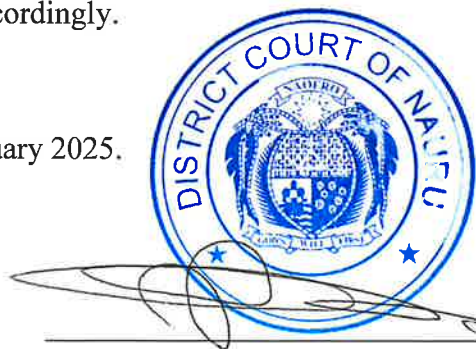
*[3] There was also included in the same charge a fourth count namely, Breach of Bail Conditions contrary to s. 27(1) of the Bail Act 2018. This Count charged John-Fij Agege alone with breaching " ....bail condition no. 4 issued by the Supreme Court in Criminal Case No. 8/2020 on the 3 June 2020, where he had reoffended whilst on bail." The relevant condition is not included in the particulars as it should have been but, nevertheless, it reads : "(4). **Not to offend while on bail.**" In my view such a condition is only breached upon conviction of an offence and not otherwise. In this case, the allegation against John-Fij Agege is not that he is not to be arrested for or charged with an offence, rather, it is that he is "not to offend" and the relevant particulars (in the past tense), is that he "...reoffended whilst on bail" without any conviction of an offence being identified.*

26. On 29 January 2025 the defendant was acquitted of all charges laid against him in District Court Criminal Case No. 69 of 2022. In light of **Republic v Agege**, supra I find that the charges in this case cannot be sustained against the defendant because the defendant was not convicted of the alleged offending which gave rise to the charge in this matter. As a result, the defendant did not reoffend or commit a crime whilst he was on bail. I also note that **Republic v Agege**, supra requires that the conviction of an offence must be particularized in the charge. Therefore, I find that the charge against the defendant in this matter is unsubstantiated.

## VERDICT

27. For the foregoing reasons, I find the defendant not guilty of count 1 of the charge and acquit him of it accordingly.

Dated this 14 day of February 2025.



Resident Magistrate

Vinay Sharma