



**IN THE DISTRICT COURT OF NAURU**

**Criminal Jurisdiction**

**Criminal Case No. 11/2022**

**THE REPUBLIC OF NAURU**

**-v-**

**J. A.**

*Before: RM. Neil Rupasinghe*

*Prosecutor: Ms Francis Puleiwai*

*Defence: Mr Thomson Lee*

*Date of Sentence: 17<sup>th</sup> of November 2022*

**SENTENCE**

*Catchwords: Threatening to Kill contrary to section 91(a)(b)(i) and (c) Damaging Property contrary to section 201(a)(b) of the Crimes Act 2016.*

1. The accused was charged with one count of Threatening to kill his grandaunt Snooky Agadio and another count of damaging the food storage cabinet belonging to Snooky Agadio.
2. The accused pleaded guilty to both counts after the charges were read, explained and understood by him at open court. Further, the defendant agreed with the below-mentioned summary of facts.

3. The summary of facts of count one suggested the accused, on the 31<sup>st</sup> of May 2022 at Meneg District of Nauru, threatened to cause serious harm to his grandaunt Snooky Agadio and damaged the food storage cabinet belonging to Snooky Agadio.
4. Upon the change of plea, the court ordered the parties to submit sentencing submissions, victim impact reports, and pre-sentence reports and scheduled the sentence for today.
5. According to the mitigation, the accused is 17 years old and now, a male first offender. He was 16 years of age at the time of committing the offence. He dropped out of school. The accused pleaded guilty at the first opportunity, indicating he is remorseful for his action. He promises he will not re-offend and has made genuine attempts to reform himself. He has fully cooperated with the police. The accused is remanded for three months.
6. When considering the aggravating fact, I noticed the accused and victims are related and reside in domestic surroundings. Per the law of Nauru, domestic issues are not subject to reconciliation under Section 123 of the Criminal Procedure Act. However, Section 48 of The Child Protection and Welfare Act 2016 provides that imprisonment may only be imposed against a child as a sentencing option of last resort.
7. Section 3 of The Child Protection and Welfare Act 2016 states that every person under 18 years is considered a child. Accordingly, I conclude that the accused deserves a non-custodial sentence.

### ***“3 Definitions***

*(1) In this Act, unless the context requires otherwise:*

*“Child’ or ‘Children’ means every person being below the age of 18 years.”*

( Emphasis Added)

8. Section 123 of the Criminal Procedure Act 1972 is relevant to reconciliation. Which provides as follows;

*"A Court may on terms of payment of compensation or other terms approved by it promote reconciliation and encourage and facilitate the settlement in an amicable way of all proceedings before it **for common assault or for any other offence of a personal or private nature** for which, upon conviction, a fine or sentence of imprisonment for a **term not exceeding one year** may be imposed, and may thereupon order the proceedings to be stayed or terminated."*

*(Emphasis added)*

9. The penal Section of the first and second count could be reproduced as follows.

**"91 Threatening to kill**

*A person commits an offence if the person:*

- (a) threatens to kill another person (or someone else); and*
- (b) the person:
  - (i) intends the other person to fear the threat will be carried out; or*
  - (ii) is reckless about whether the other person fears the threat will be carried out; and**
- (c) the threat is made in circumstances in which a reasonable person would fear the threat will be carried out.*

*Penalty: 7 years imprisonment."*

**"Section: 201 Damaging property**

*A person (the 'defendant') commits an offence if the person:*

- (a) causes damage to property belonging to another person, or to the defendant and another person; and*
- (b) is reckless about causing damage to the property.*

*Penalty: 5 years imprisonment"*

10. The discretion of the magistrate's sentencing is broad under Nauruan Law. It has been prescribed in section 277 of The Crimes Act 2016 and which provides as follows;

**"Kind of Sentences**

**Sec: 277.**

*Where a court finds a person guilty of an offence, it may, subject to any particular provision relating to the offence and subject to this act, do any of the followings;*

- (a) record a conviction and order that the offender serve a term of imprisonment;*
- (b) with or without recording a conviction, order the offender to pay a fine;*
- (c) record a conviction and order the discharge of the offender;*
- (d) without recording a conviction, order the dismissal of the charge for the offence; or*

*(e)imposed any other sentence or make any order that is authorised by this or any other written law of Nauru"*

11.I believe the court has a duty under Child Protection And Welfare Act to consider an alternative sentence to minimise the mixing of young juvenile offenders with hard criminals at the prison as much as possible.

### **The Sentence**

12.After considering the nature of the offence, mitigations, aggravating facts, especially time spent at remand and the defendant's age, I think an alternative sentence would be appropriate. I act under Section 277(e) of The Crimes Act and enter non-conviction for both counts.

1]Further, instead of paying the fine, as the defendant doesn't have the means to pay a fine, I order the defendant to clean Nauru hospital for 60 weekdays from 9 am to 5 pm continuously under the supervision of the Probation officer.

2] the defendant has to complete the above task on or before 1<sup>st</sup> March 2023. If the defendant fails to comply with the community order, he will be committed to imprisonment according to a defaulted number of days.

3]The court's probation officer must provide a report on the execution of this order before the end of March 2023.

4] the defendant is subject to the Permanent Domestic Violence Restraining Order below. The conditions of the **DVRO** are;

[i] The defendant must stay away from his GrandAunt's residence at Meneng until he reaches 18.

[ii] The defendant must not Physically or Mentally molest the victim-complainant, Snooky Agadio

13. Defendant will have 21 days to appeal this decision.

