



IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 46/2021

THE REPUBLIC OF NAURU

-V-

JULIE OLSSON

Before: RM. Neil Rupasinghe

Prosecutor: Mr Shah S.

Defence: In person

Date of Judgment: 23rd August 2022

JUDGMENT

Catchword: *making a Fales sworn statement under section 224(1)(a)(b)(c) of the Crimes Act 2016, making a false statement under section 223(1) (a)(b) (c)*

1. The accused was charged with one (01) count of making a false statement under section 223(1) (a)(b) (c) and, in the alternative, one(01) count of making a sworn statement under section 224(1)(a)(b)(c) of the Crimes Act 2016. The accused pleaded not guilty on 1st June 2022. The matter is fixed for hearing on 15th august 2022.
2. At the hearing, the Prosecution called three witnesses to support their case. They were named [PW-1]Alumita Lekenau, [PW-2] Ronald Prakash, and [PW-3] Irene Waidubu.
3. The summary of facts relevant to count 01 suggested that the accused, on 21st June 2021 at Yaren District of Nauru, made a sworn statement, as was allowed by the law to make a sworn statement, and the accused made the statement in documentary

form, which was false, and the statement was used as an evidence in a legal proceeding.

4. The summary of facts relevant to count 02 suggested that the accused, on 21st June 2021 at Yaren District of Nauru, made a statement before irene waidabu, who is authorised by law to witness the statement, and the accused made the false statement, and the statement was used as an evidence in a legal proceeding.

The Law

5. The penal section related to these two counts is available in the Crimes Act 2016, which could be reproduced as follows;

"Section 223 Making false sworn statement

(1) A person commits an offence if:

(a) the law requires or allows the person to make a sworn statement;

and

(b) the person makes the statement in documentary form; and

(c) if the statement were used as evidence in a legal proceeding,

the person would be guilty of perjury.

Penalty: 5 years imprisonment.

(2) A person must not be prosecuted for an offence against this section if:

(a) the Prosecution relies on the evidence of 1 witness only in a proceeding for the offence; and

(b) the evidence of the witness is not corroborated.

(3) In this section:

'legal proceeding' has the meaning given in section 222.

"Section 224 Making false statement

(1) A person commits an offence if:

(a) the law requires or allows the person to make a statement (other than a sworn statement) before another person authorised by law to witness the statement; and

(b) the person makes the statement; and

(c) if the statement were used as evidence in a legal proceeding, the person would be guilty of perjury.

Penalty: 3 years imprisonment.

(2) A person must not be prosecuted for an offence against this section if:

(a) the Prosecution relies on the evidence of 1 witness only in a proceeding for the offence; and

(b) the evidence of the witness is not corroborated.

(3) In this section:

'legal proceeding' has the meaning given in section 222."

6. Therefore this court would list the issues to be resolved in this matter as follows;

1] Is a sworn statement made by the accused or made before a person authorised by law to witness it?

2] Has the statement been used as evidence in the judicial proceedings?

3] whether the said statement contain false facts/information?

Evidence

7. PW-1, Alumita Lekenaua stated that she had been a barrister since 2006, now working in a law firm named David Aingimea Law Associates in Anibare District, Nauru. They engage in civil and criminal litigations and could recall a civil matter

bearing 15/21 in which she was the assigned counsel. The case was an interlocutory application, and a statement of claim and affidavits were filed by the accused and one Ron Keppa on 21st July 2022. The witness marked the relevant **affidavit dated 21/6/2021 signed by the accused as PEX-1**. She stated that it was an urgent ex-parte application over a land dispute. However, it was made inter-party and heard before Former CJ Fatiaki on 23rd June 2021; they represent the defendants Vyko Adeang and Dedauno Engar. The court issued the interlocutory orders against their clients after hearing the parties. Her clients were served the orders on the same date.

8. PW-1 added that the case facts involved a parcel of land named Adeto, called portion 80. the plaintiff sought to restrain works by the defendant on the said land as they have filed a lawsuit connecting to the same. Since all the appeals from the Nauru Land commission are determined by the Supreme Court witness conducting searches at the Supreme Court registry to confirm the claim about the filed suit indicated in paragraph 2 of the affidavit by the accused. She stated that she found no existing case as mentioned in the accused's affidavit. After that, the clients of the witness filed a strikeout application for the entire claim by the plaintiffs. At the strikeout hearing, the court allowed the plaintiffs and counsels, including the accused, to furnish what they had claimed in (PEX-1) affidavit of accused. But they have failed to provide any. Witness added that on some occasions, the accused appeared before the court, assisting the plaintiff counsel, Mr Ekwona. The witness marked a copy record of civil case number 15/21 as **PEX-2**.
9. The strikeout application on civil case number 15/21 was heard before Khan J on 3/9/2021, and it was granted; PW-1 added that in paragraphs 34 to 36 of the ruling (which is available in PEX-2), the court had observed the conduct of counsels/pleaders when making factual statements without being honest about it, which amounts to misleading the court. She said now there are two appeals, one for strikeout of the orders and dismissal of entire proceedings, and another one is intervening proceeding by the accused. The witness said Fatiaki CJ, in justification of his interlocutory order, has mentioned that he considered all the documents filed, including the affidavit by the accused.
10. Witness said there is an appeal before the Court of Appeal against the strikeout ruling of the 15/21 case; she marked the certified copy of the same appeal-bearing case number, Civil App 02/21, as **PEX-3**. In addition, she stated PEX-3 containing another affidavit by the accused dated 4/10/2021. In paragraph 5 of the said affidavit, the accused mentioned that on 17/8/2021, the plaintiffs filed a writ and statement of claim against the Nauru Land Committee and her client Dedauno Engar.
11. PW-2, Ronald Prakash stated he had been the Registrar of Nauru Courts since 2017, and his roles and responsibility are overall department administration as the head. He added one of the responsibilities is to engage as the keeper of records. He affirmed that any original document filed in the registry is filed according to rules and released to litigants. And witness added the copy record is the entire case record of a case in the registry; copies are available to counsels after he is certified with his signature and stamp. Therefore witnesses could identify and document. A copy record of Civil case number 24/21 given to the witness recognised his signature. Witness marked said document as **PEX-4**. The parties of the case 24/21 are the plaintiff of the civil case 15/21 and the Nauru Land Committee. And the subject of the case is the same land in the issue of 15/21 called Adeto P.I portion 80.
12. PW-3, Irene Waidabu stated she has been the Deputy Registrar of The Supreme Court for eight years, and one of her duty to witness the signing of affidavits. Witness, when given the PEX-1, recognised her signature and date as 21/6/2021.

She added that she knew the accused who signed the said affidavit throughout her life. The witness confirmed that the accused was well-versed in the content of the affidavit.

13. The Prosecution closed their case. Since there is a case to answer, this court advised the accused on her rights. The accused said she needed her rights under article 10(3) of the Constitution, as she did when the opportunity was to cross-examine the prosecution witness throughout the proceeding. The accused refused cross-examination and mentioned she would not question them as it amounts to representing herself in person. When the copies of marked documents were served, she refused to accept them. Based on the accused's conduct, this court would consider that she had selected to remaining silent option at a trial.
14. The Prosecutor sought time till 4 pm on 16th August 2022 to file their written submission. The matter was fixed for judgment on 18th August. However, on 16th August, the accused indicated she would file written submission. On 17th August, by letter to the registry accused sought a time extension for her written submission. The court granted time till 1.00 pm on 18th August. Later, the accused filed a notice of motion and sought the judgment date of 18th August 2022 to be deferred to 23rd August 2022; she further sought an order to file her written submission on 22nd August 2022 as she had work commitments. The bench granted additional time until 9:00 am on 22nd August 2022.
15. On 22nd August 2022, the accused filed her written submission containing 16 pages with a bundle of documents. Since neither the accused did not question the prosecution witnesses nor presented her case, this bench would consider anything within the limits of the procedural law of Nauru. Therefore this court would not consider or evaluate the evidence that the accused included in the written submission or bundle of the document. But will accept any argument or relevant case authority that attempts to raise reasonable doubt.

Analysis

16. The Evidence of PW-3 confirmed affidavit marked as PEX-1 had been signed on 21st June 2021 before PW-3 by the accused. According to paragraph 02 of said document, there was no suit against the Nauru Land Committee at the time of making the same. Therefore this court concludes that issue number 01 of this case has been established sufficiently by the Prosecution.
17. In paragraphs 18-24,110 of the submission, the accused mentions that due to a misunderstanding of the meaning of "Suit", she included that in PEX-1. Further, she raised the issue that no case number or names of the parties have been mentioned in her affidavit. Therefore, she did not intend to refer to a case before the court. On the other hand, paragraphs 57,102-106 defend her statement as accurate. She tries to justify this by stating that there were proceedings against Nauru Land Committee on 1st April 2021. However, none of the documents related to NLC proceedings has been marked as evidence before Supreme Court at 15/21 Action, which creates enormous doubt in the judicial mind. The accused added that she signed the affidavit before PW-3.
18. This court note that "Before Nauru Land Committee "and "Against the Nauru Land Committee" are entirely different facts. The first one indicates a pending matter before NLC, and the second suggests an appeal before Supreme Court. After analysing paragraph 2 of PEX-1, certainly evident that what the accused meant is not a proceeding before NLC but a Case against NLC before the Supreme Court.

19. Oral evidence of PW-1 and page 106 of Document marked as PEX-2, the case record of civil action number 15/21, confirmed the PEX-1 affidavit had been used by the accused at a judicial proceeding before The Supreme Court on 21st June 2021. Therefore this court concludes that issue number 02 of this case has been established sufficiently by the Prosecution.

20. The actus reus or physical conduct of offences making Fales sworn statement under section 224 and making a false statement under section 223 of the Crimes Act 2016 represented by issues number 01,02 mentioned in paragraph 6. this court finds the action related to the offence has proven. The most vital part of an offence is the mens rea or mental element, which is the effort to ascertain the guilty mind of the accused. After the court is satisfied with the guilt of an accused who does not have any justification for the conduct, the penalties would impose. Section 12 and 13 of the Crimes Act 2016 have provided as follows;

"Section 12; Elements of an offence

- (1) An offence consists of physical elements and fault elements.
- (2) However, the written law that creates the offence may provide:
 - (a) different fault elements for different physical elements; or
 - (b) that there is no fault element for 1 or more physical elements."

"Section 13; Establishing criminal responsibility for offences

A person must not be found guilty of an offence unless the Prosecution proves:

- (a) each physical element of the offence that is specified in the written law creating the offence that is relevant to establishing guilt; and
- (b) for each physical element for which a fault element is required—the fault element or 1 of the fault elements for the physical element."

21. The elements of both offences do not demand to prove the consequences of using false statements but merely using the same at a legal proceeding. Therefore, whether there is a consequence or not, the person involved is criminally liable for the Act. Sections 223,224 does not demand fault intention or fraudulently achieving a result. But knowledge of the false nature of statements is essential. Therefore, this could be defined as a strict liability offence. But in this case, the fact that the accused is a person who knows the law and her knowledge of ultimate results can not be disregarded. Section 17 of the Crimes Act 2016 further provided as follows;

"Section:17 Intention

- (1) A person has '*intention*' with respect to conduct if the person means to engage in the conduct.
- (2) A person has '*intention*' with respect to a circumstance if the person believes that it exists or will exist.
- (3) A person has '*intention*' with respect to a result if the person means to bring it about or is aware that it will occur in the ordinary course of events.

22. The accused has mentioned ***MaccKenzie vs Queen*** (1996) 190 CLR 348;90 A Crim R 468; 141 ALR 70 (at 356-357;75;474), an Australian High Court Case, and ***Tu'ivakano vs R***[2020] TOCA 8; AC 1 of 2020(30th October 2020) a Tongan Court of Appeal Case; which is to raise the issue of the accident, unintentional mistake. In short-term mental element or Actus rea of the offence. This court disagrees with following the same as section 222 of the Crimes Act demands the fault intention but

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23. The accused is a pleader or active legal practitioner in Nauru. The accused herself admitted content of PEX-1 was incorrect. In paragraph 17 of her affidavit contained in PEX-3(appeal at the Court of Appeal against the ruling of 15/21), the actual case connected to the land in issue was filed on 17th August 2021, not on 21st June 2021. Therefore this court does not hesitate about the false nature of accused's affidavit regarding the claim of a pending matter against the Nauru Land Committee.
24. According to PW-1, the interlocutory orders were granted solely based on the false statement in the PEX-1. It is a well-known fact that any court would stop any activity on the land when there are activities despite the pending court case. It is to preserve the status quo or subject matter. In the civil matter, the reasoning of Fatiaki CJ in granting restraining orders affirms perusing the plaintiffs' tendered document, including PEX-1. Therefore this court has no hesitation in concluding that the accused intended to obtain restraining orders by misleading the Supreme Court.

Conclusion

25. Therefore this court, for the above-discussed reasons, concluded the Prosecution had proven all the elements without reasonable doubt; the accused is guilty of one count of making a Fales sworn statement contrary to section 223(1)(a)(b)(c) of the Crimes Act 2016 and convicts the Accused accordingly.

