IN THE SUPREME COURT OF NAURU
(APPELLATE JURISDICTION)

CRIMINAL APPEAL NO. 4/2000

BETWEEN: **QUASKI ITAIA, KRIMO GIOUBA, ANDREW ADAM AND TITUS ABOUBO**

APPELLANTS

AND : **DIRECTOR OF PUBLIC PROSECUTIONS**

RESPONDENT

Date of Hearing : 14 March, 2001
Date of Decision: 15 March, 2001
Ribauw for Appellants
Director of Public Prosecutions

JUDGMENT

Each of the Appellants was convicted in the District Court on 18 May 2000 on two charges, namely:

1. Being upon premises without lawful excuse: c/s 424 A(a) Criminal Code Act 1899 of Queensland.

2. Stealing: c/s 398 Criminal Code Act 1899 of Queensland.

Each of the Appellants was sentenced to two months hard labour on each charge. The sentences to be served concurrently.

The Appellants lodged a notice of appeal on the ground of an unfair hearing. Until the hearing of the appeal no further statement of grounds was before the Court. At the hearing, the Pleader for the Appellants revealed that the grounds were really on lack of legal representation or failure to inform the accused

of their rights to representation and inordinate delay between charge and trial.

The accused were all youths aged between 15 ½ years to 17 years 3 ½ months. From the Court report they were to be treated as first offenders.

The Magistrate said "I have given my consideration to the question of sentences. The accused have depicted bad characters and in my opinion custodial sentences are necessary." He then proceeded to sentence them all to two months hard labour on both offences.

The Pleader for the Appellants drew the attention of the Court to a decision of Thompson C.J. in ***Roy Deidenang v The***

Republic (Criminal Appeal No. 22 of 1970).

That decision outlined the proper procedure to be followed when an accused pleads guilty. It was not clear from the note of Court proceedings in the District Court that such a course had been followed. Subsequent investigation by the D.P.P. has not added any light on what took place.

However, the Court has exercised some concern that it did not appear that the Magistrate had drawn the attention of the accused to the fact that each could be legally represented if they wished. The fact that all accused were minors and were apparently facing a possible custodial sentence may well have been considered by the Magistrate as reason enough to bring before the accused the opportunity to seek legal representation,

and even that the interests of justice may have required legal aid. On this point, the Court was referred to Article 10(3)(e) of the Constitution.

The Court agrees with the remarks of Thompson C.J. in **Deidenang**. That it is not necessary for a Court to address every accused appearing without representation charged with an offence to ask specifically or in terms of constitutional rights whether it is his wish to be legally represented. It is quite proper of a magistrate to accept a guilty plea and then to sentence provided the steps as outlined by Thompson C.J. are carried out. Those steps are outlined simply to be sure that there has been a fair hearing and that the accused has properly been convicted of the offence to which he has pleaded guilty.

However, having said so much, there are occasions when it is desirable that the matter of representation be put before the accused whether at the time of plea or before sentencing. One such case is when there is before the Court a young alleged offender who may face for the first time a custodial sentence, in this case, one of two months. At the same time, one has to symphatise with the Magistrate that this case was frustrating in that the four accused who had stolen in concert could, it appears, not be brought to the Court together – one or two seemingly always being absent. It is important for justice in this society that accused persons face their charges speedily and answer bail. If not, then bail may have to be refused until the Court hears the case. It was, indeed, a very convoluted process that was undertaken by the Court in this matter extending from 15 November 1999 to 18 May 2000. The frustrations of the Magistrate were evident.

to the District Court for the Appellants' pleas to be taken afresh with a further order to the District Court that Criminal Case No. 176/1999 be given a speedy hearing.

BARRY CONNELL
CHIEF JUSTICE

THE SEAL OF THE SUPREME COURT
REPUBLIC OF NAURU

The Magistrate did call for a probation report at the hearing on 15 November 1999. It would, at that time, have been an opportunity to suggest to each of the accused their right to be represented when the day for sentencing was arranged but the opportunity appears to have been missed.

The Pleader also submitted on delay but the Court was not convinced on that point.

BARRY CONNELL
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THE SEAL OF THE SUPREME COURT
REPUBLIC OF NAURU

ORDER.

The appeals of each Appellant are allowed. All convictions are quashed and sentences set aside. The cases are all remitted