IN THE DISTRICT COURT OF NAURU

In The Matter of a record of evidence having been taken or misplaced prior to final judgment

and

In The Matter of a case unduly delayed.

CRIMINAL CASE NO. 897/90
R v DEKKA DEMAURE.

RULING

This case has been bandied around enough. Dekka Demaure, the accused was charged for five traffic offences allegedly committed "on or about 26th October, 1989".

In studying the case file the Clerk of Court's case cover notes say:

Fresh Summons
Adj. 26/4/91 9:30 a.m. Warned.
Continuation 17/2/92. Adjourned for hearing 20/2/92 9:30 a.m. Pleaded Not Guilty.
Mr. D. Aingimea

The file cover shows admission by the Resident

Magistrate that she was "in a fog" about the case before preceeding to recreation leave overseas in March 1992.

Upon return from leave the file shows the following:

> On the cover the following was shown 25.3.92 set for trial 9.4.92. Inside Mr. D. N. Sharma the acting Magistrate made an order:
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> "To set a date on completion of details" etc. Presumably to reconstruct the progress of the case. It ended up with the final order: To await substantive Magistrate 24.4.92."

It is assumed that this was an adjournment to enable the Resident Magistrate to complete the case and hopefully not to explain the case to higher authority, but that is another matter. It is clear that there is no need for acting Magistrate to draw up a judgment by the reconstruction or reading of evidence of a returning Magistrate as he did not hear the case. The administrative correspondence on this file clearly shows the ills that sometimes befall us and often none

the fault of the accused. In order not to perpetuate these I am bound to make the following ruling especially with the view to the long delay in concluding this case.

There is no requirement to take notes by me and this matter could easily have been dealt with summarily on the spot as only one witness testified namely woman constable Haulangi. However, if our case cover notes are borne out by Inspector Tannang's report to the acting Resident Magistrate the first call for trial was made more than twelve months after the offence was alleged to have been committed. Then another long lapse where there is no explanation except for Inspector Tannang's notes which showed that the case was put before the Court for trial two years after it was filed. As averred to above there are some notes of concern by the acting Resident Magistrate Mr. D. N. Sharma culminating in an investigation based upon a presumption that a record of evidence was missing from the file before it left the substantive Magistrate's hands. No affidavits are on file and it is noted that the accused's counsel was not invited to fill in his view on the matter.

A dilligent search has not revealed any misplaced

record of evidence. A Clerk of Courts "cover notes" and Inspector Tannang's notes give good background material, however, it does not put the question of missing evidence beyond doubt. However, as the District Court is under my supervision I alone must take responsibility for the missing evidence of W.C. Haulangi and any cross examination on it (if any) there is no way out of that difficulty. As a result I must bend to the ancient maxim: Actus Curie Neminem Gravabit - An act of the Court shall prejudice no man.

For the following reasons a trial de novo will not serve the end of justice:

(a) The police in nearly three years only called one witness namely W. C. Haulangi and to allow them to call the others when they defaulted would instantly prejudice the accused;

(b) The lapse of time will not produce reliable evidence from both parties;

(c) The question of the Court's powers to revise its own interlocutory order which may have

been made immediately upon the discovery that no further prosecution witness was forthcoming :

for example -

a ruling that a prima facie ease was established and instead of defending accused opted for written submissions (prior to final judgment), or;

- an order for explanation from police as to why police witnesses were seen outside the Court but vanished before they were called in.

On the other hand a study of the Charge Sheet showed that these charges are not of a serious nature. This Court is at least cognizant of the fact that no damage to person or property occurred. The accused has retained a pleader at his own expense and the law has hung over his head for almost three years. From Inspector Tannang's notes it appears that prosecution has shown a particular lack of interest in this case- this is borne out by the Clerk of Courts' notes. The civil law maxim that the law assist those who are vigilant, not those who sleep over their rights in my humble view is applicable here too. It is regretted

that this court has to resort to cover notes.

Lastly there has been a lot of speculation in this case which is quite at odds with the decorum expected of the District Court. I am duty bound to put an end to this and in keeping with the spirit of the recent practice directions by the Honourable the Chief Justice in his endeavour to curb unconscionable delays in the District Court the scale must weigh in favour of the party who has suffered most that is the accused. He should and is hereby discharged without conviction on all counts.

Dated the 4th day of September 1992.

'IUNAISE V. HELU
RESIDENT MAGISTRATE