

**IN THE DISTRICT COURT OF NAURU
(Criminal Jurisdiction)**

CRIMINAL CASE NO. 109 of 2014

BETWEEN:

THE REPUBLIC OF NAURU
Complainant

AND:

ENZO MENKE
Defendant

Mr. Livai Sovau for the Republic
Mr. Ravunimase Tangivakatini for the defendant

Date of hearing: 10 October 2016
Date of Judgment: 17 October 2016

SENTENCE

INTRODUCTION

1. The defendant pleaded guilty to 1 count of damaging property contrary to section 469 of the Criminal Code 1899. The maximum penalty for this offence is 3 years imprisonment.
2. The facts are that on the 13th April 2013 between 1:00 am and 2:00 am in the night, the defendant came out of the reef bar at the Menen Hotel. As he was going to his vehicle a security officer followed him and asked him if he was okay. The defendant replied swearing and said he can drive. The defendant got into his vehicle and reversed the said vehicle which collided with a Mitsubishi vehicle registration number R786. As a result of the collision, the Government car's front bonnet and corner were damaged. On

this day the defendant willfully and unlawfully damaged the vehicle registration number R786 belonging to the Government.

3. The accused continued driving and as he drove away, he nearly crashed into the hotel wall beside the Reef Bar's main entrance. He applied the brakes, reversed and then drove away.
4. Section 469 is titled Malicious injuries in General and it reads:

*" Any person who willfully destroys or damages any property is guilty of an offence which, unless otherwise stated, is a misdemeanor, and he is liable, if no other punishment is provided, to imprisonment with hard labor for two years, or if the offence is committed by night, to imprisonment with hard labor for three years"*¹

5. The agreed facts submitted to the court did not show that the defendant reversed the vehicle he was driving into the vehicle registered as R786, with the specific intention to damage the said vehicle. Mere recklessness on the part of the defendant does not meet the threshold of the criminal intention to willfully destroy or damage the said vehicle registered as R786.
6. The facts as presented fail to prove the element of a specific intention on the part of the defendant to willfully damage the said vehicle. I therefore vacate the plea of guilty and order that this matter be listed for trial so that the court can hear the evidence and determine the issue of the defendant's guilt or innocence. This matter is adjourned to the 16 November 2016 at 10 am for mention for a trial date to be set.

Dated this 17 day of October 2016


Emma Garo
Resident Magistrate



¹Section 469 of the Criminal Code 1899