



## IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction  
Criminal Case No. 86/2022

THE REPUBLIC OF NAURU

-v-

MIKE KAM

*Before: RM. Neil Rupasinghe*  
*Prosecutor: Ms Joni Edward*  
*Defence: Mr Ravuanimasei Tagivakatini.*  
*Date of Sentence: 28<sup>th</sup> February 2023*

### SENTENCE

**Catchword:** *Sentence— Driving under the influence of liquor contrary to section 69(1) & (2)(a) Read with section 81 of the Motor Traffic Act 2014.*

1. The accused pleaded guilty to one count of driving under the influence of liquor contrary to sections 69(1) & (2)(a) of the Motor Traffic Act 2014 after the charge was read, explained and understood by him.
2. The defendant agreed to the summary of Facts suggesting that Mike Kam, on the 9<sup>th</sup> of December 2021, in Aiwo District, drove a motorcycle scooter on a public highway while intoxicated. The alcohol count in his breath had been 0.171 grams, exceeding the prescribed limit of 0.0525 grams of alcohol per 210 litres of breath.

3. Based on the plea of guilt, this court formally convicts the accused for the charge of driving under the influence of liquor contrary to sections 69(1) & (2)(a) of the Motor Traffic Act 2014.
4. This court prefers to mention **Section 79 of the Motor Traffic Act 2014**, which has described the Penalties for the relevant offence and which provides as follows:-

*"(1) Any person who is convicted of an offence under Section 69(2) is liable to:*  
*(a) for a first offence: (i) mandatory suspension of his or her driver's licence for 6 months; and (ii) a maximum fine of \$1,000; or (iii) imprisonment for 6 months;*  
*(b) for a second offence: (i) mandatory suspension of his or her driver's licence for 12 months; or (ii) a maximum fine of \$3,000; or (iii) imprisonment for 12 months; and*  
*(c) for a third offence: (i) mandatory suspension of his or her driver's licence for 5 years; and (ii) a maximum fine of \$10,000; or (iii) imprisonment for 3 years."*
5. The defendant filed sentencing submissions. Accordingly, the court would acknowledge the same and consider it when imposing fines and penalties.
6. There is no harm or damage to the general public by Defendant's conduct as the cause of this action is a police booking. Nevertheless, on the other hand, this court would not simplify the Defendant's behaviour due to the threat he created to himself and the lives of the general public who use the road facilities simultaneously.
7. Further, this court is mindful that the convict has aided in minimising the use of the Court's resources by pleading guilty at the very first opportunity, which is an excellent deal over public tax monies. He is a 47 years old first offender. Unemployed and he doesn't have an income. He is in a de facto relationship. his partner earns \$200 per week. Sought a noncustodial sentence and he is willing to pay a fine.
8. The Defendant cooperated with the police during the investigation by undergoing a breathalyser test and detention at the police station. This court would consider his conduct during the investigation as a sign of remorsefulness over the offence.

9. On the other hand, this court noticed that the level of alcohol at the time of the incident in the Defendant's body was, amounting to 0.171 grams of alcohol per 210 litres of breath. However, these courts will not consider mere intoxication as aggravating fact as it is itself an element of the offence but the level of intoxication or alcohol at the time of the offence. In this case, it is more than 03 times the prescribed limit, which is aggravating.
10. Similarly, this court will not consider driving the vehicle as an aggravating fact as it is an element of the offence; however, the size or capacity of the car is significant as the risk to the public lives depends on the same. This court noted that the model of the vehicle involved is a motorbike and bears a lower risk.
11. Further, even though there is no recorded harm or damage, this court is mindful of the threat created by the convict to the general public, especially to children who play and move by the roadside without giving much attention to vehicles.
12. In the matter of *R v Baylon Cook*, the Defendant was convicted and fined \$700 by the court after the Defendant's plea on a count of driving intoxication. He had cooperated with the police and pleaded guilty at the first opportunity. It measured at 0.097 grams, i.e. 84%, much lower than the present case.
13. This court observes that the Nauruan magistrate courts have attempted to form a rational connection between the amount of alcohol and recklessness. Accordingly, higher amounts of alcohol in the offence of driving under the influence of liquor, contrary to sections 69(1) & (2)(a) of *the Motor Traffic Act 2014*, attracts higher fines.
14. In *R v Menke*[2021] NRDC 31; Criminal Case 31/2021, the court imposed a \$ 700 fine and mandatory suspension of driving licence for six months. This court is more interested in the judicial dicta, which describes the legal concern over drinking and driving. In Para 5 and 6, the court has stated;

*"That this was a reckless act. You knew you had been drinking, and you decided to drive, and you were reckless as to whether the alcohol content in your breath was under the prescribed limit or not. There was no harm caused to anyone by this offence, so the measure of the harm is not the damage caused but the harm that could have been caused by your driving whilst under the influence. The more a person is intoxicated, the more dangerous he becomes to himself and others. The level of alcohol in your breath is 61% higher than the prescribed amount of alcohol. Therefore, I would rate your offending at the serious end of the scale."*

15. The stance mentioned above has been justified by 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, demanding 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. "*

16. This court is mindful of rehabilitating a convict and the public's safety; these two factors are two sides of the same coin. However, rehabilitation does not have meaning when public safety is in danger. There is no public safety if the judiciary fails to rehabilitate the convicts as they, too, are part of the same society.

17. This court strictly believes that the judiciary should not allow or facilitate the perpetrators to buy mercy or leniency by way of fines but should always impose a sentence that bears the condition of deterrent where it is applicable and possible.

18. Further, Section 279 of the crimes act 2016 of Nauru has provided as follows;

***"Sec: 279. Sentencing considerations-general***

(I) *In deciding the sentence to be passed, or the order to be made, in relation to a person for an offence against a law of Nauru, a court shall impose a sentence or make an order that is of a severity appropriate in all the circumstances of the offence."*

19. Therefore, after referring to the norms, principles & aspirations of sentencing, the personal interest of the convict and the general public's safety, this court concludes that a non-custodial sentence would be adequate for absolute determination of all the sentencing concerns.

### **The Sentence**

20. This court has taken into account the seriousness of this offence, the aggravating factors and the mitigating factors and imposed;

- (1) \$ 500 fine. In default, to be imprisoned for a term not exceeding the lower of (a) one day for every 80 cents of the fine remaining unpaid OR (b) 6 months. Sixty (60) days to pay the fine.
- (2) Further, the driving licence of the convict will be suspended for six (06) months from today.

21. The convict has 21 days to appeal.

