

IN THE SUPREME COURT OF NAURU  
(APPELLATE JURISDICTION)

CRIMINAL APPEAL NO. 3/2002

BETWEEN : **BEN-GAD DEIRERAGEA** APPELLANT  
AND : **DIRECTOR OF PUBLIC PROSECUTIONS** RESPONDENT

CRIMINAL APPEAL NO. 4/2002

BETWEEN : **BEN-ASSER DEIRERAGEA** APPELLANT  
AND : **DIRECTOR OF PUBLIC PROSECUTIONS** RESPONDENT

CRIMINAL APPEAL NO. 5/2002

BETWEEN : **DANSON DEIRERAGEA** APPELLANT  
AND : **DIRECTOR OF PUBLIC PROSECUTIONS** RESPONDENT

Date of Hearing : 21 October 2002  
Date of Judgment : 21 October 2002

Appeal against Severity of Sentence.

D. Gioura for Appellants  
Director of Public Prosecutions for Respondent

---

**DECISION ON APPEAL**

---

1. The Appellants committed their offences together when they stole

goods the property of the Nauru Phosphate Corporation to the value of \$12,000 approximately. The offences were committed at night, pre-planned and Ben-Gad and Ben-Asser Deireragea were employees of the Nauru Phosphate Corporation.

2. All three pleaded guilty to the offences of Persons found in a dwelling house, shop, office, factory, garage, outhouse, or other building without lawful excuse, S.424(a) of the Criminal Code, and Stealing, S.348 of the Criminal Code, Danson Deireragea was additionally charged with Damaging Property and was fined \$100. He did not appeal against the latter conviction or fine. On each of the two offences, to which each pleaded guilty, the three were given one month to be served cumulatively.

3. Mr. Gioura for the Appellants emphasized that the Appellants were not represented at the time when they pleaded guilty. He submitted that when it was apparent that they may face a custodial sentence the Magistrate should have informed them and sought that they might seek representation. They were first offenders, Ben-Gad was 24, Ben-Asser 22 and Danson 19. He sought a fine rather than jail for each of them. There

was no special plea made for any one of them and whilst it was said the family gave them support they were not in attendance or sought to give evidence.


4. The Director of Public Prosecutions took the unusual step of submitting that the Court might consider ordering a re-trial on the grounds that there was some indication that the procedure outlined as necessary in *Deidenang's* case may not have been followed and that representation might have been sought when there was to be a custodial sentence. He went on to state that in any re-trial the Director of Public Prosecutions would charge them properly by proceeding under S. 348 para vi – Stealing by clerks and servants in the case of the first two Defendants who had been employees of Nauru Phosphate Corporation. Such a charge attached a much higher maximum sentence – namely, seven years.

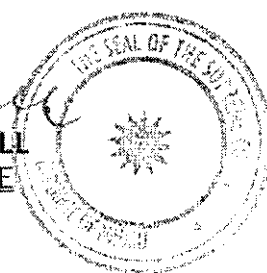
5. In any event, the Director of Public Prosecutions on the matter of sentence considered that the sentence of one month on each charge to be served cumulatively was too lenient and opted for something in the vicinity of three months.

6. The Court does not take up the submission of the Director of Public Prosecutions for a re-trial nor might I say was it supported by Mr. Gioura. This appeal was simply one related to severity of sentence and was brought on that basis by the Appellants.

7. Taking into account the expressed reasons for sentence given by the Magistrate where he had taken into account that each pleaded guilty and were first offenders, I did not see any reason to disturb the sentences that the Magistrate gave each of the Appellants. The offences are too common in Nauru presently not to attract a custodial sentence. With the Magistrate's knowledge and experience of the appropriateness of the sentence, I did not find it too light or too harsh in the circumstances to interfere with it.

8. I dismiss the appeals of each of the Appellants.

  
**BARRY CONNELL**  
**CHIEF JUSTICE**



THE SEAL OF THE SUPREME COURT OF NAURU