

# The Nauru 19 and the importance of *pro bono*

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## **Introduction**

### **PICTURE: Nauru 19 warriors for justice in t-shirts**

1. I hope to convey the flavour of the case against the Nauru 19 by taking you through key events over the last 6 years in Nauru.
2. Let me be upfront though, this is a plea for help.
3. The Nauru 19 are warriors for justice, as you will hear, but they have reached their greatest moment of need.
4. In some ways it feels like the net is closing on them.
5. They desperately need the help of anyone who cares about the rule of law, about democracy. And any Australian who cares about the impact our country's policies, are having on the region.

## **Politics and Law**

### **PICTURE: Nauru**

6. As criminal lawyers we do not tend to think of trial work as political work.
7. But of course, all law is politics in some sense.
8. Some of you may have read Professor Gerry Simpson's seminal book, 'Law, War and Crime'. If you haven't its worth a read.
9. The learned professor examines high profile politically charged criminal trials across the world and their political and legal underpinnings. From procedurally fair trials in stable liberal democracies, to the extreme of show trials in politically charged matters in illiberal dictatorships.

10. Somewhere in the middle in the professor's analysis is the 'deformed legalism' of international war crimes trials. Where politics is ever present, but a serious degree of procedural legality still present.
11. His ultimate conclusion; trials are political, in different ways depending on the context.
12. This analysis is apt to understanding the story of the Nauru 19.
13. The tale of the Nauru 19 is intimately connected to the politics of the nation and the pressures of politics have deformed the legality of the trial process.

## Nauru

### **PICTURES: Nauru, Gods will first, Straight outta Nauru**

14. Before delving into the details of the case, let me start by setting the scene for you – on the island about 6000 kilometers east of us now in the Pacific Ocean.
15. Nauru - the smallest Republic in the world, with a population of about 11,000, is 21 square kilometres – to put that in perspective, the whole island is smaller than Melbourne airport.

### **PICTURES: Mining, restaurant, Sprent's driveway**

16. If you comply with the 48km/hour speed limit, a trip right around the island takes about 20 minutes.
17. The island is shaped a little like a hat, with homes, businesses, government buildings.

### **PICTURES: Pinnacles on top side and by coastal edge**

18. And the airstrip along the narrow coastal edge and the interior, called the "top side" the site of the three refugee and asylum seeker camps, the last of the phosphate mining.

### **PICTURE: Prison on top side**

19. And the second prison on the island built in 2016 with Australian money and which remains empty, apparently awaiting an influx of prisoners as a result of the prosecution of the Nauru 19.

### **PICTURE: Parliament of Nauru**

20. The Nauruan government is made up of a single house of Parliament with 19 members including the Speaker, representing constituents from the 12 districts of the island.
21. Its history is tragic and fascinating. No one seems to know the origins of the Nauruan people or their unique language, unrelated to those around them.

### **PICTURE: Airstrip, sunset at Japanese war gun, mining infrastructure**

22. Somehow they got to one of the world's most remote islands, sometime in the distant pre-modern past.
23. Without delving too far into national generalizations, the words unique, independent, proud, come to mind in trying to describe the Nauruan national character.
24. A colonial experience focused on phosphate extraction, or theft.
25. Genocide and forced relocation of the entire population under Japanese occupation. The destruction of all national records. 1945 was year zero.
26. 1968 saw independence and the nationalization of the precious and lucrative phosphate industry.
27. For a time, the richest per capita country in the world.
28. Gross mismanagement and corruption.
29. By the 2000's the country was broke. An exemplar of the so-called resource curse.
30. The onset of regional processing of asylum seeker boat arrivals saw the money flow again and the beginning of a terrible scramble for resources that saw a political battle for the control of the state push Nauruan politics into more and more of a high stakes game.
31. Politics in Nauru, the smallest republic in the world must always have been highly personalized and therefore at times bitter.

32. Think of your local council, often a fractious personality driven environment.
33. Then imagine it has all the powers of a national government.
34. Then imagine it as poverty stricken and in the middle of the pacific.
35. Then imagine a regional government offers it hundreds of millions of dollars to process refugees.
36. It is little wonder Nauruan politics is bitter and divided.
37. It is little wonder that a politically charged trial has stressed the country's institutions and deformed legality in ways that perhaps will shock even a battle-hardened room of criminal lawyers.

### **Why did the Nauru 19 Protest?**

#### **PICTURE: Nauru 19**

38. The Nauru 19 are charged with riot and other public disorder offences, following an anti-government protest.
39. To tell the story of the Nauru 19, I need to take you back to 2013 when there was a change in government.
40. The story I am about to tell has largely been told through affidavits gathered in the Nauru 19 litigation.
41. An important political story has been told through the criminal justice process.

### **A New Government**

#### **PICTURE: Baron Waqa and David Adeang**

42. In June 2013 a new Government was formed with Baron Waqa as President and David Adeang as Minister for Justice, Border Control and Finance.
43. These two men are responsible for a lurch towards authoritarianism and the destruction of the rule of law in the country.
44. They are the authors of the persecution of the Nauru 19 that continues with no signs of abating.

## **The Destruction of the Judiciary**

### **PICTURE: Geoffrey Eames QC and Peter Law**

45. By mid-2013, Geoffrey Eames QC, former Supreme Court judge from Victoria had been Chief Justice of the Supreme Court of Nauru for about 3 years. His appointment was due to extend until 2020 when he would have reached retirement age. He travelled periodically to the island when the Supreme Court sat to hear cases.

46. Peter Law, a lawyer from Sydney was the Resident Magistrate of the District Court of Nauru. He had been living and working as the Magistrate on the island for close to three years. His appointment included the roles of Registrar of the Supreme Court, Coroner and Chairman of the Family Court.

### **PICTURE: Interim injunction against deportation of Peter Law, ‘I don’t take orders from the chief justice’ article**

47. In January 2014, Peter Law granted interim injunctions against the deportation of two men who had been living and working on Nauru for several years, but had fallen out of favour with the government.

48. Cabinet declared the men prohibited immigrants, cancelled their visas and endorsed their immediate deportation.

49. Law’s decision displeased the government.

50. Law was immediately declared a prohibited immigrant and immediately deported, in violation of a injunction issued by the Chief Justice.

51. Then the Chief Justice’s visa was cancelled and he was banned from the country.

52. An entire judiciary of a country had been removed. Illegally, without lawful process.

## **Parliamentarians Speak Out**

### **PICTURE: Nauru expels Australian magistrate etc.**

53. Mathew Batsiua, then one of the opposition MPs, spoke out critically of the government for its interference with the judiciary. The Waqa

government's grip on power weakened as MPs abandoned the government and joined the opposition.

54. MP Squire Jeremiah, sought leave to move a motion of no confidence in the Waqa Government. Sprent Dabwido MP also joined the opposition ranks as a result of the government's conduct and supported the seeking of leave to move a motion of no confidence.
55. On 28 January 2014, the Waqa Government was reduced to 11 and the Opposition increased to 8.
56. By March 2014, Geoffrey Eames resigned, unable to carry out his role as Chief Justice in absentia.

### **Suspension of the Opposition**

#### **PICTURES: Mathew Batsiua, Squire Jeremiah, Sprent Dabwido**

57. When Parliament sat on 13 May 2014, three members of the opposition, including Mathew Batsiua were suspended indefinitely by the Waqa Government, after the standing orders of Parliament which set a period of suspension of one day were suspended. They were suspended from Parliament for speaking to the foreign media, and being outspoken about the breakdown in the rule of law in Nauru. According to the Waqa Government, this was "contrary to the national interest."
58. On 5 June 2014, again the standing orders of Parliament were suspended and Sprent Dabwido and Squire Jeremiah, two further Members of the Opposition were suspended by the Waqa Government indefinitely. They were suspended for throwing what the Speaker described as 'unruly tantrums' when they agitated in Parliament in relation to their opposition colleagues who had been suspended.
59. All privileges, entitlements and remunerations normally befitting Members of Parliament were withheld indefinitely.
60. By mid 2014, almost one third of the island's population had no representative in Parliament.

### **No Recourse in the Courts**

61. The parliamentary suspensions were challenged in proceedings in the Supreme Court, in a case heard by judges chosen by the Waqa government to replace the removed judiciary. In December 2014,

Justices Mohammed Khan, Jane Crulci (Hamilton-White) and Chief Justice Madraiwiwi controversially ruled that they had no role in examining parliamentary affairs, setting the stage for confrontation.

62. By mid June 2015, there was no resolution to the ongoing suspension the opposition MPs, despite community petitions, public meetings and efforts to resolve the issue in the Parliamentary Privileges Committee.

### **Protest!**

#### **PICTURES: Police roadblock on day of protest**

63. On 16 June 2015, Parliament was sitting to debate the national budget. MPs Mathew Batsiua, Squire Jeremiah and Sprent Dabwido had now been suspended from Parliament for over a year. They wished to participate in the budget debate.

64. They and hundreds of their supporters marched on Parliament but Police stopped the procession. Armed with a new law banning the gathering of more than 3 people in public without the written permission of the Commissioner of Police, the police insisted that the MPs and their supporters could not pass and attend Parliament.

65. The police maintained the roadblock, and the protestors moved onto Parliament via the airstrip.

66. Hundreds of Nauruans gathered outside the Parliament building.

67. On 25 March 2015, the Waqa Government had passed the *Nauru Police Force (Amendment) Act 2015* creating a new offence in s24A, associations in public of three or more people were now unlawful, no relevant exception applied to the protestors assembled.

68. The police clashed with the anti-government protestors and the Nauru 19 were charged with offences of entering a restricted area (being the airstrip), riot, unlawful assembly, disturbing Parliament, assaulting police officers, and other public disorder offences.

**PICTURE: This is Mathew Batsiua being arrested and Sprent Dabwido and Squire Jeremiah in their prison cells bail refused.**

#### **The Prosecution of the Nauru 19**

69. And so began a long battle in the court system of Nauru.

## **Thwarting of Legal Representation**

70. For the first 15 months, the Nauru 19 accused had no legal representation in court as their efforts to secure lawyers were thwarted by the government.

## **Denial of Legal Aid**

71. The Minister for Justice, David Adeang, directed the Public Defender not to give any assistance to those charged as a result of the anti-government protest.

72. With a tiny legal profession on the island, mostly made up of non-lawyer pleaders or lawyers tied to the government, the only other option for the accused was to look overseas. But the Nauru government fought against the admission to practice of legal practitioners they sought to engage; and they resisted the granting of or processing of visas for lawyers.

## **The Pro Bono Team**

### **PICTURE: The pro bono team**

73. Eventually in September 2016, a *pro bono* legal team was formed with permission to enter Nauru. Christian Hearn, Mark Higgins, Stephen Lawrence, Neal Funnell, Penelope Purcell and I were all admitted to practice specifically for the Nauru 19 case.

### **PICTURES: Fishing in Nauru**

74. Blacklisted from employment opportunities on the island, our clients have had to turn to other ways of making money. Many of them are champion fishermen, and have caught countless fish to raise money for our travel expenses over the last several years.

75. We tried to assist with the cause, but it turns out our labours were better spent elsewhere.

## **Pleas of Guilty**

### **PICTURE: Emma Garo**

76. Following legal advice, four of the 19 wanted to plead guilty, they were four of the lesser involved and came to be sentenced by Magistrate Garo,



from Solomon Islands, who was then Resident Magistrate of the District Court of Nauru.

77. At the end of November 2016, Magistrate Garo imposed sentences of imprisonment on each of the accused of between 3 and 6 months, however suspended the term in relation to one of them.
78. The same day, having indicated their intention to appeal the severity of the sentences, Magistrate Garo granted the three of the defendants Josh Kepae, John Jeremiah and Job Cecil bail pending the institution of appeal proceedings.
79. Within a few weeks Magistrate Garo was removed as the Resident Magistrate by way of non-renewal of her contract.
80. The leniency of her sentences was denounced in parliament by Minister Adeang.

### **The First Trial Date**

#### **PICTURE: Arrival stamp; Nauru Airlines; Airport shotsc**

81. The remainder of the accused pleaded not guilty and were set for trial, initially in the District Court in April 2017.
82. Our first application was a stay until such time as the defendants could receive a fair trial before a properly independent judge, both in fact and perception.
83. Our efforts to collect evidence in support of this application, by way of applications for Parliamentary records and subpoenae to various government agencies and to Minister Adeang were blocked – by destruction of records by government officials, by the issue of a Presidential certificate purporting to grant immunity from compliance with the subpoenae.

#### **PICTURES: Jay Udit’s “wrath of contempt of court” submission and Jay Udit, Graham Leung and Justice Department**

84. Solicitor General, Jay Udit, appeared for the various government agencies, for Graham Leung, the Secretary for Justice and for Minister Adeang in relation to the subpoenae. He applied to have the subpoenae set aside. He called upon the court to deal with us for contempt and abuse of process, asking where would anyone in the world survive the

wrath of contempt of court for making such broad and sweeping allegation of the judiciary that it “does not enjoy the minimum level of independence.”

85. The new Resident Magistrate Penijamini Lomaloma acceded to the government’s application to set aside the subpoenae and also prohibited the accused from relying on any oral or affidavit evidence from Geoffrey Eames and Peter Law. Having previously allowed the affidavits of Eames and Law to be read, his Honour then made an order “expunging” the affidavits from the record.
86. We challenged the power to “expunge” evidence and within days the law was amended to allow the destruction of court records.
87. These preliminary matters dominated the first allocated trial hearing and resulted in the proceedings being adjourned.

### **Ashurts Briefed**

#### **PICTURE: Prosecution team**

88. In mid 2017, Ashurst Australia and a team of barristers from Queensland were then engaged by the Waqa Government to prosecute the Nauru 19. This meant the matter had to be further delayed and a new brief of evidence was to be prepared.
89. We foreshadowed at that point, that our continued representation of our clients could not be assured on a pro bono basis and that an application would be brought for government-funded legal representation.
90. The involvement of the team of Australian prosecutors also resulted in the accused securing an independent trial judge, Geoffrey Muecke, former chief judge of the District Court in South Australia.

#### **PICTURE: Justice Geoffrey Muecke**

91. Justice Geoffrey Muecke was granted a commission as a Supreme Court Justice of Nauru for this trial alone.
92. When he was sworn in, the government announced his arrival and published a news item in which a government spokesman welcomed Justice Muecke’s appointment and said “His Honour is a highly respected and experienced judge. His credentials and reputation are impeccable.”

93. I will come back to Justice Muecke.

### **The Sentence Appeals**

#### **PICTURES: Legal team working in Nauru and on way to court**

94. In the meantime, the sentence appeals for the three men who had been sentenced to terms of imprisonment, had been before the Supreme Court. They had appealed the severity of their sentences and the DPP had also appealed them on the basis they were inadequate.

95. Acting Chief Justice Mohammed Khan heard the matter. His Honour refused to adjourn the proceedings to allow the defendants to pursue an application in relation to judiciary lacking the necessary independence to fairly determine the appeals. In the course of doing so, HH also made an order “expunging” from the record the affidavits of Geoffrey Eames and Peter Law.

96. I should say Ashursts and their counsel did not appear in these proceedings and they occurred before their entry into the case.

#### **PICTURE: Clients with fish, after court BBQs**

97. A few days later, Khan ACJ upheld the DPP’s sentence appeal in relation to the inadequacy of the sentences and increased the terms of imprisonment by up to 700% - a total effective terms of 22 months for two of the men and 14 months for the third, immediately locking the three up.

98. We urgently filed applications for leave in the High Court of Australia, under the then treaty arrangement that allowed for appeals to that court from Nauru.

99. A few days later our clients were released on bail, pending the appeal to the High Court of Australia. The complex provisions of the law made their release mandatory in the circumstances of the case. Judge Khan didn’t seem pleased at making the order.

100. You can see us here at one of our post-court customary Nauruan BBQs by the ocean.

#### **PICTURE: Swimming at Anibare boat harbor**

101. And we frequently found ourselves after court down at the Anibare Boat Harbour in an attempt to wash off the day's events.

### **The High Court of Australia**

#### **PICTURES: Bret Walker SC leads Nauru 19 legal team in the High Court of Australia**

102. In October 2017, the Nauru Director of Public Prosecutions, now represented by Ashurst Australia and counsel from Australia, conceded in the High Court that Judge Khan had made errors in the handling of the appeals.

103. As a result the High Court sent the case back to the Nauruan Supreme Court to be reheard according to law and before a judge other than Judge Khan.

104. Chief Justice Kiefel and Justices Gageler and Keane were also unanimous in their decision that the Republic of Nauru should have to pay the three men's legal costs of the appeal. These costs remain unpaid by the Republic.

### **The Sacking of Ashurts**

105. In late November 2017, after 5 months' involvement, the team of Australian prosecutors were sacked by the Nauru Government.

106. I must admit we were initially skeptical of the Ashursts team and their counsel, a bunch of Queenslanders after all, and how they would prosecute the matter.

107. We could not have been more wrong. They appeared and conducted themselves in the highest prosecutorial tradition.

108. No wonder they didn't last.

### **The Sentence Appeals**

#### **PICTURES: DPP John Rabuku, Prosecutor's office, Nauru**

109. The sentence appeal proceedings and the trial proceedings were thereafter conducted by newly installed Director of Public Prosecutions, Fijian lawyer, John Rabuku.

110. The sentence appeals were heard again in March 2018 and Mr Rabuku called on Chief Justice Filimoni Jitoko to impose lengthy sentences of imprisonment on each of the three defendants, including seeking the maximum penalty for the offence of riot despite the mens' guilty pleas and their limited roles in the offence as barely more than bystanders.
111. Chief Justice Jitoko re-sentenced each of the men to terms of imprisonment between four and nine months, but granted them bail until a further appeal would be heard in the High Court of Australia.

### **Termination of the High Court**

#### **PICTURES: Note from Registrar; Treaty agreement; Nauru a nation in democratic freefall propped up by Australia**

112. But it was not to be. The men were thwarted in filing their appeals to the High Court of Australia due to the secret termination by the Nauru Government of the treaty which set out the arrangements for appeals from Nauru to be heard in Australia.
113. This is the note from the Registrar of the Court attached to our applications for leave, confirming that the treaty had been terminated.
114. The Waqa Government had triggered the termination of the treaty without making any arrangements for an alternative appeal process for litigants in Nauru. Our clients were left in limbo until the eventual creation of the new Nauru Court of Appeal late last year. The Court dismissed their appeals and the three clients served the increased jail terms.

### **Administration of Justice Act**

115. In May 2018 the Nauru parliament passed the Administration of Justice Act. Among its many draconian provisions is section 7, it is now a criminal offence in Nauru to “criticize” any witness, party, legal representative or judicial officer in any proceeding.
116. Handy protection for the government when they are party to a criminal proceeding in which they have been receiving sustained criticism.
117. This is one of many laws in Nauru that require challenge under the constitution.

118. Sadly there exists no organizations on the island to conduct and fund such litigation. We have challenged the constitutionality of laws when they have directly arisen in the case, but feasibly the Nauru citizenry cannot challenge other laws.

### **Further Developments in the Trial**

**PICTURE: Mark Higgins and Mathew Batsiua leaving court; Nauru Supreme Court listing; Mark Higgins, Stephen Lawrence, Christian Hearn and Felicity Graham entering court**

119. Back to the trial proceedings before Justice Muecke.

120. In May 2018, we applied as foreshadowed for orders pursuant to sections 10(2) and 10(3)(d) of the Constitution of Nauru which protect a person's right to legal representation and a fair trial that we be assigned to represent the defendants in the proceedings, without payment by the defendants; and that the Republic of Nauru pay the reasonable fees and all disbursements of the legal representatives for the Defendants incurred.

121. Following days of evidence and submissions, HH reserved.

122. In an attempt by the executive and legislature to then frustrate our motion, the Waqa Government passed through Parliament the *Criminal Procedure (Amendment) Act, 2018*.

123. The effect of which was to cap legal fees for assigned lawyers at \$300 per day up to a maximum of \$3,000 for a case.

### **Assignment Order for Legal Representatives Made**

**PICTURE: Clients after court; Neal Funnell with Lockley Denuga**

124. In June 2018, Justice Muecke:

- Declared the whole of the *Criminal Procedure (Amendment) Act 2018* to be void and of no effect.
- HH found that the cap of \$3000 was so absurd that it invited a conclusion that the Act was passed after 29 May 2018, not with the legitimate objective of invoking a reasonable policy for legal aid in Nauru consistent with limited funding here and balancing the

interests of all Nauruans, but to frustrate the defendants' Notice of Motion that HH was deciding.

- HH assigned us to represent the defendants at their trial, without payment by the defendants.
- HH ordered that the Republic of Nauru pay into the Supreme Court of Nauru the sum of \$224,021.90 by 5pm Friday 29 June 2018
- Failing compliance with Order 3, consider ordering a stay of the defendants' trial until Order 3 has been complied with.

125. The Republic did not comply with the orders.

126. As a result, we brought an application for a permanent stay and costs.

### **Permanent Stay**

127. On 13 September 2018 Muecke J permanently stayed the indictment.

128. Some highlights include:

[475] I consider that this case is a very rare case where Executive Inference, virtually from the day after the events outside Parliament on 16 June 2015, has been such that I consider that “the continuation of the prosecution is inconsistent with the recognised purposes of the administration of criminal justice and so continues an abuse of the process of the court” (see Mason CJ in *Jago*). I consider that in denying the defendants legal representation and resisting their obtaining legal assistance, in imposing a “blacklist”, in forbidding any plea bargaining, and in publicly denouncing and vilifying the defendants and those seeking to assist them, the Executive Government of Nauru has displayed persecutory conduct towards these defendants which is all the more serious in the unique context of Nauru. In this respect I agree with the submissions of the defendants' legal representatives of 30 July 2018 that:

36. The Government of Nauru exists to serve its people. The unique Nauruan context means the State plays a tremendously important role in service provision, including in the provision of legal services. In this context an arbitrary and capricious and unexplained direction was given as to who could not access publicly-funded legal services. Presumably based on political animus towards the defendants.

[369] – “I find that it has been understood by the Public Legal Defender and those in his office, by all legal practitioners on Nauru, and by all Pleaders on Nauru that the Minister for Justice expects that no legal

assistance or representation is to be provided by them to any of the defendants before me. Further, I find that it is understood by those persons that the Minister for Justice of Nauru considers that all these defendants are guilty of very serious crimes against the Parliament of Nauru, they should be shown no mercy, and they should be locked up for considerable periods. It is understood that the Minister for Justice believes that as such, the defendants are criminals who deserve no assistance or representation by anyone on the Island of Nauru.”

[408] - “A consideration of the history of these proceedings that I have set out in detail earlier in this judgment discloses that the Executive Government, through the Secretary for Justice and the Solicitor-General at various times, brought what I consider to be inappropriate, and sometimes improper, applications relying on many occasions on unmeritorious assertions of “abuse of process” and applications which sought to equate these criminal proceedings with civil proceedings. This was evident not only in procedural contentions, but was also evident in substantive matters such as the “jurisdictional” arguments that were advanced both in May and July/August 2018 to the effect that the Republic could not (apparently in any of its manifestations) be ordered to pay legal costs for legal representation of the defendants at a trial on these charges.”

### **PICTURE: Sunset in Nauru; Christian and Stephen on the beach in Nauru**

[313] – [314] – the Director making submissions without evidence to support them: “My view is that such a submission in such circumstances is inappropriate for, and unbecoming of, a DPP to make in any jurisdiction. I do not consider it to be an appropriate submission for a Director of Public Prosecutions, who is the Officer responsible for the representation of a State in criminal proceedings against one its citizens before the courts, to make, whilst acknowledging that there were no facts or evidence to support it. ”

[370] – “In my judgment, the findings and conclusions to which I have just referred, constitute a shameful affront by the Minister for Justice to the Rule of Law in Nauru, which he professes to operate for and give protection to the citizens of the country, under its Constitution.”

[384] I have no doubt and I find that the Minister for Justice was, in parts of his statement to the Parliament of Nauru on 3 November 2016, consciously and deliberately seeking to influence the Nauruan Courts in their dealing with the “rioters”, each of whom were expected by the



Executive Government to be brought to justice by the Courts and be sentenced severely.

129. The Nauru 19 were elated. They had taken on the full force of their government and they had triumphed.

130. Then the Republic brought an appeal, listing 25 grounds of appeal.

### **The Appeal: Nauru Court of Appeal**

#### **PICTURE: Justices Nicholas Kirriwom, Michael Scott and Chief Justice Albert Palmer**

131. The Nauru Court of Appeal, made up of Chief Justice Albert Palmer of Solomon Islands, Justice Michael Scott (formerly a judge in Fiji and Tonga) and Justice Nicholas Korriwom of Papua New Guinea, heard the Republic's appeal at the end of April 2019.

#### **PICTURE: Legal team and clients outside court; Mathew Batsiua with our filed submissions; Court of Appeal listing**

132. On Friday 21 June 2019, the Court handed down its judgment. The Court allowed the Republic's appeal on a highly technical basis, namely, that Justice Muecke's appointment to the Supreme Court of Nauru specifically for the purpose of hearing the Nauru 19 criminal trial did not extend to granting Justice Muecke powers of the Supreme Court of Nauru involving the determination of constitutional rights.

133. The case has now been sent back to the Supreme Court for a further trial.

#### **PICTURES: After court BBQ and t-shirt giving (with Protest); Squire Jeremiah cutting coconut for us; Neal Funnell and Stephen Lawrence working in Nauru**

134. The appeal court did not deign to examine or give meaning to the various damning factual findings made by Muecke J, who was satisfied of abuse of process on a range of different bases.

135. The question of whether there exists an abuse of process anathema to a fair trial, on any view of the facts, was not decided by the judges on appeal.

## **The Current Situation**

136. It is hard to describe the feelings last Friday for the people involved in the case.
137. Years of struggle and pressure.
138. As an aside: You might notice in the picture on the left, a small child in a blue and yellow shirt running through shot – He was born on the day of the Nauru 19 protest, 16 June 2015 and his name is Protest.

## **PICTURE: Mathew Batsiua, Sprent Dabwido and Squire Jeremiah; Nauru 19 and article: Judge throws out case and rules protesters cannot receive a fair trial**

139. We are talking about people stigmatised and excluded in a small community, denied employment, stripped of status. Family members deprived pensions, rental contracts interfered with, denial of phosphate royalties. And remember the man carrying the line of fish. He was denied access to the decompression chamber after a diving incident.
140. But they banded together, they fundraised, they fought and they won.
141. Then it was taken from them, by a court created and handpicked by their opponents.
142. Yet again the long road of persecution and struggle stretches out before them.
143. Gutted, exhausted, distressed. It is hard to not feel like the net is closing.

## **The death of Sprent Dabwido**

144. And the 19 had become 18.
145. Sprent Dabwido, leader of the Nauru 19 and a former president and one of the funniest and bravest person I have ever met, was diagnosed with cancer in March 2018 by a visiting doctor in Nauru.
146. He sought a government-funded overseas medical referral but received no treatment until his arrival as an asylum seeker in Australia over six months later.

147. Earlier court-approved travel following heart attacks in 2016 had been thwarted by the Nauru government cancelling his passport.
148. The irony was lost on no one, as President, Sprent had signed the regional processing agreement with Prime Minister Gillard.
149. In late 2018 he arrived in Australia and made an application for asylum as a refugee.
150. That application made him eligible for that most precious entitlement, a Medicare card.
151. Despite the best efforts of Professor Smee and the dedicated team at Prince of Wales Hospital, it was too late.
152. The tumor was at an advanced stage and had metastasized. It had been treatable, but no longer.
153. Sprent choked to death on his tumour on 8 May 2019 in Armidale.
154. He got out of bed and made it to the door of his brother's room, he banged on the door and collapsed. His brother Trent attempted CPR but the air rushed out the sides of his mouth. His brother's throat was fully blocked, as predicted by his oncologist.
155. That's how a nasopharyngeal cancer takes you, when you receive no treatment for many many months.
156. The net had closed on Sprent.
157. He lived his last weeks to the fullest - proposing to his partner Lucintha and celebrating their commitment to each other in Little Bay Chapel against the backdrop of the Pacific Ocean that connects Australia and Nauru.
158. He moved with his family and settled into country life in Armidale, New South Wales.
159. Sprent escaped his persecutors, but the fight goes on for the remainder of the Nauru 19.

**Conclusion: What is the importance of pro bono?**

160. What is the importance of pro bono?

161. It provides access to justice and can change the law.
162. But as pro bono lawyers for the Nauru 19 we became more than lawyers, Sprent called us family. We all share incredibly close bonds.
163. We have helped with criminal defence in a politically charged trial in a fragile developing country, with asylum applications, even with a wedding, and then with a funeral.
164. For me, right now, this is the importance of pro bono. The human connections between people that make human dignity possible.
165. That is ultimately what drives lawyers to assist others.
166. Indeed human dignity is the fundamental right that underpins our legal system.

**PICTURE: Warrior for Justice ragow; Sprent Dabwido with ragow**

167. Throughout this case, our clients have come to be known as the Nauru 19 and as the Warriors for Justice.
168. From time to time, our clients have bestowed on us, their legal team, the same moniker Warriors for Justice and we have each been given a replica ragow, the traditional Nauruan warrior's weapon, and which now forms the ceremonial mace in Parliament.
169. You can see here the late Sprent Dabwido, true warrior for justice with his Ragow.
170. The Nauru 19 desperately need help.
171. The last four years has put a lot of personal stress and strain on our clients and their families.
172. In August last year, they thought it was finally over, but that has all been taken away.
173. They are financially destitute. There is no basis to think they will receive proper legal representation on Nauru.

**Donations**

174. You can donate at the link now on the screen:

<https://www.gofundme.com/help-the-nauru-19-fight-for-justice>

175. And you can buy your own Nauru 19 Warrior for Justice for \$100 today.

176. I am going to leave you with a video message from another one of the true warriors for justice in Nauru Mathew Batsiua.

**VIDEO MESSAGE: Mathew Batsiua**