IN THE DISTRICT COURT OF NAURU
(Criminal Jurisdiction)

CRIMINAL CASE NO. 34 and 35 of 2015

BETWEEN:

THE REPUBLIC OF NAURU
Complainant

AND:

NATHAN SOLOMON,OAEON JOSEPH KUN, RILEY HUBERT, CONZALEY DETABENE, NIVED GRUNDLER, SHISHEN DABWIDO, BOSS ENOS, SHERMAN DABWIDO AND SUMICH DETENAMO
Defendant

Mr. Lacanivalu for the Republic
Mr. Knox Tolenoa for the Sumich Detenamo
Mr. Vinci Clodumar for Nathan Solomon
Mr. Ravunimase Tangivakatini for Oaeon Joseph Kun, Riley Hubert, Conzaley Detabene, Nived Grundler, Shishen Dabwido, Boss Enos and Sherman Dabwido

Date of hearing: *18 July 2016*
Date of Ruling: *19 July 2016*

Ruling

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1. The defendants are jointly charged with 1 count of assault occasioning actual bodily harm contrary to section 339 of the Criminal Code 1899. Mr. Nathan Solomon pleaded guilty and is to be sentenced. The other defendants pleaded not guilty and this matter proceeded to trial on 18th May 2016. On that day the prosecution called two witnesses.

2. The application by Mr. Tangivakatini is to have the complainant ordered not to give evidence on matters in his

statement said to have been given on the 19 May 2016 one day after the trial for this matter had started. Mr. Tangivakatini submits that this is in breach of the defendant's right under Article 10(3)(c) of the Constitution of Nauru which read:

"a person charged with an offence-
a)…
b)…
c) shall be given adequate time and facilities for the preparation of his defence"[1]

3. Mr. Tangivatini further submits the following:

i) The prosecution's duty is to ensure that the defence is served with all relevant documents within a reasonable time
ii) The service of additional disclosures after trial is unreasonable and any service of disclosures one day after the trial has commenced should not be entertained, unless ordered by the court.
iii) The service of disclosures after the trial has commenced is unfair on the defense and is a breach of the defendant's right to be given adequate time to prepare for trial.
iv) Whilst the defence have a chance to cross-examine the complainant Mr. Maladuzu on why the statement was made only after trial has commenced, it would be best to err on the side of caution and prevent possible issues in appeal.
v) The basis of this application from the defense is to ensure that the prosecution should disclose all information and depositions before trial commences as set out in the Criminal Procedure Act
vi) This submission from the defense also safeguards the interests of District Court and the prosecution, should the matter be appealed to the Supreme Court on grounds of procedural unfairness.

4. There is no evidence given to the court regarding when the first statement was obtained by the police from the complainant. There is no evidence given to the court regarding how the materials or information intended to be called by the prosecution as contained in the additional statement of the complainant disclosed to the defense a day

[1] Article 10(3)(c) of the Constitution of Nauru

after the trial had commenced will prejudice the rights of the defendant as guaranteed by Article 10(3)(c) of the Constitution of Nauru.

5. I fail to understand Mr. Tangivakatini's submission that this application is made by the defense to safeguard the interests of the District Court and the prosecution should the matter be appealed to the Supreme Court. The District court is a creature of statue,[2] and is a subordinate court in terms of the hierarchy of courts. Any party aggrieved by the decision of the District Court has a right of appeal to the Supreme Court.

6. Mr. Lacanivalu has informed the court from the bar table that it was upon further briefing of the complainant witness there was new information the prosecution was not privy to until trial, and with obligation to disclose the additional statement from the complainant was obtained and disclosed to the defense. What the nature of this new information is has not been given to the court by way of evidence. Mr. Lacanivalu has cited the case of Tuisolia v Fiji Independent Commission Against Corruption [2010] FJHC 100; HAM122.2009(1 April 2010) and the principles therein stated. The case of Tuisolia can be distinguished from this case now before the court. Mr. Tangivakatini is not applying for a permanent stay of the proceedings against his clients as is the situation in Tuisolia v Fiji Independent Commission Against Corruption cited by Mr. Lacanivalu. In addition to this, there is simply no evidence adduced or presented by either the defence or prosecution to enable this court to determine this issue as raised.

7. Time and again this court has reminded counsels that applications or orders sought has to be supported by evidence given by way of affidavits being filed with the court or witnesses being called to give evidence. In the event that the facts in a contested issue are admitted then any such facts has to be formally admitted as provided for under section 147 of the Criminal Procedure Act 1972. No evidence has been presented to the court. There is therefore no evidence before me to determine the issue. I dismiss the application.

[2] Section 9 of the Courts Act 1972

Dated this 19th day of July 2016

Emma Garo
Resident Magistrate