

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

CRIMINAL CASE NO. 32 of 2016

BETWEEN:

THE REPUBLIC OF NAURU
Complainant

AND:

FATIMO ABDI
Defendant

*Mr. Ravunimase Tangivakatini Public Defender Office for the
defendant*

*Mr. Filimoi Lacanivalu office of the Public Prosecutions for the
defendant*

Date of Hearing: 29 July 2016

Date of Ruling: 29 July 2016

Ruling

INTRODUCTION

1. The defendant is charged with 1 count of Arson contrary to section 205 of the Crimes Act 2016. The particulars of the offence as charged read: Fatimo Abdi on the 29th July 2016 at Nauru made to Mumina Isse a threat to damage a building in Fwa Camp belonging to the Government of Nauru by fire and was reckless about causing Mumina Isse to fear that the threat will be carried out.
2. The prosecution applies for the defendant to be remanded in custody. The grounds for remanded as submitted by Mr. Lacanivalu are:
 - i) The prosecution case against the defendant is a fairly strong case
 - ii) The public interest and the protection of the community

iii) The allegation against the defendant is serious

THE STRENGTH OF THE PROSECUTION CASE

3. The prosecution case against the defendant is that she doused petrol on herself and tried to kill herself. When police and fire officers arrived at the scene she is alleged to have said words to the effect of

"of I don't like police why do you send police; if police come inside I will burn them and burn the house"

4. The defendant on the other hand denies this. The only prosecution witness who had said this is Mumina Isse in her statement. Other prosecution witnesses said she said if police officers go in she will kill herself. Mr. Tangivakatini has asked inspector Capelle during cross-examination

Q: Do you confirm that the defendant had tried to kill herself

A: Yes

5. Her case manager Katherine Kelly said that when she arrived and the defendant opened the door she was covered in petrol and was holding a knife in her left hand and a lighter in her other hand. The defendant was holding a small bottle with clear liquid inside, which she believed was petrol. The defendant was crying and stated that she had waited too long for her medical treatment and it was not fair that other people were getting medical treatment before her.
6. The prosecution case as is presented is that only one witness said that the defendant said if police officers go in she will burn them and burn the house. All the other witnesses said she threatened to kill herself.
7. As properly pointed out by Mr. Tangivakatini the prosecution case borders on attempted self-harm which can form the basis for attempted suicide which is no longer an offence in this jurisdiction. Further submitting that the defendant should be released on bail as the circumstances surrounding her alleged offending is better dealt with a social issue.

CIRCUMSTANCES OF THE OFFENDING

8. In terms of the circumstances of the offending Mr. Lacanivalu has submitted that the use of petrol is serious and the manner in which the defendant is alleged to have committed the offence is specifically reckless as she had also put others in danger. Arson is a serious offence that carries a maximum penalty of 5 years imprisonment. I however remind myself that this is still a bail able offence.

THE PUBLIC INTEREST AND THE PROTECTION OF THE COMMUNITY

9. Mr. Lacanivalu submits that the protection of the public and others justify further remand of the defendant. There is nothing to show that the defendant is suffering from any mental health issues or is unstable mentally so as to be a danger to herself and the community. Inspector Capelle had given evidence that the statement of Sarah the roommate of the defendant has not been recorded. Inspector Capelle gave evidence that he sent two of his officers to see Sara and on their return he was informed by Senior William that Sarah wanted to give her statement but on Monday and she just told police that she is afraid as well in case anything escalates that she was afraid for her safety and at the same she is willing to give a statement. That she was afraid of the defendant. Inspector Capelle also gave evidence that when the police asked the defendant's neighbors to give their statements; they said they don't want to give statements and told the police to go away.
10. Firstly, the evidence of Inspector Capelle in this regard is inadmissible hearsay even at this stage of the bail hearing. It would have been acceptable had Senior William been called to give evidence of this. Not inspector Capelle. Mr. Lacanivalu has explained that he was not aware that another officer had spoken with Sarah from whom no statement was taken until in court. The lack of awareness by the prosecution cannot be rectified by way of the court accepting inadmissible hearsay evidence. In any event the defendant cannot be held responsible for her neighbor's refusal to give statement to the police by being remanded in custody. There is nothing to show that her neighbors refused to give evidence because they are scared off her.
11. The defendant gave evidence in court and assured the court that she will not cause any further problems. Her evidence in effect reflects what her case manager with regard to how her medical situation was handled.

12. I find that in the whole of the circumstances of this case the prosecution has failed to satisfy me that the defendant should be remanded in custody. The defendant is released on bail subject to the following conditions:

- i) She is to keep the peace and be of good behavior
- ii) She is to enter into her own recognizance in the principal sum of \$100.00
- iii) She is to provide a surety to act as surety for her in the principal sum of \$100.00
- iv) She is to attend court on the 10th August 2016 at 10 am for the mention of this matter and as and whenever required to do so by the court.

Dated this 29 July 2016



Emma Garo
Resident Magistrate

