

IN THE SUPREME COURT OF NAURU  
(APPELLATE JURISDICTION)

CRIMINAL APPEAL NO. 5/2000

BETWEEN : **THE DIRECTOR OF PUBLIC PROSECUTIONS**

APPELLANT

AND : **MICHAEL FELICIANO & MICHAEL WISNESKI**

RESPONDENTS

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**DECISION ON APPEAL**

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I have considered the submissions filed in this appeal.

The issue is, I consider, a simple one. The vessel in question was released having been seized under the powers of section 24 of the Fisheries Act 1997.

The Respondents were charged with offences under section 23(1) and 24(1) of the Act.

Unlike an offence under section 24(4) of the Act, the Charges against the Respondents are for offences, which carry only a monetary penalty.

On the hearing of the charges, the learned Magistrate considered he could not accede to the request of the Secretary for Justice that the Respondents be required to enter into bail recognizance as a requirement for their attendance at an adjourned hearing. He ruled he had no power to do this.

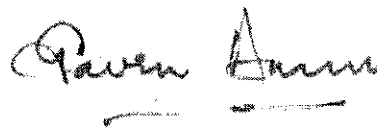
In my view the learned Magistrate's ruling was right. As I see it, the test is whether the Respondents were or could have been arrested by warrant and brought to Court before they were charged. This could occur only if the offences with which they

are charged carried, by way of penalty, a term of imprisonment thereby depriving them of their liberty before being charged in Court. Bail pertains to the release from arrest. Until the right of arrest arises there can be no question of bail. An adjournment of a hearing of a charge involving a penalty less than one of imprisonment does not, in the absence of provision to the contrary, permit a right to deprive a person of his liberty pending the hearing of the Charge.

Only if the Respondents fail to appear before the Court on the day specified in the summons or otherwise directed by the Court, can the right to arrest them arise – a failure to appear is a contempt of Court allowing arrest of the offender for such contempt. The question of bail, at the present stage, does not arise as there is no contempt.

I am satisfied the learned Magistrate acted correctly.

The appeal is dismissed.



*Raven Aune*

**CHIEF JUSTICE**

1/12/2000