



SUPREME COURT OF NAURU

AT YAREN

MISCELLANEOUS CAUSE Case No.80 of 2016

SPRENT DABWIDO

DEFENDANT/APPLICANT

AND

THE REPUBLIC

DIRECTOR OF PUBLIC PROSECUTION

Before: Khan J
Date of Hearing: 7 September 2016
Date of Ruling: 7 September 2016

Case maybe cited as: DABWIDO v THE REPUBLIC

CATCHWORDS: Applicant's passport cancelled by the Minister under section 24 of the Passport Act 2011 (The Act)- applicant entitled to appeal against the decision to the Supreme Court- he forgoes his right of appeal.

In considering application for variation of bail- held that applicant is entitled to apply for passport under section 7 of the Act

APPEARANCES

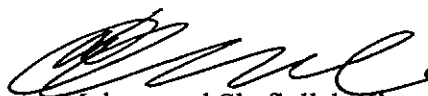
For the Applicant: Mr V Clodumar (Pleader)
For the Republic: Mr D Tongivalu (DPP)

RULING

1. In my ruling on 26 August 2016 I varied the applicant's bail condition in which the applicant was granted leave to go Brisbane for medical treatment.
2. Following my ruling the applicant made arrangements to go to Brisbane on 28 August 2016. As he was about to depart for Brisbane he was informed by the Director of Immigration that his passport was cancelled by the Minister on 16 August 2016 under the provisions of section 24 of the Passports Act 2011 (The Act).
3. The applicant and others were charged for the offence of Unlawful Assembly and various other offences and on 17 July 2015 he was released on conditional bail by Madraiwiwi CJ in the matter of Dabwido & Others v Republic 2015 NRSC7 in which a condition was imposed that the applicant "(c) *not to apply for another passport without the permission of the court*".
4. On 5 September 2016 the applicant made an application for variation of bail to the District Court in which he was seeking the court's permission to apply for another passport. The application was refused by the learned Magistrate on the basis that the applicant did not exhaust his right of appeal against the Minister's decision to the Supreme Court as provided for in section 39(d) of the Act.
5. From the ruling of the District Court it appears that the DPP was not objecting to the application and that he had made a concession that the defendant was entitled to apply for a new passport. In the affidavit of Sergeant Adam, at [12] it is stated: "*There is no legal basis to for objecting to the defendant to apply for a new passport but the condition was put as a bail condition so that the court and prosecution could be aware of any intention of the defendant to travel since the defendant was not allowed to leave the country.*"
6. From the tenor of the matters referred to in [12] of Sergeant Adam's affidavit it seems that the DPP was taking a purely legalistic approach as section 7 of the Act sets out the requirements for the issuance of a Nauruan passport and the applicant would have fulfilled those requirements.
7. In the application before me today the applicant through his pleader Mr. Clodumar has clearly stated that he has accepted the cancellation of the passport by the Minister, and that he will not be filing an appeal against that decision. In my view on the basis of the matters placed before the District Court the learned Magistrate was correct in arriving at the conclusion that the defendant should first exhaust his right of appeal against the decision of the Minister and for that reason she held that she had no jurisdiction to entertain the application to vary the bail condition.

8. In light of the applicant's concession that he accepts the Minister's cancellation of the passport and his decision to forgo his right of appeal he is entitled to apply for a passport under section 7 of the Act. I therefore vary the bail condition and grant the applicant permission to that apply for a passport.

Dated this 7 September 2016


Mohammed Shafiullah Khan
Judge

