



IN THE SUPREME COURT OF NAURU
AT YAREN
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 101/2016

BETWEEN

THE REPUBLIC OF NAURU

APPELLANT

AND

JOHN JEREMIAH, JOSH KEPAE AND JOB CECIL

RESPONDENTS

Before: Khan, ACJ
Date of Submissions: 24 April 2017
Date of Ruling: 25 April 2017

Case may be cited as: The Republic –v- Jeremiah and others

CATCHWORDS:

Application for adjournment of appeal- on the basis that the co- accused who are awaiting trial may be filing an application for temporary stay in the District Court- adjournment refused as that application will have no effect on the sentences which is subject of this appeal.

APPEARANCES

Counsel for the Appellant: Mr D Tonganivalu
Counsel for the First and Third Respondents: N Funnel & S Lawrence
Counsel for the Second Respondent: N Higgins

RULING

BACKGROUND

1. The respondents were charged with the following offences:

Count 1
Statement of Offence

Unlawful assembly: contrary to s.61 and s.62 of the Criminal Code 1899.

Particulars of Offence

Mathew Batsiua, Sprent Dabwido, Squire Jeremiah, Pisoni Bop, John Jeremiah, Renack Mau, Piroy Mau, Mereiya Helstead, Daniel Jeremiah, Josh Kepae, Bureka Kakioua, Job Cecil, Estakai Foilape, Dabub Jeremiah, Grace Detageouwa, Joram Joram, Rutherford Jeremiah, Jacki Kanth, Meshack Akubor and others on 16 June 2015 at Yaren District in Nauru, with intent to carry out some common purpose namely to unlawfully enter the Parliament of Nauru whilst it was in session assembled in such a manner as to cause persons in the neighbourhood to fear unreasonable grounds that the persons so assembled will tumultuously disturb the peace.

Count 3

Statement of Offence

Riot: contrary to s.61 and s.63 of the Criminal Code 1899.

Particulars of Offence:

Mathew Batsiua, Sprent Dabwido, Squire Jeremiah, Pisoni Bop, John Jeremiah, Renack Mau, Piroy Mau, Mereiya Helstead, Daniel Jeremiah, Josh Kepae, Bureka Kakioua, Job Cecil, Estakai Foilape, Dabub Jeremiah, Grace Detageouwa, Joram Joram, Rutherford Jeremiah, Jacki Kanath, Meshack Akubor and others on 16 Jun 2015 at Yaren District in Nauru with intent to carry out some common purpose namely to unlawfully enter the Parliament whilst it was in session being assembled and by such assembly needlessly and without any reasonable occasion provoke other persons tumultuously to disturb the peace.

Count 4

Statement of Offence

Disturbing the legislature: contrary to s.56 of the Criminal Code 1899.

Particulars of offence:

Mathew Batsiua, Sprent Dabwido, Squire Jeremiah, Pisoni Bop, John Jeremiah, Renack Mau, Piroy Mau, Mereiya Helstead, Daniel Jeremiah, Josh Kepae, Bureka Kakioua, Job Cecil, Estakai Foilape, Dabub Jeremiah, Grace Detageouwa, Joram Joram, Rutherford Jeremiah, Jacki Kanath, Meshack Akubor and others on 16 June 2015 at Yaren District in Nauru, advisedly committed a disorderly conduct in the immediate view and presence of the Parliament while in session and tending to interrupt its proceedings.

Count 8

Statement of Offence

Serious assault: contrary to s.340(2) of the Criminal Code 1899.

Particulars of offence:

Danielle Jeremiah, Renack Mau, Josh Kapae and Piroy Mau on 16 June 2015 at Yaren District in Nauru assaulted Senior Constable Angelo Amwano while acting in the execution of his duty to prevent the rioters from entering the Parliament building.

2. On 25 November 2016, the respondents pleaded guilty. The first and the third respondents were represented by Ms Felicity Graham and the second respondent was represented by Mr Christian Hearn.
3. The learned trial Magistrate imposed the following sentences:
 - 1) John Jeremiah – count 3 – riot contrary to s.61 and s.63 of the Criminal Code 1899 – 3 months imprisonment. Count 4 – disturbing the legislature contrary to s.56 of the Criminal Code 1899 – 3 months imprisonment. Both sentences to be served concurrently with a total term of 3 months imprisonment.
 - 2) Job Cecil – count 1 – unlawful assembly contrary to s.61 and s.62 of the Criminal Code 1899 – 3 months imprisonment. Count 4 – disturbing the legislature contrary to s.56(2) of the Criminal Code 1899 – 3 months’ imprisonment. Both sentences to be served concurrently. Total term 3 months imprisonment.
 - 3) Josh Kapae – count 4 – disturbing the legislature contrary to s.56(2) of the Criminal Code 1899 – 3 months’ imprisonment. Count 3 – riot contrary to s.61 and s.63 of the Criminal Code 1899 – 3 months imprisonment. Count 8 – serious assault contrary to s.340(2) of the Criminal Code 1899 – 6 months’ imprisonment. All sentences to be served concurrently. Total term 6 months imprisonment.
4. After the sentencing, the respondents made an application for bail pending appeal proceeding pursuant to the provisions of s.10 of the Appeals Act 1972 and the learned Magistrate Ms Garo granted bail pending the finalisation of the appeal.
5. In this appeal written submissions were filed by the respondents and the appellant on 28 March 2017 and 12 April 2017 and this appeal was set down for hearing on 24 April 2017.

APPLICATION FOR ADJOURNMENT

6. On 24 April 2017, all the respondents made an application for an adjournment of the appeal on the basis that their co-accused who were to appear before the District Court for trial would be making an application for a temporary stay of proceedings until they

are guaranteed that they will receive a fair trial before an independent judicial officer or court.

7. The solicitor for the respondents, Mr Christian Hearn, gave evidence of their intended application for stay of proceedings in the District Court. I say intended as no such application has been filed yet. Mr Hearn tendered copies of an affidavits of Peter Law, former Magistrate, Geoffrey Michael Eames, the former Chief Justice of Nauru, Matthew Batsiua and Squire Jeremiah.
8. Mr Hearn stated that the application for temporary stay will be based on the evidence of Peter Law, Geoffrey Eames, Honourable David Adeang (Minister for Justice) and Graham Leung (Secretary for Justice). The subpoenas were issued for the Minister for Justice and the Secretary for Justice to give evidence in the District Court; and that the Solicitor General has filed an application for the setting aside of those subpoenas. The setting aside application is currently before the District Court and the Resident Magistrate may give a ruling sometime next week.
9. Depending on the outcome of the ruling by the resident Magistrate, the defendants will then be making an application for a case stated and the outcome of which will form part of a temporary stay of proceedings. The respondents submit that stay application will have a bearing on this appeal.
10. The application for adjournment is opposed by the appellant (the Republic).

CONSIDERATION

11. I have read the material tendered by Mr Christian Hearn including the affidavits of Peter Law, Geoffrey Eames, Matthew Batsiua and Squire Jeremiah and I refrain from making any comments on those documents as it may be put before the Resident Magistrate for his consideration in the intended stay application.
12. Insofar as the 3 respondents are concerned they made an informed decision to plead guilty before Magistrate Garo and they were represented by Miss Graham and Mr Hearn.
13. When they pleaded guilty the respondents and their counsel were aware of the termination of Peter Law's contract and the cancellation of Geoffrey Eames's visa and did not make any application for stay before Magistrate Garo. She sentenced the respondents and subsequently granted them bail pending appeal. I reiterate that that in the intended application for temporary stay by the respondents will be relying on the evidence of Peter Law, Geoffrey Eames, the Minister for Justice and the Secretary for Justice, if the District Court dismisses the Solicitor General's application for setting aside the subpoenas. No evidence from Magistrate Garo is going to be adduced.

14. Even if the defendants were to succeed in the District Court in their stay application it will not have any effect on the respondents' sentences and it will still stand. The sentences can only be altered by way of appeal in this court.
15. In the circumstances the application for adjournment is refused.
16. I accepted the affidavits from Christian Hearn to enable me to rule on this application. I note that the material placed before me will likely be subject to further application before the District Court as indicated by the counsels. The material does not relate to this appeal and I therefore order that exhibits 1 to 5 be expunged from the record and I direct the Registrar to put exhibits 1 to 5 in a sealed envelope and it is only to be opened by leave of this court.

DATED this 25 day of April 2017



Mohammed Shafiullah Khan
Acting Chief Justice

