

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

CRIMINAL CASE NO. 16 of 2016

BETWEEN:

**THE REPUBLIC OF NAURU**  
Complainant

AND:

**HOUSSEIN NAOUROUZI NASAB**  
Defendant

*Mr. Sevualoni Valenitabua Public Legal Defender for the  
defendant*

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

*Date of Hearing: 12<sup>th</sup> May 2016*

*Date of Ruling: 20<sup>th</sup> May 2016*

## **Ruling**

### **INTRODUCTION**

1. The defendant is charged with one count of Threats to kill contrary to section 359(1) (b) of the Criminal Code 1899. The maximum penalty for this offence is 10 years imprisonment. The particulars of the offence charged are that:

*"Houssein Nourouzi on the 28<sup>th</sup> April 2016 at the Connect Services Beach House in Nauru, threatened to kill himself, his wife namely Tahereh Jaffari Nia and his son namely Havin Nourouzi Nasab by setting themselves on fire, with intent to cause public alarm"<sup>1</sup>*

### **PROSECUTION CASE**

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<sup>1</sup> Particulars of the offence as charged and filed with the District Court on the 12 May 2016

2. The prosecution applied to have the defendant remanded in custody and relied on the affidavit of Senior Constable Chiesty Duburiya in support of the application of remand. Senior Constable Chiesta Duburiya in her affidavit says:

*"1. THAT I am familiar with matters pertaining to these proceedings and depose this affidavit from my personal knowledge as a result of information obtained in my official capacity unless otherwise stated, and the contents of which are true to the best of my knowledge information and belief.*

*2. THAT the Respondent is a male namely Hossein Nouzouri Nasab of Anetan District who is employed at Eigigu.*

*3. THAT statement obtained from Karen Angove a case manager at Connect Settlement Services showed that the Respondent, on 28<sup>th</sup> April, 2016 threatened Ms. Angove that he will set himself, his wife and child on fire if Connect does not respond to his request to be reallocated to another house within 3 weeks.*

*4. THAT a statement obtained from Amy Blair, a Social Worker at Connect Services shows that on the 3<sup>rd</sup> of May, 2016 at 8:30pm, the Respondent while meeting with her maintained that he will set himself, his wife and child on fire in their house if this request is not resolved.*

*5. THAT a statement obtained from Brenda Clare, a Complex Case Manager at Connect shows that on the 5<sup>th</sup> of May, 2016 at about 10 am, the Respondent while meeting with her maintained that he will set himself, his wife and child on fire*

*6. THAT on the 11<sup>th</sup> of May, 2016 a report was made within the Central Police Station regarding the Respondent threatening to set himself and his family on fire before Connect employees as outlined in paragraph 3,4, and 5 above.*

*7. THAT the Respondent was arrested at Eigigu Transport at Denig District on the 11<sup>th</sup> May 2016, and detained at the Central Police Station at 9:40 am.*

*8. THAT the respondent was told about the allegation and the reason of the arrest prior to the arrest.*

9. THAT on the 12<sup>th</sup> May 2016 at 6:44pm, Police Constable Goodman Gioura and I conducted the Record of interview of the Respondent at the Central Police Station where he denied the allegations against him.
10. THAT the Respondent was charged with Threats to Kill contrary to section 359 at the Police Station where he further denied the allegations against.
11. THAT the Respondent was produced at the District Court on the 12<sup>th</sup> of May 2016 at about 10:30am.
12. THAT the Respondent was brought to Court as early as reasonable for this case to be called.
13. THAT the Respondent is charged with a serious offence and the allegations and circumstances are similarly serious.
14. THAT police have been on standby and Code Red on a few occasions in the past three weeks due to information received by our intelligence Unit of self-harm offences by refugees together with threats of disrupting public facilities.
15. THAT Police are taking cases of threats of self-harm seriously as it disrupts peace and causes anxiety within the greater community of Nauru.
16. THAT within the last three weeks, cases of threatening to self-harm have increased in trend with one such incident involving an Iranian male refugee who died after he set himself on fire and another incident involved a Somali female who also set herself on fire but survived.
17. THAT the Respondent is a danger to himself and his family and to the staff of Connect Settlement Services
18. THAT due to the circumstances of the case, there is a real likelihood that the Respondent will repeat the same offence if he is released on bail.
19. THAT the Police wishes to request this honorable Court to remand the Respondent at the Correctional Center until

*such a time as circumstances may change or until further orders by the Court*"<sup>2</sup>

3. It is my view that the matters deposed to in the affidavit of Constable Duburiya that would be relevant to this case are those deposed to in paragraphs 3, 4 and 5. But these raise further questions; did the defendant speak with the named witnesses? If so what did he say to them? How did he threaten to kill himself, his wife and two month old child? None of this has been explained to the court. What has he done so far to show that he had carried out the necessary preparation to carry out the threat? It is not for the prosecution to come to court with their conclusions and ask this court to remand the defendant. The prosecution needs to give detailed information to allow the court to draw its own conclusion on the issues.
4. I also note from the affidavit Senior Constable Duburiya that the named witnesses for the prosecution, Ms Karen Angove is the case manager for the defendant, Ms. Amy Blair is the Social Worker for the defendant and Ms. Brenda Clare is the complex case Manager.
5. Ms. Brenda Clare from the affidavit of the defendant, did visit him, and along with his wife and child accompanying her to visit him at the Correctional Services. The wife of the defendant and his 2 month old child the named complainant's in the prosecution case were brought by a named prosecution witness Ms. Brenda Clare to visit the defendant when he was remanded in custody pending the courts determination of the issue of bail in this case.
6. As properly and responsibly pointed out by Mr. Valenitabua, Ms. Brenda Clare need to clarify if she had made a statement to the police regarding this matter. And it is not for Mr. Valenitabua to approach Ms. Brenda Clare and take instructions from Ms. Brenda Clare. She is a named prosecution witness and the prosecution should do this. That has not been done in this case.
7. Another issue properly raised by Mr. Valenitabua is that of the issue of "privilege". The three witnesses named by the prosecution as having lodged a complaint against the defendant in this case are case managers and social welfare workers employed by Connect Settlement. Are the information

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<sup>2</sup> Affidavit of Senior Constable Chiesty Duburiya filed with the Court on the 16<sup>th</sup> May 2016.

obtained by the said officers when working with the defendant in their various different capacities privileged information? I will require submissions on the issue of "privileged information" and whether this will render the statements obtained from the named officers are privileged information, before I can be able to determine this issue.

8. I reserve my ruling on the remand application and make the following directions:

- i) Prosecution to ascertain whether or not Ms. Brenda Clare has made a statement to the police and is a witness intended to be called by the prosecution to give evidence against the defendant.
- ii) Whether or not the issue of "privileged information" applies to allow the defendant to plead that any information divulged to Ms. Clare, Ms. Angove and Ms. Blair in their capacity as case managers and social welfare officers are privileged information on the basis of client/patient relationship.
- iii) Affidavits to be filed by prosecution confirming whether or not Ms. Brenda Clare has made a statement to the police and whether Ms. Brenda Clare is a witness intended to be called by the prosecution to prove his case against the defendant submitted by Wednesday 25<sup>th</sup> May 2016.
- iv) Submissions on the issue of whether or not any information given by the defendant to Ms. Brenda Clare, Ms. Amy Blair and Karen Angove during the course of attending to the defendant as his case manager or as social welfare officer is privileged information be submitted by Friday 26 May 2016.
- v) This matter is adjourned to 1 June 2016 at 3:30pm for Ruling to be delivered.

Dated this 20 day of May 2016

