

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

CRIMINAL CASE NO. 25 of 2016

BETWEEN:

THE REPUBLIC OF NAURU
Complainant

AND:

JACKSON MAU
Defendant

Mr. Filimoni Lacanivalu for Republic
Mr. Ravunimase Tangivakatini for Republic

Date of hearing: 27 July 2016

Date of Ruling: 27 July 2016

Ruling

1. On the 28th April 2016, the defendant was sentenced by her Honor Justice J. E. Crulci to 11 months imprisonment, three months to be served; the remaining eight months on probation Order. During his time on probation, in addition to the requirements of the probation Order the defendant is to abstain from the use of intoxicating liquor or drugs. The date of imprisonment commenced from the 20th day of April 2016.¹
2. He is now charged with escaping lawful custody contrary to section 229 of the Crimes Act 2016. This offence is alleged to have been committed by the defendant on the 5th June 2016 whilst he was a prisoner serving the term of imprisonment as ordered by the Supreme Court.

¹ Republic v Jackson Mau Supreme Court Criminal Case No. 42 of 2015 paragraph 14 page 4

3. This morning this matter was called up, the defendant was arraigned and he pleaded not guilty to the charge. This matter was then listed for trial on the 17th August 2016.
4. Mr. Lacanivalu then sought that the defendant be remanded in custody to allow the prosecution to file documents in support of the prosecutions application to have the defendant remanded in custody for this offence. The court refused the application by the prosecution and had this matter stood down to 4:00pm to enable the prosecution to be heard on the application for the further remand of the defendant.
5. At 4:00pm the court was informed by Mr. Lacanivalu that the prosecution no longer pursues the application for the defendant to be remanded in custody. But submit that the defendant be released on bail subject to the following conditions:
 - i) That the defendant sign a bail recognizance in the sum of \$100.00
 - ii) That the defendant provide a surety to sign a bail bond for \$100.00
 - iii) That the defendant report to the police station once a week
 - iv) That the defendant not interferes with prosecution witnesses namely Sergeant Thubalkain, Mr. Douglas Teimitsi a warder working with the Correctional Services of Nauru and the Supritendant of Operations Mr. Jasper Uepa.
 - v) That if the defendant has a passport he is to surrender it to the court.
 - vi) That the defendant be of good behavior and to keep the peace whilst on bail.
 - vii) The defendant not leave the country without the permission of the court.
6. The court then enquired as to what is the basis for ordering that the defendant not interfere with prosecution witnesses seeing that the named witnesses are all Officers with the Correctional Services and it seems that they are all senior officers. In reply Mr. Lacanivalu says that there is no evidence to support the submission that the defendant be ordered not to interfere with the prosecution witnesses but it's for the court to decide the matter. I find this strange because the basic rule is that he who seeks an order must provide evidence or reasonable grounds

to support the order being sought. So despite no objection from the defence on submission by the prosecution, there is no evidence or reasonable grounds to support this order that is being sought. I refuse to order as part of the conditions of bail that the defendant not interfere with prosecution witnesses.

7. The defendant pleaded not guilty. No background information as to the circumstances of the alleged commission of the offence has been given to the court. Apart from the charge filed with the court on the 10th June 2016, there is nothing else. How is this court expected to strike a balance in terms of the conditions imposed to reflect the seriousness of the charge in terms of the modus operandi in how the offence is alleged to have been committed. There is nothing before me. This flaw must be resolved in favor of the defendant.

8. Mr. Tangivakatini has informed the court that the defendant does not have a passport and Mr. Shamrock Kamtaura a former work colleague of the defendant who works at the Rhonphos has is willing to act as surety for the defendant and agrees to sign a bail bond of \$100.00 as suggested by the prosecution. Mr. Lacanivalu takes issue with Mr. Shamrock Kamtaura acting as surety for the defendant submitting that perhaps an uncle of the defendant or someone who is older and exerts more authority over the defendant. Someone who can exert authority over the defendant.

9. Mr. Shamrock Kamtaura is 23 years old and has the legal capacity to act as surety. If he fails in his duty to act as surety then the court can always order that the bail bond of \$100.00 imposed be forfeited and paid to the Republic. The prosecution has not submitted; nor provide any information to show that Mr. Kamtaura is irresponsible and will therefore not be a suitable surety. I reject this submission by the prosecution.

10. The defendant is released on bail subject to the following conditions:
 - i) He enter into his own recognizance in the sum of \$100.00
 - ii) Mr. Shamrock Kamtaura acts as surety for him and signs a bail bond of \$100.00

- iii) He is to report to the Nauru Police Station once a week every Friday between the hours of 9:00 am and 5:00p. He is to start reporting on Friday 5th August 2016
- iv) He is to keep the peace and be of good behavior whilst on bail.
- v) He is not to leave the Country without the permission of the court.
- vi) He is to appear in court on the 17th August 2016 for the trial of this matter and as and whenever required by the court to do so.

Dated this 27th day of July 2016

