

IN THE DISTRICT COURT OF NAURU
(Criminal Jurisdiction)

CRIMINAL CASE NO. 16 of 2016

BETWEEN:

THE REPUBLIC OF NAURU
Complainant

AND:

HOSSEIN NOUROUZI NASAB
Defendant

Mr. Livai Sovau for the Republic

Mr. Sevualoni Valenitabua Public Defender for the defendant

Date of hearing: 22nd August 2016

Date of ruling: 22nd August 2016

Ruling

1. The defendant is charged with 1 count of threats to kill contrary to section 359(1) (b) of the Criminal Code 1899. The matter is listed for trial today.
2. The prosecution applies to have the name of the prosecution witnesses suppressed and to have a closed court when the prosecution witnesses are giving their evidence. The reason for this as given by Mr. Sovau is because of their work with refugees and their personal safety. In relation to their work, Mr. Sovau says that they work with numerous clients, refugees and members of the public. There is information sharing with other stake holders' example the Australian Border Police, IHMS and the Nauru Police Force. The effect this may have on their other clients if they found out is that it will bring in trust issues and make it difficult for them because of potential trust issues. In

terms of their personal safety Mr. Sovau submits that when information is passed on to the police, in relation to their clients, there has been instances when they have been harassed and they have been targets of phone calls, where telephone calls where the numbers are not disclosed and when they pick up the phones they are sworn at and threatened.

3. I have not been able to find any case authorities on this point in law in this jurisdiction nor given one.
4. One of the issues raised in *Feratailia v Regina*¹ is whether the court has power to order that the identity of witnesses who have expressed a genuine fear for their safety and that of their families to be suppressed and not disclosed to the defendant and to be able to give their evidence other than from the witness box in court?²
5. His Lordship Chief Justice Palmer held:

"1. The overriding feature in this matter is the right to a fair trial as encapsulated in section 10(1) of the Constitution. It reads as follows:

"10(1) if any person is charged with a criminal offence, then unless the charge is withdrawn, that person shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."³

The common law right to fair trial, memorably described by Lord Bingham of Cornhill CJ, as the "birthright" of every British citizen, however necessarily entails a balancing exercise in the reception of evidence at trial. For without evidence freely and voluntarily given in open court, no justice would be done, a fortiori, where there is evidence of intimidation and harassments of witnesses resulting in their unwillingness to attend court for fear of their safety and lives and that of their families. The due administrate of Justice would be interfered with and not have been seen to be done. That right as enshrined in our constitution operates in no different manner with the reception of witness evidence and rights of the accused to a fair trial. It necessarily follows that the courts in

¹ *Feratailia v Regina* [2006]SBHC 137;HCSI-CRAC 268 of 2006 (6 September 2006)

² *Feratailia v Regina* [2006] SBHC 137;HCSI-CRAC 268 of 2006(6 September 2006) at paragraph 4 page 3

³ *Feratailia v Regina* [2006]SBHC 137;HCSI-CRAC 268 of 2006 (6 September 2006) at paragraph 2 page 4

*this country must have the power to control their own proceedings to enable them to ensure that its processes are not only fair to the accused but also to the witnesses.*⁴

6. Article 10(1) of the Constitution of Nauru are in Similar terms to section 10(1) of the Constitution of Solomon Islands
7. His Lordship Chief Justice Sir Albert Palmer further held that

"The High Court as a court of "unlimited original jurisdiction to hear and determine any civil or criminal proceedings.." has inherent power as well at common law to control its own proceedings. This is consistent with what was said by Justice Mitting in R v Davis & ors (ibid) at page 13, quoting Lord Morris in Coneely v DPP(1064) 2AC 1254 at 1301:

*"The Court undoubtedly possesses an inherent jurisdiction at common law to control its own proceedings, if necessary by adapting and developing its existing processes..." to defeat any attempted thwarting of its processes"*⁵

His Lordship Chief Justice Sir Albert Palmer held:

*"Whilst the Magistrates Court is a creature of Statute, in the exercise of its statutory functions, it must necessarily be able to control its own proceedings so as to ensure that its court processes are fair, independent and impartial and that there is no "attempted thwarting of is processes." Part of that judicial process entails considering material before it that will enable it to determine what is fair and just in the conduct of each case. Where an application has been lodged by the prosecution for witness identity to be suppressed and evidence to be obtained through means other than in the presence of the accuse, the court is entitled to consider such matter and rule accordingly"*⁶

⁴ Feratailia v Regina [2006]SBHC 137;HCSI-CRAC 268 of 2006 (6 September 2006) at paragraph 4 page 4

⁵ Feratailia v Regina [2006]SBHC 137;HCSI-CRAC 268 of 2006 (6 September 2006) at paragraph 6 page 4

⁶ Feratailia v Regina [2006]SBHC 137;HCSI-CRAC 268 of 2006 (6 September 2006) at paragraph 8 page 4 to paragraph 1 page 5

8. In this case before me, as properly pointed out by Mr. Valenitabua there is no evidence presented to the court by the prosecution to enable the court to determine whether or not it should order name suppression of the prosecution witnesses and to further order that there be a closed court whilst the prosecution witnesses are giving their evidence.
9. The application for suppression of the name of prosecution witnesses and that there be a closed court whilst prosecution witnesses are giving their evidence in court is dismissed.

Dated this 22nd day of August 2016

