



IN THE SUPREME COURT OF NAURU

[CRIMINAL JURISDICTION]

Case No 103'A' of 2016

BETWEEN                      **JOHN JEREMIAH**    Applicant

And                                      **THE REPUBLIC**    Respondent

Before:                      Crulci J

For the Applicant:      V Clodumar

For the Applicants:    D. Toganivalu

Date of Hearing:              16, 17 February 2017

Date of Judgment:        20 February 2017

**CATCHWORDS** – *Application for Variation of Bail – section 80(3) Criminal Procedure Act 1972 – Variation Refused*

**RULING**

1. On the 25 of November, 2016 the applicant John Jeremiah was sentenced to a period of three months imprisonment on each of the following offences:
  - a) **Riot**, contrary to section 61 and 63 of the *Criminal Code 1899* (maximum penalty, three years);
  - b) **Disturbing the Legislature**, contrary to section 56 of the *Criminal Code 1899* (maximum penalty, three years).

2. The sentences were ordered to be served concurrently, giving a total term of imprisonment of three months. Following the conviction and the imposition of an immediate custodial sentence the District Court was informed of the applicant's intention to appeal against the sentence imposed.
3. Having heard from counsel the learned Resident Magistrate determined that as:
  - a) The sentences were of a short duration;
  - b) The legal year 2016 was shortly to close; and
  - c) The applicant had pleaded guilty to the offences;it would frustrate his rights to appeal if the applicant was not granted bail pending appeal.
4. Pursuant to section 10(1) of the *Appeals Act* 1972 the applicant was released on bail on the following conditions:
  - a) To be of good behaviour whilst on bail;
  - b) To reside at Meneng District or at his current abode;
  - c) Not to leave the country without the permission of the Court.
5. The applicant applies to this Court for a variation of his bail to allow him to leave the country for a period of approximately three months in order to accompany his wife overseas as she is in need of medical attention.
6. In support of his application he has filed with the Court the following documentation:
  - a) An Affidavit under the hand of John Jeremiah, filed on the 8 of February, 2017, containing the following exhibits: JJ/01 certification of a registration of a marriage; JJ/02 release of passport request dated 6 February 2017 signed by Dr. Richard Walsh Leona; JJ/03 a medical report in relation to Andiarra Jeremiah's referral to a Bangkok Hospital dated the 2 of February, 2017, signed by Dr. Richard Walsh Leona;
  - b) An Affidavit under the hand of Andiarra Jeremiah, filed on the 15 of February, 2017;
  - c) An Affidavit in Reply under the hand of John Jeremiah, filed with the Court on the 15 of February 2017.

7. The Director of Public Prosecutions filed the Affidavit in Response of Sgt. Iyo Adam on the 14 of February, 2017, with annexure 1A: Letter dated 13 February 2017 under the hand of Dr. Olayinka Ajayi, Deputy Secretary for Health/ Director of Public Health.
8. The Court notes that Mrs. Andiara Jeremiah had surgery on her arm following a MRI scan in Brisbane in 2014. Later in 2016 she underwent an operation to the back of her neck. She now has a recurrent infection of the anterior neck compartment, with associated dysphagia<sup>1</sup>.
9. The Overseas Medical Referral ("OMR") committee has authorized that she undergoes an urgent MRI for her neck and thoraco-abdominal area. Following this MRI surgery will proceed as appropriate. It is expected that she will be off-island for a period of around three months in total.
10. Mrs. Andiara Jeremiah is a 'Priority Two' patient, which the Court understands to mean that the referral will be processed within a period of two weeks of the letter dated 2 February 2017.
11. The applicant asks that his bail be varied to allow him to depart the country as a medical escort for his wife as he is the next of kin, and may be required to sign relevant medical authorizations.
12. The Court notes that the respondent DPP has appealed both the original three month sentence of imprisonment imposed on the 25 November 2016, and the decision to admit the applicant to bail pending the appeal (suspending the immediate imposition of the custodial sentence).
13. The Court notes as a general premise that although operations carry some risk to the patient, there is nothing before this Court to indicate that this is a particularly difficult or high risk procedure.
14. The Court also notes that had the applicant been the subject of an immediate custodial order on the 25 November, 2016 he would to date still be a serving prisoner<sup>2</sup>.

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<sup>1</sup> Dictionary definition: Difficulty in swallowing

<sup>2</sup> *Correctional Service Act 2009, s 46 Remission of Sentence*: (1) A prisoner serving a sentence of imprisonment of more than one month, other than a prisoner serving a life sentence, may on the ground of his good conduct and industry, be granted remission in accordance with the provisions of this section, provided that nothing in this

15. The affidavit of Andiara Jeremiah, dated 15 February, 2017 raises in paragraph 9 a number of matters as to why in the particular it should be her husband the applicant who accompanies her as a medical escort.
16. In relation to the signing of medical forms and other legal documents, this Court is of the opinion, unless evidence is produced to it to the contrary, that Mrs. Andiara Jeremiah can appoint another to be her power of attorney for medical and legal matters.
17. The Court does not read the sentence quoted from the letter of the Deputy Secretary as indicating that the applicant 'has to be the escort' for Mrs. Andiara Jeremiah.
18. Paragraph 1(c) of Dr. Olayinka Ajayi's letter reads as follows:

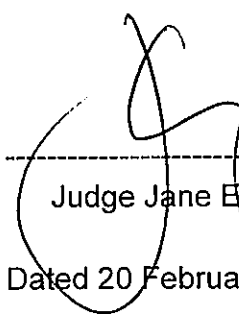
"As a matter of fact, given Mrs Andiara Jeremiah other medical conditions such as diabetes and hypertension, a clinical escort appointed by the Ministry of Health and Medical Services will be much more beneficial in the opinion of Health Executive Management. In summary Mr. John Jeremiah is not yet approved by MHMS final authority as a family escort for his wife. In the escort of final authorization of OMR support of Mrs Andiara Jeremiah, Mr. John Jeremiah does necessary have to be the escort."
19. Regarding the paragraph quoted above, it is Dr. Olayinka Ajayi's opinion that it would be more appropriate for a *clinical escort* to accompany Mrs. Andiara Jeremiah. In the Court's view the last sentence when read in context is missing the word '*not*'. Inserting that word into the sentence renders the sentence in accordance with the opinions expressed in the paragraph as a whole: "*In the escort of final authorization of OMR supporter of Mrs Andiara Jeremiah, Mr. John Jeremiah does 'not' necessary(ily) have to be the escort.*"  
(amendments mine)
20. There is no evidence before the Court as to the strength of the applicant's ties to Nauru, nor if he is able to lawfully live in another country and

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section shall permit the reduction of any period of imprisonment to a period less than 31 days. (2) The remission granted under this section shall not exceed one third of the total sentence.

maintain himself there. As he is potentially facing a custodial term of imprisonment, he is on the face of it a flight risk, especially if he is out of the jurisdiction with his wife. The Court notes that he pleaded guilty to the offences so it is the sentence imposed rather than the finding of guilt, which is appealed.

21. On the information provided to the Court, the applicants request to vary his bail to allow him to travel overseas is denied.
22. The application to vary bail is refused.

  
Judge Jane E. Crulci  
Dated 20 February 2017

