



IN THE SUPREME COURT OF NAURU
AT YAREN CRIMINAL JURISDICTION

CRIMINAL CAUSE CASE NO.
103/2016

BETWEEN

THE REPUBLIC OF NAURU

APPLICANT

AND

JOHN JEREMIAH, JOSH KEPAE AND JOB CECIL

DEFENDANTS

Before: Khan, ACJ
Date of Submissions: 13 and 14 March 2017
Date of Ruling: 16 March 2017

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

CATCHWORDS:

The DPP may by notice require the District Court may require to send its record to the Supreme Court for review under the provisions of s21 of the Appeals Act 1972- the notice must comply with the requirements of s21 A which are conjunctive in nature- before the court's jurisdiction is activated.

APPEARANCES

For the DPP: Mr D Tonganivalu
For the Defendants: In person

RULING

INTRODUCTION

1. On 25 November 2016 the above defendants were sentenced for the following offences:

Count1
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 Kepae 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. Another defendant, Grace Detageouwa, was also sentenced in respect the charge of unlawful assembly and malicious injuries contrary to s.469 of the Criminal Code 1899 the particulars of which were that she wilfully and unlawfully damaged the glass window of the Parliament building.
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) Grace Detageouwa – count 3 – disturbing the legislature contrary to s.56(2) of the Criminal Code 1899 – 3 months’ imprisonment. Count 3 – malicious injuries contrary to s.496 of the Criminal Code 1899 – 3 months imprisonment. Both sentences to be served concurrently and the sentences were suspended and she was ordered to enter a good behaviour bond for a period of 12 months in the sum of \$500 and ordered to pay the costs of the damages to the window of the Parliament.
4. After the sentencing, the defence counsels informed the court that the defendants will be appealing against the sentences and made an application for bail and suspension of the sentences pending appeal pursuant to the provisions of s.10 of the Appeals Act 1972 (the Act) which reads:

"1) Where a convicted person presents or declares his intention of presenting a petition of appeal, the Supreme Court or the District Court may, if in the circumstances of the case it deems fit, order that he be released on bail, with or without sureties, such person, order that the execution of the sentence or order against which the appeal is pending be suspended pending the petition of appeal is presented and if no petition of appeal is presented within the time allowed, the order for bail or suspension shall forthwith lapse."

5. The Republic opposed the application and after hearing submissions the Magistrate gave a ruling on the same day and granted bail to the defendants and made an order suspending their sentences pending the finalisation of the appeal.

Appeal against sentence

6. On 2 December 2016, an appeal was filed by the Director of Public Prosecutions against the sentences of John Jeremiah, Josh Kepae and Job Cecil as being lenient and inadequate.
7. I was advised by the DPP that he was not appealing against the sentence of Grace Detageouwa.
8. On 9 December 2016, all 3 defendants filed their grounds of appeal against their sentences that it was harsh and excessive

APPLICATION FOR REVISION

9. The DPP filed a notice(notice) on 9 December 2016 requiring the resident Magistrate to send her record to this Court in relation to her ruling granting bail and suspending the sentences. The notice was filed pursuant to s.21A of the Act which states:

The Director of Public Prosecution may require records to be sent to the Supreme Court

(1) Where:

- a) *The Director of Public Prosecutions considers that:*
 - i. *any finding, sentence or order of the District Court in any criminal cause or matter is illegal or improper or that there was an irregularity in any proceedings in any such cause or matter; and*
 - ii. *The interest of justice required that the Supreme Court should examine the record of that cause or matter and exercise its powers under s.23; and*

b) *No appeal has been commenced by any person in respect of that cause or matter;*
the Director of Public Prosecutions may, by notice in writing under his hand, require the resident Magistrate to send to the Supreme Court the record of that cause or matter.

10. There was some confusion in relation of the filing of the notice. It was allocated Case No. 101 of 2016 which is the criminal appeal number in the appeal against the sentences and it was also allocated Case No. 103 of 2016.
11. After the notice was filed by the Director of Public Prosecutions, the Magistrate was required to submit a copy of the record to the Supreme Court under the provisions of s.21A(3). The Magistrate did not comply with the provisions of s.21A(3) and consequently no record was submitted to the Supreme Court.
12. When I was in the midst of assigning the date for the appeal the review application came before me. The DPP informed me that apart from the appeal, the review matter was also pending.
13. On 10 March 2017 I decided to deal with the review application. Initially I was of the opinion that I will deal with the application without allowing any parties to be heard either personally or through their lawyers (as provided for in s.24 of the Act). However, upon reflection I received submissions from the defendants legal representative as the application had the potential to be prejudicial to them, in that if the review was granted then the bail could be revoked (s.23(2) of the Act),.

WRITTEN SUBMISSIONS

14. The solicitors for the defendants filed written submissions on 13 March 2017 and the DPP filed its submissions on 14 March 2017.
15. The respondents submission is that the application for review was filed when the DPP's appeal was pending and on the same day the defendants filed their appeals and s.21(a)(i)(b) places restriction or limitation on this Court and as such this Court has no jurisdiction to deal with the application, and, further the record has not been submitted by the Magistrate in accordance in accordance with s.21A(3) of the Act which is a prerequisite.
16. The DPP in response submitted that this Court is vested with the powers to carry out the review and both the DPP and the resident Magistrate could send records to the Supreme Court for that purpose. With respect, that submission is flawed as the DPP has no powers to send records directly to the Supreme Court and that is clearly stipulated in s.23(5) where it is stated:

"5) Subject to Section 21A, no proceedings by way of revision shall be entertained at the insistence of any party to the proceedings."

17. There is a threefold requirement of s 21 A of the Act which are conjunctive in nature and they are:
- a. That any finding, sentence or order of the District Court in any criminal cause or matter is illegal or improper or there was any irregularity in any proceedings. The DPP concedes that the magistrate had the powers to suspend the sentences and grant bail under the provisions of s10 of the Act, but submits that it was improper. How can it be improper when the magistrate was vested with powers to make those orders? If the DPP felt that the magistrate fell into an error by making those orders improperly then he should have filed an appeal against those orders but he failed to do so and instead filed this application.
 - b. The interest of justice require that the Supreme Court should examine the record.
 - c. No appeal has been commenced by any person in respect of that cause or matter. The DPP filed his appeal on 2 December 2016 so when the notice was filed an appeal was pending.
 - d. There is a further requirement that the District Court shall send to the Supreme Court its record together with the a copy of the notice [s21A(3)] and the magistrate did not do it.

Conclusion

18. For the court's jurisdiction to be activated the notice must comply with all three of the requirements of s21 A and in this matter, there was clearly non-compliance and therefore the notice is dismissed.

Timetable for Appeal.

19. The appeal is set down for hearing on 24 April 2017 and orders have been made for parties to file their written submissions simultaneously by 24 March 2017 and any reply to be filed by 30 March 2017.
20. The matter is adjourned for mention on 31 March 2017.

DATED this 16th day of March 2017



Mohammed Shafiullah Khan
Acting Chief Justice