



IN THE SUPREME COURT OF NAURU  
AT YAREN  
APPELLANT JURISDICTION

CRIMINAL APPEAL NO.  
101/2016

BETWEEN

JOHN JEREMIAH

FIRST APPLICANT

JOSH KEPAE

SECOND APPLICANT

JOB CECIL

THIRD APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS (NAURU) RESPONDENT

Before: Khan, ACJ  
Date of Hearings: 3 May 2017  
Date of Ruling: 4 May 2017

Case may be cited as: Jeremiah & Others v DPP

**CATCHWORDS:**

Application for stay of sentences pursuant to s.39(3) of the Appeals Act 1972- pending appeal to the High Court of Australia- application refused.  
Bail application- no leave to appeal filed as yet- principles to be applied.

**APPEARANCES:**

Counsel for the First and Third Applicants: S Lawrence  
Counsel for the Second Applicant: M Higgins  
Counsel for the Respondent: Mr D Tonganivalu

## RULING

### BACKGROUND

1. The applicants were charged with the following offences in the District Court:

#### 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 Kapae 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. After the applicants pleaded guilty on or about 8 November 2016 they were sentenced by the District Court as follows:

1) John Jeremiah - (first applicant)

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) Josh Kapae - (second applicant)

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(2) 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.

3) Job Cecil - (third applicant)

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. The Director of Public Prosecutions (DPP) filed an appeal against the sentences under the provisions of the Appeals Act 1972(the Act) that the sentences were manifestly lenient; whilst the applicants filed an appeal that the sentences were manifestly excessive.
4. The appeal was heard by this court. On 2 May 2017, a judgment was delivered increasing the sentences under the provisions of s.14(4) of the Act. The first and second applicants were sentenced to a term of 22 months imprisonment, whilst the third applicant was sentenced to a total of 14 months imprisonment.
5. The applicants have informed this Court that they will be filing an appeal to the High Court of Australia against their sentence.

#### APPLICATION FOR STAY OF SENTENCE

6. This is an application for stay of the sentences pursuant to the provisions of s.39(1) of the Act. The applicants are seeking the following orders:
  - 1) A declaration that the sentence of imprisonment substituted on the applicants on 2 May 2017 are stayed pursuant to s.319 of the Appeals Act 1972;
  - 2) An order making the staying of the sentence conditional upon the plaintiffs entering into a bail recognisance; in the alternative
  - 3) An order granting the applicants bail until the conclusion of the application and appeal proceedings before the High Court of Australia.
7. Mr Higgins on behalf of the applicants submitted that the stay of the sentences falls within the ambit of s.39(1) of the Act which reads:

#### **“39 Stay of Sentence and Orders**

- (1) Sentence of death and any other order made by the Supreme Court on conviction, or made or confirmed by the Supreme Court under the provisions of Part II of this Act, for the payment of compensation or any of the expenses of the prosecution or for the restoration of any property to any person and the operation of any provision of any law re-vesting in the original owner or his personal representative the property in stolen goods in case of such conviction, shall be stayed in every case:
  - a) Until the expiration of twenty-one days after the date on which the Supreme Court imposed, made or confirmed it;
  - b) Where any period longer than twenty-one days is allowed for applying under this Part to the High Court for leave or for

filing a notice of appeal under this Part to the High Court until the expiration of that period;

- c) Where an application has been made under this Part to the High Court for leave, until the application has been heard and determined by the High Court or discontinued and, if leave to appeal is granted, for a further period until the expiration of the time allowed for filing of the notice of appeal; and
- d) Where a notice of appeal to the High Court under this Part has been filed in the Registry of the High Court until the appeal has been heard and determined by the High Court or discontinued;

but, if in any cause the Supreme Court is satisfied that the title to any property to which any such order relates or in respect of which such provision of the law operates is not in dispute, it may direct that the order or operation of such provision of the law shall not be stayed insofar as it relates to such property.”

8. The DPP submits that this application does not fall within the ambit of s.39(1) and that the relevant provision is s.39(2) which reads:

(2) Where in respect of any cause an application for leave to appeal under this Part has been made or Notice of Appeal under this Part has been filed, the sentence and or any order made upon the conviction or by the Supreme Court on appeal under Part II of this Act, other than an order quashing a conviction, shall be stayed, unless the Supreme Court otherwise orders:

- a) where an application has been made for leave, until the application has been heard and determined by the High Court or discontinued and, if leave to appeal is granted, for a further period until the expiration of the time allowed for filing the notice of appeal; and
- b) where the notice of appeal has been filed until the appeal has been heard and determined by the High Court or discontinued;

but the Supreme Court shall not order the execution of a sentence of death until the appeal has been determined or discontinued.

9. If Mr Higgins is correct in his submissions then under the provisions of s.39(1) the applicants are entitled to an automatic stay of the sentence for at least 21 days as provided for in s.39(1)(a). In that regard, Mr Higgins submitted that Nauru must be viewed in the historical context of being far from the High Court of Australia which is based in Australia; and the difficulties of logistics in being able

to access the High Court and filing of documents, which has now changed with the advent of the modern technology.

10. On the other hand, if the DPP is correct in his submissions then there is no automatic stay.
11. It is common ground that the applicants are not entitled to file an appeal as of right to the High Court, and will have to first make an application for leave to appeal, and depending on the outcome of that application, they will then file the notice of appeal. It is also common ground that no application for leave to appeal has been made yet. So, the provisions of s. 39 (2) does not come into play at this stage.
12. The title to s.39 is “**Stay of Sentence and Orders**”. It starts off by ‘sentence of death and any other order by the Supreme Court on conviction, or made or confirmed by the Supreme Court under the provisions of Part II of this Act...’. It then goes on to list the orders made in respect of the payment of compensation and other expenses etc.
13. Mr Higgins is correct when he submits that s.14(4) of the Act comes within Part 2 of the Act. The issue in contention is whether the sentences imposed under the provisions of s.14(4) comes within the ambit of s.39(1) or s.39(2).
14. In my opinion s.14(4) comes within the ambit of s.39(2) and I say that because s.39(2) contains the operative words which are:

“where in respect of any cause an application for leave to appeal under this Part has been made ... the sentence ... by the Supreme Court on an appeal under Part II of this Act ... shall be stayed unless the Supreme Court otherwise orders.”

15. For the reasons given above the application for stay is refused.

#### APPLICATION FOR BAIL

16. The applicants are also seeking bail until the finalisation of the appeal proceedings before the High Court of Australia.

17. In *Chamberlain v R*<sup>1</sup> Brennan J stated at page 609:

“The power of this court to grant bail to a prisoner committed in the execution of a sentence pending his appeal or special leave to appeal must find a statutory foundation.”

18. I accept that s.39(3) provides this court with the statutory foundation which reads as follows:

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<sup>1</sup> (1983) 46 ALR

The Supreme Court may, if it thinks fit, make the stay of a sentence conditional upon a person subject to such sentence entering into a bail recognizance, with or without sureties, as it considers reasonable.

19. It was further stated in *Chamberlin vs R*(Supra) at page 610 as follows:

“In Australia, in the various States where a statutory power to grant bail pending an appeal exists, the circumstances in which the power will be exercised have been described in general terms as “very exceptional” (*Re Kulari* [1978] VR 276; “exceptional” (*R v Ryan* [1930] SASR 125; *R v Patmoy* (1944) 62 WN (NSW) 1; *R v Lawrence* (1978)22 ALR 573; *R v Wood*[1970] QWN 3); “exceptional or unusual” (*R v Byrne* [1973] QWN 30); or “special” (*R v Salon* [1952] ALR (CN 7) at 1053-4; *R v Southgate* (1960) 78 WN (NSW) 44).

However, the test may be formulated, in practice the grant of bail pending an application for special leave to appeal to this court will be more restricted than the grant of bail by courts exercising a general statutory power where there is an actual appeal pending.”


20. In *Hayes v R*<sup>2</sup> Mason J stated;

“For my part, I doubt whether this circumstance would induce me to grant bail. Bail is not granted in every case where an appeal, if successful, would result in the acquittal of the appellant or in his not serving the term of imprisonment.”

21. In the circumstances the application for bail pending the intended appeal to the high court of Australia is refused.

22. The application is dismissed.

DATED this 4 day of May 2017

  
Mohammed Shafiullah Khan  
Acting Chief Justice



<sup>2</sup> (1974) 48 ALJR 455