



IN THE SUPREME COURT OF NAURU

AT YAREN

CRIMINAL JURISDICTION

Criminal Case No. 12 of 2017 and Criminal
Case No. 08 of 2018

BETWEEN: THE REPUBLIC OF NAURU

Applicant/Complainant

AND:

- 1. MATHEW BATSIUA**
- 2. PISONI BOP**
- 3. RENACK MAU**
- 4. MEREIYA HALSTEAD**
- 5. BUREKA KAKIOUA**
- 6. HESTAKAI FOILAPE**
- 7. DABUB JEREMIAH**
- 8. JACKI KANTH**
- 9. MESHACK AKUBOR**
- 10. JORAM JORAM**
- 11. PIROY MAU**
- 12. LENA PORTE**

Defendants/Respondents

Before : Hon. Justice D. V. Fatiaki

For the Republic : Mr. R. Talasasa, Director of Public Prosecutions and associates

Defendants: In person.

Date of Ruling : 20 November 2019

RULING

Yesterday morning 19th of November 2019, **Meshack Akubor** advised the Court that he had a long standing heart problem since his youth that seemed to be resurging. He said he is experiencing joint pain and wished to be released to seek medical attention.

The Director of Public Prosecutions (**DPP**) advised the court that the examination of his witness in the box, was about to be completed. Although he did not appear to have any objection to an adjournment of the case thereafter, he advised that a Medical Certificate should be produced by the Defendant.

The Defendant advised that he could remain for some further time to finish the witnesses evidence in chief completed. The witness's evidence was completed after he had identified and testified about a folder of photographs (**Exhibit P2**).

After the witness finished his evidence, all defendants including Mr **Meshack Akubor** indicated individually that they had heard the witnesses evidence, had understood the meaning and effect of the evidence, and did not wish to ask any question of the witness. The witness was released and Mr. **Meshack Akubor** was also released for his requested medical examination at about 12 noon. The case was then adjourned to resume at 2.30 p.m. after lunch subject to advice from Mr. **Meshack Akubor**.

At 2.30 p.m. the court staffs were advised that Mr. **Meshack Akubor** was still undergoing medical treatment. At 5 p.m. when the court resumed, **Mr. Meshack Akubor** medical examination had still not completed and the trial was accordingly adjourned to 10 a.m this morning for **Mr. Meshack Akubor** to produce a Medical certificate.

At 10 a.m when the case was to resume, the court was advised that Mr. **Meshack Akubor** was not available and had produced a Medical Certificate which stated inter alia: "... (Mr. **Meshack Akubor**) *being unfit for work is being treated as an outpatient*". The Medical Certificate also advised : " ... (Mr. **Meshack Akubor**) *will/should be fit to resume duty on 25/11/19*" without the need for further review. There was some vagueness in the Medical Certificate which necessitated the doctor being requested to appear in court to explain its terms. In particular, Mr **Meshack Akubor's** medical condition and whether or not he was fit to attend court (as opposed to work).

Dr. **David Bill** attended court and explained that Mr **Meshack Akubor** suffered from Rheumatic Heart Disease (**RHD**) and Acute Viral Infection (**AVI**). The doctor further explained that RHD was a longstanding condition of the defendant and the AVI, (**Flu**) was more recent and for which

the defendant was prescribed panadol and advised to take bed rest until 25/11/2019. The doctor considered that sitting in court and listening to testimony was a “*stressful environment*” and bed rest was much needed. No antibiotic was prescribed for the defendant's flu. The doctor was thanked for his assistance and released.

The Court then addressed **DPP** as to the situation which had arisen after Mr. **Mathew Batsiua** had reminded the court that the defendant Mr **Meshack Akubor** had specifically mentioned that he wanted to be present for the trial and so, the trial should not proceed in his absence.

It was accepted that the court was faced with two alternatives in the circumstances:

- 1) to adjourn the proceedings under section 196 of Criminal Procedure Act 1972, or
- 2) continue the trial of the remaining 11 defendants and direct that Mr **Meshack Akubor** be tried separately pursuant to the proviso to section 189 of Criminal Procedure Act 1972, which reads:

“Provided that where the information charges more than one person and one or more of those persons is present in Court, the Court may, in its discretion, either adjourn the trial of all the accused or proceed with the trial of those of them who are present and order that the accused who is absent be tried separately.”

In similar vein, section 196 of Criminal Procedure Act 1972, gives the court power to postpone or adjourn a trial if the court considers it “*necessary or advisable*” to do so.

It is clear from foregoing that the court has a discretion to exercise under either alternative identified above. In the exercise of its discretion the court is required to undertake a balancing exercise between the interest of Mr **Meshack Akubor**; the interest of the remaining 11 defendants; the interest of the Prosecution and the “*public interest*”.

In doing so the court is required to consider several competing factors including the following:

- the stated interest of Mr **Meshack Akubor** to be present throughout the trial;
- the interest of the Prosecution that this long outstanding trial should be completed as soon as possible without necessary delay and adjournments;
- the fact that these charges have been hanging over the defendants for in excess of 4 years;
- the fact that the defendants are jointly indicted as a group and it would be in their collective interest that they be tried as a group;

- the possibility that the defendants might obtain legal representation if a trial is adjourned;
- the fact that separating Mr. **Meshack Akubor** at this stage of the trial where a great deal of the prosecution evidence has already been led might be considered unfair to him if he was to be retried;
- the fact that there has been no cross examination by any of the defendants (including Mr **Meshack Akubor**) of the seven prosecution witness who have been called thus far;
- the fact that the trial of 11 defendants who are present, should not be stalled unreasonably by the absence of one defendant; and
- the fact that the prosecution is ready and able to call its witnesses if the trial continues.

After having carefully considered and weighed the above factors and mindful that the **DPP** does not insist on the trial continuing, I exercise my discretion and adjourn the trial until **Monday 25 November 2019 at 10 a.m.** for resumption. The defendants bail is extended.


D. V. Fatiaki

Judge

