



**IN THE SUPREME COURT OF NAURU
AT YAREN
[CRIMINAL JURISDICTION]**

Criminal Case No. 04 of 2021

BETWEEN: ROLEX DABWIDO

APPLICANT

AND: THE REPUBLIC

RESPONDENT

BEFORE: Keteca J

Date of Hearing: 12th November 2024

Date of Ruling: 13th November 2024

Case may be cited as: Dabwido v Republic

Catchwords: Application for variation of Bail to travel to Australia under Section 22(2)(c), Bail Act 2018

Appearances:

Counsel for the Prosecution: **S Shah**

Counsel for the Accused: **R. Tom**

RULING

BACKGROUND

1. The Applicant is charged with one count of attempted murder, contrary to Section 55A and a count of Intentionally causing serious harm, contrary to Section 71(a)(b)(c) and (i) of the Crimes Act 2016.
2. He was granted bail on 27th July 2021. The matter is listed for hearing on 14th – 18th April 2025.

APPLICATION

3. On 11th Nov 24, Mr Tom filed a Notice of Motion seeking the following orders:
 - i. Bail be varied under Section 22(2) (c) of the Bail Act 2018 and for the Applicant be allowed to travel to Australia for his son's graduation.
 - ii. The Applicant relies on his and the supporting affidavits of:
 - a. Barukh Dabwido- cousin of the Applicant; and
 - b. Kimmy – Dyke Dabwido – another cousin of the Applicant.
4. In essence, the Applicant intends to attend the graduation of his step-son in Brisbane.

AFFIDAVITS

5. The Applicant states:
 - i. He is **previously married** to Avnis Dabwido, the mother of Aiwo Roland, their 19-year-old son who will be graduating in Brisbane.
 - ii. He and his wife raised Avnis Dabwido together and they supported his education in Australia.
 - iii. He intends to travel on 13th Nov 24 and to return on **12th Dec 25**. (paragraph 13 of his affidavit)
 - iv. He undertakes to return to Nauru **'as we have all our business commitments here..'**
6. Barukh Dabwido states:
 - i. He is 24 years old and the Applicant's cousin.
 - ii. He is willing to be a surety for the Applicant and to pay \$1000 to the court should the Applicant not return to Nauru.
7. Kimmy- Dyke Dabwido states:
 - i. He is also the cousin of the Applicant.
 - ii. He is also willing to be a surety for the Applicant to the sum of \$1000.

PROSECUTION

8. Mr Shah did not object to the application for Bail Variation.

DISCUSSION

9. I note the following:
 - i. At paragraph 2 of his affidavit, the Applicant states that he is **'previously married** to Avinis Dabwido nee Roland.' To be previously married, means that he is no longer married to Aiwo Roland's mother.
 - ii. At paragraph 13 of his affidavit, the Applicant states- 'I intend to travel on the 13th of November 2024 and **returning on 12th Dec 2025.**' There is no explanation whether this is a typographical error or the Applicant actually intends not come back until Dec 2025. I take this to mean that the Applicant does not intend to attend his trial when this matter will be called for hearing on 14th April 25.
 - iii. At paragraph 15 of his affidavit, the Applicant refers to **'we have all our business commitments here.'** What these business commitments are and their monetary value are not included in the affidavit.

- iv. There is also no evidence that the Applicant and his wife (if **they are still married as his evidence states that he is previously married to her**) have any substantial property here on Nauru that will persuade me that he will return to Nauru.
- v. Mr Shah for the prosecution did not raise any of the points in i-iv above. Instead, he did not object to the application for bail variation.

10. In *Denuga v R*, it recognised that the Court has powers to vary bail conditions under Sections 31(5) and (7) of the Bail Act 2016 as follows:

(5) A Court which has power to review a bail condition, or to hear a fresh application under s. 15(1), may, if not satisfied that there are special facts or circumstances that justify a review, or making of a fresh application, refuse to hear the review or application.

(7) The power to review a decision under this Part includes the power to confirm, or reverse or vary the decision.

11. Under Section 17(2) Of the Bail Act 2018:

'the primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in court to answer the charges laid against him or her.'

This is also the consideration that the court must address in the variation to bail applications.

12. From the evidence, the Applicant intends to **return in Dec 25**. This makes it unlikely that he will appear in April 25 to 'answer the charges laid against him.'

13. In *Quadina v Republic*, Criminal Case No. 13 of 2022, a ruling I delivered on 11th Oct 24, I said-

Further, there is the 'public interest and the protection of the community "factors that the court need to consider. Any possibility of the Applicant absconding whilst in Australia will defeat the public interest in ensuring that the Applicant answers to the serious charge of 'attempted murder' laid against him."

14. I also note that Aiwo Roland will still have his mother there for his graduation this Friday, 15th November, at Kenmore State High School.

CONCLUSION

15. Considering all the above, the application to vary the conditions of bail of the Applicant and to have him travel to Australia today, 13th Nov 2024, is dismissed.

DATED this 13th day of November 2024.


Kiniviliame T. Keteca
Acting Chief Justice

