



**IN THE NAURU COURT OF APPEAL
AT YAREN
CRIMINAL APPELLATE JURISDICTION**

**Criminal Appeal
No.4 /2018
Supreme Court
Criminal Case No.
3/2017**

**In the matter of an application for revocation of
Bail in terms of section 22(10) a of the Bail Act,2018**

BETWEEN

THE REPUBLIC

Applicant

AND

SAMARANCH ENGAR

Respondent

BEFORE: **Dr. Bandaranayake, Acting
President**

DATE OF HEARING: **12/08/2022**

DATE OF Ruling: **17/08/2022**

CITATION: **The Republic v Engar**

KEYWORDS: **'Bail conditions", "non compliance of bail condition",
"revocation of bail" "delay in making application",
"maxim on vigilantibus"**

LEGISLATION: **Section 22(10) a of the Bail Act, 2018**

CASES CITED: **The State v Moha ([2010] PGNC 42; N 3997
(25/03/2010)), Timo v. Regina ([2004] SBHC 44; HC
CRC 189 of 2004 (19/05/2004)), The State v. Lewaqai
([2005] FJHC 715; HACO 44.2004 (11/01/2005)), The
Police v Yakamo ([2021] PGDC 119; DC 6065
(12/08/2021)), The State v Samy ([2007] FJHC 58; HAM
065.2007 (14/08/2007)) and The State v Charan ([2016]
FJHC 305; HAM 021.2015 (22/04/2016))**

APPEARANCES:

COUNSEL FOR APPLICANT **R.B. Talasasa Jr.
Director of Public Prosecutions**

COUNSEL FOR
RESPONDENT: **R. TAGIVAKATINI
Public Legal Defender**

RULING

1. Samaranch Engar, (hereinafter referred to as the respondent), was charged with causing the death of Unique Lee Dick on 10th December 2016 and was tried at the Supreme Court of Nauru for one count of murder contrary to section 55(a),(b) and (c) of the Crimes Act, 2016.
2. The Trial took place in 2017 and 2018, wherein the Judgment was delivered on 01/05/2018. The Supreme Court found the respondent guilty of the charge of murder and was sentenced on 03/05/2018 to 19 years imprisonment of which 15

months to be deducted for time spent in custody prior to sentencing. He has been in remand since 10/12/ 2016.

3. On an application filed by the respondent on 04/09/2019, the Supreme Court had granted bail, subject to the following conditions:

- A. That there be surety in the amount of one thousand dollars (\$1000);
- B. That the respondent to reside at Aiwo District all the time;
- C. That the appellant shall not approach or come anywhere or less than 100 metres of the residence of the deceased;
- D. That he will not interfere at any time with any of the deceased's relatives and families;
- E. That he will be under a curfew and his movements are restricted and to remain indoors at his residence between 7pm and 6am every night;
- F. That he will surrender his passport or any travelling documents to the Court;
- G. That he will report every Friday before 6 pm to the Nauru Police Station;
- H. That he will ensure that he attends Court, where directed.

4. On 25/05/2022, the Director of Public Prosecutions, had filed a Notice of Motion, in terms of Section 22(10) a of the Bail Act, 2018, applying for revocation of bail. The application, thus filed was pursuant to bail condition No. 7, namely that the **respondent will report every Friday before 6pm to the Nauru Police Station.** In support of his application, the Director of Public Prosecutions had filed an affidavit from the Acting Superintendent Kirsty Karl, of Nauru Police Force.

5. When this application was called before Court on 27/07/2022 to ascertain whether the main appeal filed by the respondent could be fixed for hearing, the Director of Public Prosecutions insisted that before taking up the main appeal, the issue of the violation of bail conditions should be taken into consideration. He

was granted further time to reconsider his position, and the matter was adjourned for 29/07/2022. On 29/07/2022, the Director of Public Prosecutions informed the Court that he needs his application to revoke bail granted to the respondent to be considered first. Accordingly the application filed by the Director of Public Prosecutions was fixed for hearing on 12/08/2022.

6. On 11/08/2022, the Director of Public Prosecutions had informed the Registrar of the Court of Appeal, that this matter be dealt with as suggested by Court and to consider it along with the substantive appeal. This was considered in Chambers and the Director of Public Prosecutions was informed on the same day that the matter would be taken up for hearing as decided and informed earlier by the Court on 12/08/2022.
7. Accordingly the Court took up the application filed by the Director of Public Prosecutions in order to revoke the bail granted for the respondent for hearing on 12/08/2022.
8. The main submission made by the Director of Public Prosecutions was that the respondent had failed to comply with the bail condition No. 7, wherein he had breached that condition.
9. The issue that arises in this application therefore, is whether the bail that was granted to the respondent should be revoked and action should be taken to forfeit the \$1000 for breaching the reporting conditions.
10. The Public Legal Defender for the respondent submitted that the respondent had been constantly reporting to the Police Station as directed, during the first 6 months of bail. In March 2020, By Gazette No. 65 of 2020, a National Emergency for the Management and Minimisation of the Impact of the Corona Virus had been declared in Nauru by His Excellency the President. Even thereafter, the appellant had been reporting to the Police Station, but he had found that such

reporting had proved difficult for him as he was ignored by Police Officers, who had to give priority to matters relating to the Corona Virus Pandemic. Due to the attitude shown to the respondent by the Police Officers, the respondent became frustrated, which led him to discontinue the reporting to the Police Station.

11. The Public Legal Defender for the respondent contended that the respondent should have consulted his counsel before such discontinuation and he apologised to the Court.
12. The Public Legal Defender for the respondent brought to the notice of the Court that the Director of Public Prosecutions had not attached a copy of the reporting logbook to actually verify the records of the visits made by the respondent to the Police Station. His position was that the respondent had signed at least once in 2021, but that record had not been provided for verification.
13. The main contention of the Director of Public Prosecutions was that the bail had been granted to the respondent on several conditions and that he had breached one of those, viz., the need to report every Friday before 6 pm to the Nauru Police Station. He referred to the decision in **The State v. Moha** ([2010] PGNC 42; N 3997 (25/03/2010)) in support of the test that may be used in revoking bail where Kariko, J., had stated that “failure to fulfil bail obligations” would amount to reasonable grounds as well as to the decision in **Timo v. Regina** ([2004] SBHC 44; HC CRC 189 of 2004 (19/05/2004)) purely in the interests of justice.
14. The Public Legal Defender for the respondent on the other hand referred to **The State v. Lewaqai** ([2005] FJHC 715; HACO 44.2004 (11/01/2005)), **The Police v Yakamo** ([2021] PGDC 119; DC 6065 (12/08/2021)), **The State v Samy** ([2007] FJHC 58; HAM 065.2007 (14/08/2007)) and **The State v Charan** ([2016] FJHC 305; HAM 021.2015 (22/04/2016)) in support of his contention that it is apparent that the Regional Courts have taken a lenient approach for breach of reporting conditions regarding bail for the simple reason of the necessity to balance the

interests of justice and that in certain circumstances, the varying of bail conditions had been considered by Courts in place of deciding on revocation of bail.

15. The Bail Act of 2018, provides for the power to Courts to grant bail, subject to conditions, to an accused person. In instances where such bail conditions had been breached, section 22(10) of the Bail Act, states thus:

“Where the conditions of bail are breached and without limiting the right of the Republic to charge an accused person for a breach of bail condition, a Court may:

- a. revoke bail; or*
- b. grant such other orders as it deems fit.”*

16. It is to be noted that the wording used in Section 22(10) of the Bail Act leaves the discretion to the Court, not making it mandatory for the bail to be revoked.

17. The affidavit of the Acting Superintendent dated 26/05/2022, clearly indicates that the respondent had been reporting to the Nauru Police Station as directed in the months of August, September, October and November 2019 as well as in the months of January to May 2020. This position is substantiated by way of a Report he had compiled. The contention of the respondent in response to this was that this report is not complete as he had reported to the Police Station in 2021 as well. The Police had not provided additional material other than the aforementioned report and in such circumstances there is no possibility to ascertain the correct position regarding the reporting of the respondent at the Police Station. Also there was no material provided to counter the submission made on behalf of the respondent that his non compliance of the bail condition was due to the difficulties and restrictions faced during the Corona pandemic at the time under review.

18. It is to be noted that the Director of Public Prosecutions had filed this application only in 2022. The Public Legal Defender contended that the Director of Public Prosecutions had not made any effort to make this application in the year 2020, but had waited until he was prompted by the Court. His position was that the Police should have informed the Director of Public Prosecutions immediately after the first time the respondent failed to report at the Police Station and steps should have been taken soon after.
19. It is a well known legal maxim that the law would support only those who do not sleep on their rights, but instead seek to enforce them vigilantly, in a timely manner (***Vigilantibus Non Dormientibus, Jura Subveniunt*** - H. Broom, A Selection of Legal Maxims, 7th Edition, T & J.W. Johnson & Company, 1874, pg. 892). Delays in commencing action is a circumstance that should be taken into serious consideration in arriving at a final decision. This would emphasise the need to act vigilantly and would severely discourage the negligence or undue delay on the part of a prosecutor.
20. Violation of bail conditions is not a matter that should be treated lightly. When a bail application is considered favourably, conditions are imposed for the strict adherence by a person, who is being accused for a crime, but released to the society. In such circumstances, it is the duty of that person to ensure strict adherence to the conditions that have been imposed. Be that as it may, in the event if there are violations of any bail conditions, it is the duty of the relevant parties to take immediate action in order to rectify any non compliance.
21. On a consideration of all the circumstances in this application, it is abundantly clear that there had been laches not only by the respondent by not complying with a bail condition, but even by the applicant for not taking action immediately after the conditions were breached. It is also to be noted that the main appeal is to be taken for hearing during this Court session in a few days time.

22. When the Bail Act is read together in the backdrop of the concept of granting bail, a mere breach of a bail condition alone will not be sufficient to revoke bail and to remand the offender. Such action would be against the concept of fair and equal justice.
23. Referring to the considerations that should be given in the interest of justice, the Director of Public Prosecutions, cited the decision of Palmer, CJ in **Timo v Regina** (supra), where it had been clearly stated that a breach of a bail condition does not imply that the offender should be automatically remanded. In **The State v Samy** (supra), where the respondent who was awaiting Trial on 3 counts of attempted murder and had violated his bail conditions, the Fiji High Court had decided to take up the Trial on an early hearing date instead of revoking bail.
24. Accordingly, the respondent is warned severely to adhere to all the conditions on which bail was granted by the Supreme Court Order dated 04/09/2019 and he should report every Friday before 6pm to the Nauru Police Station.
25. The application filed by the Director of Public Prosecutions to revoke bail is accordingly refused. Respondent's bail is extended on the basis of all the previous conditions stipulated in the Supreme Court Order dated 04/09/2019. Any further breach of bail conditions, may result in revocation of bail and remand in custody.



Shirani A. Bandaranayake
Dr. Shirani A. Bandaranayake,
Acting President
17/08/2022