

**IN THE DISTRICT COURT OF NAURU
(Criminal Jurisdiction)**

CRIMINAL CASE NO. 19 of 2016

BETWEEN:

THE REPUBLIC OF NAURU
Complainant

AND:

FAHREED HUSSAIN
Defendant

*Mr. Ravunimase Tangivakatini Public Defender Office for the
defendant*

*Mr. Filimoi Lacanivalu office of the Public Prosecutions for the
defendant*

Date of Hearing: 18th May 2016

Date of Ruling: 1st June 2016

Ruling

INTRODUCTION

1. The defendant is charged with 1 count of threatening to damage property contrary to section 203 of the Crimes Act 2016 and 1 count of Arson contrary to section 205 of the Crimes Act 2016.

2. Section 203 of the Crimes Act 2016 read:

"(1) A person commits an offence if the person:

- (a) Makes to another a threat to damage property; and*
- (b) is reckless about causing that person to fear that the threat will be carried out*

Penalty: 3 years imprisonment

(2) In a prosecution for an offence against this section it is not necessary to prove that the person threatened actually feared that the threat would be carried out."¹

3. Section 205 of the Crimes Act 2016 read:

"(1) A person commits an offence if the person:

(a) causes damage to a building or vehicle by fire or explosives; and

(b) intends to cause, or is reckless about causing, damage to that or any other building or vehicle.

Penalty: 10 years imprisonment

(2) A person commits an offence if the person

(a) makes to another person a threat to damage a building or vehicle belonging to that person or a third person by fire or explosives; and

(b) intends to cause, or is reckless about causing, that person to fear that the threat will be carried out.

Penalty: 5 years imprisonment

(3) In a prosecution for this offence against subsection (2) it is not necessary to prove that the person threatened actually feared that the threat would be carried out."²

3. Section 80 (1) and (2) of the Criminal Procedure Act 1972 and section 80(A) of the Criminal Procedure (Amendment) Act 2016 governs the exercise of the Courts discretion to grant or refuse bail.

WHETHER OR NOT THE OFFENCES ALLEGED TO HAVE BEEN COMMITTED BY THE DEFENDANT ARE BAILABLE OFFENCES

4. The maximum penalty for the offence of damaging property is 3 years imprisonment and the maximum penalty for the offence under the two circumstances which define the offence of arson under section 205 is 10 years imprisonment

¹ Section 203 of the Crimes Act 2016

² Section 205 of the Crimes Act 2016

and 5 years imprisonment. This means the offences are bail able offences.³

THE STRENGTH OF THE PROSECUTION CASE

5. The defendant is alleged to have gone to the Connect Settlement Services Office located at the Menen Hotel, with a bottle of petrol threatening to harm self-harm.⁴ Dr. Toolia Smith and "a Doctor Andrew" from IHMS advised the police that the defendant was not mentally ill, and both doctors refused to issue orders under the Mentally Disordered Persons (Amendment) Act 2016 and so the defendant was released from protective custody at 5:40pm on 17th May 2016.⁵ Italics mine, to point out that it is not proper to refer to another professional as "A Doctor Andrew". I am sure had time been taken by the prosecution, it would have been possible to find the full name of the Doctor who made the report with Doctor Smith and that he be referred to by his full name with the courtesy and respect all professionals or any individual person irrespective of who he or she is should be addressed.

6. The Chief of Menza Security made a report to Central Police station at 5:51pm that the defendant had threatened two of his security guards at Menan Hotel.⁶ At 20:20 hours on 17 May 2016, Senior Constable Vicromic Starr arrested the defendant at the front of the police station for the allegation that he had threatened two security guards at the Menen Hotel.⁷

7. One of the securities alleged to have been threatened by the defendant is Mr. Benedict Kepae. In his statement Mr. Kepae said that he was informed by Alimir a refugee who is also working as a security that some refugees have had a meeting and that they will protest and burn the Connect Settlement Services Office located at the Menen Hotel.⁸ Later Mr. Amir then called the securities and informed them that the said person who will burn the office has arrived.⁹ Mr. Kepae and another officer Mr. Janeres then approached the defendant in front of the Connect Settlement Office and

³ Section 80(1) of the Criminal Procedure Act 1972

⁴ Paragraph 3 of the affidavit of Constable Vicromic Starr dated 23rd May 2016.

⁵ Paragraph 4 of the affidavit of Constable Vicromic Starr dated 23rd May 2016

⁶ Paragraph 9 of the affidavit of Constable Vicromic Starr dated 23rd May 2016

⁷ Paragraph 10 of the affidavit of Constable Vicromic Starr dated 23rd May 2016

⁸ Paragraph 1 of the statement of Benedict Kepae dated 17th May 2016

⁹ Paragraph 2 of the statement of Benedict Kepae dated 17th May 2016

saw that he has in possession 1.5 litre container which contain petrol inside and a sparkle. They took the container of petrol and sparkle away from the defendant.¹⁰ The defendant is then said to have become aggressive, shouting and yelling at the securities whilst they were trying to calm him down.¹¹ The defendant is then alleged to have said the following words to the Mr. Kepae " I know your face and where you live, once I get out of jail I will go to burn you and your families and your home"¹²

8. The defendant on the other hand has denied all the allegations against him and says that he will be calling further evidence to dispute all these at trial. Mr. Tangivakatini further submits that the defendant was intending to commit self-immolation not arson.
9. It is fair to say that the prosecution case against the defendant is a fairly strong one at this stage of the proceedings.

THE CIRCUMSTANCES, NATURE AND SERIOUSNESS OF THE CHARGE

10. The maximum penalty for the offence of threatening to damage property is 3 years imprisonment. The prosecution has not particularized in the statement of the offence which of the two limbs under section 205 of the Crimes Act 2016 it is relying on in charging the defendant in this matter. Is it section 205(1) of the Crimes Act or section 205(2) of the Crimes Act 2016? There is statutory aggravation provided in that the maximum penalty provided. The prosecution has not elected which proviso of section 205 to prefer the charge. It is not for this court to fill in the blank by going through the evidence so far presented to work out which is the most likely proviso that it should come under. The effect of this is that this court is unable to enquire into the seriousness of the charge for the alleged arson. This inability to inquire into the seriousness of the charge of arson must in my view be ruled in favor of the defendant.

THE LIKELIHOOD THAT THE PERSON MAY CONTINUE TO COMMIT OFFENCES IF RELEASED ON BAIL

¹⁰ Paragraph 3 of the statement of Benedict Kepae dated 17th May 2016

¹¹ Paragraph 1 page 2 of the statement of Benedict Kepae dated 17th May 2016

¹² Paragraph 2 page 2 of the statement of Mr. Kepae.

11. The submission by the prosecution is that the defendant is a threat to himself and Mr. Kepae. And that he had allegedly attempted to commit self-harm and threatened Mr. Kepae. Attempted suicide is no longer an offence in this jurisdiction. There is nothing to show that the defendant is likely to commit further offences.

THE PROTECTION OF THE PERSON FROM THE PUBLIC

12. The report from Doctor Smith and Dr. Andrew is clear that the defendant does not suffer from mental health issues and he was released from protective custody by police on the 17th May 2016, before being arrested again on the same night. I am not satisfied that there is need to have the defendant remanded to protect him from the Public.

THE PUBLIC INTEREST AND THE PROTECTION OF THE COMMUNITY

13. The report from Doctor Toolia Smith and Doctor Andrew is that the defendant is not suffering from any mental health issues. So remanding the defendant for the purposes of protecting the public does not apply. I am of the view that the other matters could be satisfactorily addressed by way of strict bail conditions.
14. I find that the prosecution has not satisfied me on the balance of probability that the defendant should be denied bail. The defendant is released on bail subject to the following conditions:
- i) He is to enter into his own recognizance in the sum of Principal \$100.00
 - ii) He is to reside at Fly Camp
 - iii) He is not to enter the Connect Settlement Office or Menen Hotel premises without the supervision of his case manager.
 - iv) He is not to enter Menen Hotel Premises between the hours of 5pm and 9:00am.
 - v) He is not to enter within 50 meters radius of the residence of Mr. Kepae.
 - vi) He is to be on a curfew from 6pm to 6:00am

vii) He is to provide a suitable surety in the Principal sum of \$200.00

Dated this 20 day of May 2016



Emma Garo
Resident Magistrate

