

IN THE DISTRICT COURT OF NAURU
(Criminal Jurisdiction)

CRIMINAL CASE NO. 23 of 2016

BETWEEN:

THE REPUBLIC OF NAURU
Complainant

AND:

HAMID REZA NADAF
Defendant

*Mr. Ravunimase Tangivakatini Public Legal Defender's Office for
the defendant*

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

Date of Hearing: 13th June 2016

Date of Ruling: 16 June 2016

Ruling

INTRODUCTION

1. The defendant is charged with threatening to sabotage contrary to section 200(1) (a) and (b) (i) of the Crimes Act 2016.
2. At its highest the case for the prosecution is that the defendant was the driver of the motor bike that was driving towards Mr. Harris from the opposite direction as he Mr. Harris was approaching Camp 5. They were travelling at a high speed and as they drove past he turned and swore at them jokingly. It was then that Mr. Harris noticed something white and he went to pick up the thing that fell from them, to give it back to them. He later realized that these two papers contain the following:

"DEARS NAURU PEOPLE

WE [REFUGEE AND ASYLUM SEEKER PEOPLE] DON'T WANT TO STAY HERE IN NAURU AND KEEP LIVING HERE. ACTUALLY WE DID NOT COME TO NAURU AS ASYLUM SEEKERS AND WE DID NOT REQUEST SEEKING FROM YOUR COUNTRY AS ASYLUM SEEKERS, OR TO BE REFUGEES IN YOUR COUNTRY, NAURU. AS YOU KNOW THERE ARE ELECTIONS COMING FOR NAURU AND AUSTRALIA, SO WE WISH AND HOPE YOU AND AUSTRALIAN PEOPLE CAN CHANGE THIS SITUATION AND RELEASE US FROM DETAINING US IN DETENTION AFTER 3 YEARS SUFFERING. ELECT A GOOD GOVERNMENT WHO DON'T WANT EARN MONEY BY KEEPING US IN DETENTION AND KEEP DOING THIS DIRTY POLICY AND TRYING TO YOU NAURIAN PEOPLE. WE ARE BEGGING YOU TO THINK ABOUT THIS MATTER PLEASE, BECAUSE IF YOUR GOVERNMENT WILL NOT LET US LEAVE YOUR LAND [NAURU] WE WILL CHOOSE THE LAST AND WORST THINGS TO RELEASE FROM HERE?! PERHAPS BURNING ALL THE CAMPS WITH ALL THE DETENTION AS YOU KNOW THE FIRE MAYBE WILL COME TO YOUR HOUSES, YOUR FAMILY, YOUR CHILDREN AND WILL TAKE ALL NAURU...!!!

THANK YOU FOR YOUR ATTENTION"

3. It is also the prosecution's case that similar notices were found at the Civic Centre, the public notice board at Cappelle and at the Menen Hotel. Also the same notice was put on the windscreen of AFP officer Michael Paul Serabatoio.
4. The offence of threatening to sabotage is a bail able offence. Also at this stage I remind myself that it is only an allegation and remains an allegation against the defendant. That said, I remind myself of my comments in the case of R v Fadel Al Man Hal District Court Criminal Case No. of 16 2016 where the District court held that:

"The effect of the alleged threats made by the defendant, which formed the basis of the charge filed against him, could in my view be summed up as he is being accused of allegedly threatening and making serious threats to the Nation and its people Nauruans and Non-Nauruans. These are allegations against him and they remain allegations against him at this stage of the proceedings. But in terms of its possible effect on the community this is where I am of the view that what His Lordship Chief Justice Sir Albert Palmer aptly described in Kwaiga v R amongst other things when his Lordship said:

"In considering bail, the court is involved in a risk assessment. This entails assessing how much risk society should bear on one hand by granting bail and how much the accused should bear on the other by being remanded in custody or on conditional bail. If the risks are high such that society should not be exposed to that risk, then bail normally would be refused and the accused made to bear that risk by having his presumption of innocence and liberty curtailed even in the absence of a lawful conviction in a court of law:¹

After having considered the submissions and for the reasons given in this ruling, I am satisfied that the prosecution has discharged the onus to satisfy me on the balance of probabilities that the defendant should be denied bail on the grounds of public interest and protection against such threats being made real or perceived. The defendant in the circumstances of this case should bear that risk by having his presumption of innocence and liberty curtailed, even without lawful conviction. Bail is refused. The defendant has a right to appeal this decision to the Supreme Court within 14 days."²

5. This case now before me is on all fours with that of *Republic v Fadel Alman Hal*,³ and as such the public interest demands that the defendant be remanded in custody.

Dated this 16th June 2016



Emma Garo
Resident Magistrate



¹ Kwaiga v Reginam [2004]SBHC 93; HC-CRC 333 of 2004 (9 August 2004) at page 2

² R v Fadel Al Man Hal District Court Criminal Case No. 16 of 2016 at paragraphs 22 and 23.

³ R v Fadel Al Man Hal District Court Criminal Case No. 16 of 2016