

IN THE DISTRICT COURT OF NAURU
(Criminal Jurisdiction)

CRIMINAL CASE NO. 28 of 2016

BETWEEN:

THE REPUBLIC OF NAURU
Complainant

AND:

JESSE JEREMIAH DENTAN JEREMIAH SALLY JEREMIAH TYHANI JEREMIAH JOSHILLA
KEPAE JOSH KEPAE AND MOLINA KEPAE
Defendant

Mr. Filimoni Lacanivalu for Republic
Mr. Knox Tolenoa for defendant

Date of hearing: 19 July 2016
Date of Ruling: 20 July 2016

Ruling

1. The defendant Jesse Jeremiah is charged with 1 count of damaging property contrary to section 201 of the Crimes Act 2016. He is jointly charged with others. He applies to comply with condition 4 of the bail condition imposed on him by the court on the 25 June 2016. Condition 4 of the bail condition imposed on him by the court read:

"Not to leave the country without the permission of the court"¹

2. The prosecution does not oppose the application but submit that:

i) The defendant provide a surety who will pay \$400.00 surety;

¹ Condition 4 bail condition imposed on the defendant by the District Court on 25 June 2016

ii) The surety should surrender his/her passport to the court and not leave the country until the defendant returns on the 29th August 2016.

iii) The surety is to appear in court in place of the defendant on the 3rd August 2016 when this matter is due to be called up in court for mention.

3. The court enquired about why the prosecution is asking that the surety surrender his/her passport to the court and not leave the country whilst the defendant is away. Mr. Lacanivalu explained that the surety takes the place of the defendant whilst the defendant is away and stays on Island. On the issue of why the surety is required to be in court for the mention of this matter on the 3rd August 2016, Mr. Lacanivalu submits that this is because the surety will be signing that he is standing in for or acting for the defendant whilst the defendant is overseas. I find this aspect of the submission by the prosecution strange. The surety can never take the place of the defendant under any circumstances. The surety's duty is to ensure that that defendant attends court and complies with the conditions of his bail.
4. When this matter came before the court on 25th June 2016, the prosecutions agreed to not include in the order for bail conditions an order to the effect of having the defendant surrender his passport. But now the prosecution is applying to have the passport of the surety surrendered and movement of the surety surrendered until the defendant returns on the 29th August 2016. On the 25th June 2016 the court did allow the defendant to travel out of the country on the condition that he provided to the court a Nauru Airline Return ticket and a suitable surety in the principal sum of \$100.00. The defendant did leave the country to travel to Fiji on the 26 June 2016 and returned. As properly pointed out by Mr. Tolenoa he did comply with his bail conditions.
5. The prosecution has now submitted that the surety be increased from \$100.00 on the last occasion to \$400.00 almost three times the amount of surety imposed on the last occasion without any explanation or justification. The effect of this submission is arguably punitive. This is because the prosecution are asking for an increase three times the amount of surety imposed by the court on the previous occasion, despite the fact that this defendant had


complied with his previous bail condition when previously allowed to travel out from the country by the court.

6. The submission that the surety be present in court in the place of the defendant is rejected. The defendant is legally represented and the proper person to represent him in court in his absence is his counsel; not his surety.
7. The submission that the surety surrenders his or her passport and is not to leave the country until the defendant returns is rejected. In my view this will have the effect of penalizing the surety by way of restricting his or movement before any breach of the conditions real or perceived occurs. Section 80(2) of the Criminal Procedure Act 1972 read:

"The amount of bail shall be fixed with due regard to the circumstances of the case and shall not be excessive"²

8. It is my view that conditions of bail imposed should also be reasonable, practicable and workable.
9. The defendant is allowed to travel out of the country subject to the following conditions:
 - i) That he provide a Nauru Airline Return Ticket
 - ii) His attendance in court on the 3rd of August 2016 is excused.
 - iii) He is to appear in court on the 3rd September 2016 at 10 am for the mention of this matter.
 - iv) Upon his return into the country on the 29th August 2016 the bail conditions imposed on him by the court on the 25th June 2016 will be activated.

Dated this 20th day of July 2016


Emma Garcia
Resident Magistrate



² Section 80(2) of the Criminal Procedure Act 1972