

IN THE DISTRICT COURT OF NAURU
(Criminal Jurisdiction)

CRIMINAL CASE NO. 23 of 2016

BETWEEN:

THE REPUBLIC OF NAURU
Complainant

AND:

HRN
Defendant

*Mr. Filimoni Lacanivalu for Republic
Mr. Tangivakatini for the defendant*

*Date of hearing: 1st September 2016
Date of Judgment: 1 September 2016*

Judgment

1. The defendant is charged with threatening to sabotage: contrary to section 200(1) (a) and (b) (i) of the Crimes Act 2016. The defendant pleaded not guilty. This matter is set for trial today. The prosecution this morning filed an affidavit by one of the witnesses it intends to call to give evidence in this matter, to the effect that, he would like to have his name suppressed and to give his evidence in close court. The following reasons were given in his affidavit
 - a) *He is employed as a security at the Regional Processing Camp no. 3 and have been a security officer in the camp for 2 years.*
 - b) *He normally work in the logistic unit giving out radios, boots, uniforms and other logistical goods to local security officers who work at Camp 3 and sometimes he also work as security officer in the Camp as CSO.*

- c) In his work he meet and talk with refugees and asylum seekers every day and he is friendly with them as it is part of his job to make them feel happy and safe.
 - d) He knew the defendant for about a year as they sometimes meet and talk and make jokes to each other at Camp 3 and he also knew the defendant's son as well.
 - e) He knows the defendant's refugee friends at the Camp and he has been informed that there is likelihood that the defendant's friends and family will be present in court during trial.
 - f) He has been informed that a request can be made to the court to make orders to close the court during the giving of his evidence and for his name to be suppressed.
 - g) He is afraid of giving evidence in this matter as he firmly believes that something will happen to him if he is to do so with the suspect's family and friends present in Court.
 - h) He is concerned that the defendant, and /or his friends will be angry at him and might do something to him or his wife... or his sons... if he gives evidence in Court.
 - i) The defendant knows him and his family and the defendant's girlfriend knows him.
 - j) Even though he has not received any threats or interference from anyone in regards to this matter until now, he is seriously concerned about his family's safety after he gives evidence as his work involves coming into contact with refugees every day.
 - k) He would be more comfortable in giving evidence if his full name is suppressed on any judgments or rulings that are to be made in Court.¹
2. The decisions in the Courts of other jurisdiction in the region are clear that the Magistrates Court has power to order a closed court and name suppression.²
 3. In the Republic of Nauru the starting point for consideration is Article 10(10) of the Constitution of Nauru. Article 10 of the Constitution of Nauru read:

*"Except with the agreement of the parties thereto; proceedings of a court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority including the announcement of the decision of the court or other authority, shall be held in Public..."*³
 4. Mr. Tangivakatini representing the defendant informed the court that the defence has no objections to the application by the prosecution for this particular witness to give in a

¹ Refer to contents of affidavit filed in Court in support of application

² State v sing [2009]FJHC177; HAR005.2009(27 August 2009); Feratailia v Regina [2006] SBHC 137;HCSI-CRAC 268 of 2006(6 September 2006)

³ Article 10(10) of the Constitution

closed court and that his name be suppressed. By consent of the parties the court orders that the evidence of the witness be given in closed court and that his name be suppressed.

Dated this 1st day of September 2016

