



**IN THE SUPREME COURT OF NAURU**

[MISCELLANEOUS CAUSE]

Case No 57 of 2015

BETWEEN JAMAL HUMIDAN BAVI and OTHERS APPLICANTS

And SECRETARY FOR JUSTICE RESPONDENT

Before: Madraiwiwi CJ  
For the Applicants: Mr V Clodumar  
For the Respondent: Mr G Leung and Mr J Daurewa  
Date of Hearing: 10 June 2015  
Date of Ruling: 10 June 2015

**RULING**

1. The Court has considered the submissions of the parties.
2. The applicants have sought to cast a wide net and the relief sought subsequently in their respective writ of summons traverse matters that provide background but are not strictly relevant to the application for judicial review.
3. Accordingly the applicants are confined to the orders made by the learned Registrar on 28 May 2015 and 6 June 2015 and the other applications are struck out. The judicial review is thus confined to those orders.

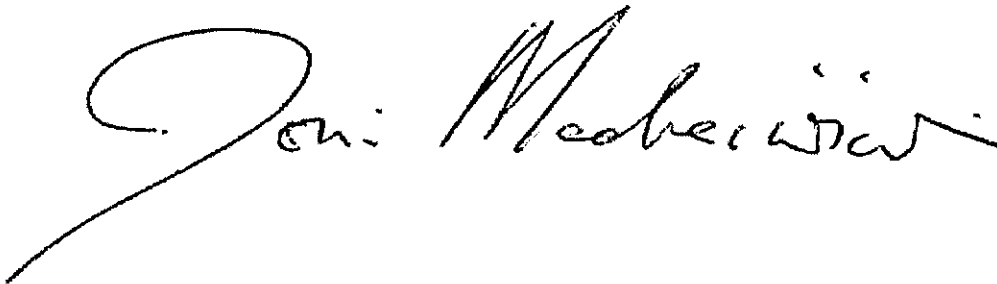
4. Pursuant to Order 2 of the Rules of Civil Procedure, the Court waives all irregularities and directs the respondent to file affidavits in reply by 17 June 2015.

5. The matter is set for argument on 18 June 2015 at 10:00am.

6. This judicial review concerns the same issues with Misc. Cause No 56 of 2015; therefore they can be dealt with simultaneously.

7. The striking out application in Civil Action No 8 of 2014 will abide this matter.

DATED this 10<sup>th</sup> day of June 2015

A handwritten signature in black ink, reading "Joni Madraiwiwi". The signature is written in a cursive style with a large initial 'J'.

.....  
Joni Madraiwiwi  
CHIEF JUSTICE



**IN THE SUPREME COURT OF NAURU**  
**AT YAREN**

**Misc. Cause No. 57 of 2015**

**Between:**

Jamal Humidan Bavi  
Thamil Maran  
Rahim Valogerdzageh  
Jehad Darawasaha  
Kazim Alipoor  
Thileepan Sivayoganathan  
Awni Anachar  
Suthan Murugesu  
Sriharan Thevarasa  
Sibilraj Sriskantharaja

**Applicants**

**And:**

Secretary for Justice

**Respondent**

Counsel for the Applicants: Mr. V. Clodumar

**RULING OF LEAVE APPLICATION FOR JUDICIAL REVIEW**

This was an Ex-Parte Application for leave for Judicial Review to the Registrar pursuant to Order 38 Rule 1 of the Civil Procedure Rules 1972.

Mr. Clodumar filed an Originating Summons with the Ex-Parte Application and the Supporting Affidavit of Jehad Darawasaha, one of the Applicants. Mr. Clodumar is seeking a:

- (a) Writ of Certiorari bringing the decision of the Secretary for Justice into this Court to be quashed.
- (b) Writ of Mandamus directing the Secretary for Justice to re-determine the application according to law.
- (c) Writ of Prohibition restraining the Secretary for Justice, his employees, officers, delegates or agents from acting upon or giving effect to the decision.

This Court heard Counsel, Mr. Clodumar for the Applicant and considered the supporting affidavit in relation to the above matter on 5 June 2015. The Court also reviewed the supporting documents provided by Mr. Clodumar in which he has submitted that the Secretary for Justice

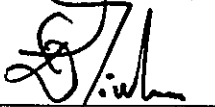
has not provided reasons for the refusal to grant a visa to the Applicants lawyer, Mr. Jason Williams on the 20 May 2015 pursuant to section 10(7) of the Immigration Act 2014.

Therefore, upon hearing Mr. Clodumar for the Applicants.

The following Orders are made:

1. **Leave granted for Judicial Review.**
2. **Original Affidavit to be filed.**
3. **The Writ of Summons to be served on the Secretary for Justice and Border Control as Respondent.**
4. **Matter to be listed on Monday 8 June 2015 for mention.**
5. **Pursuant to Order 39, the Respondent has 5 days to Appeal the decision of the Registrar to a Judge.**
6. **There is no order as to costs.**

Dated this 5<sup>th</sup> day of June 20



David Toganivalu  
Registrar  
Supreme Court of Nauru



**IN THE SUPREME COURT OF NAURU**

[MISCELLANEOUS CAUSE]

Misc. No 54 of 2015

BETWEEN TYRONE DEIYE

**APPLICANT**

And THE REPUBLIC

**RESPONDENT**

Before: Khan, J

For the Applicant: Mr A Vakaloloma  
For the Respondent: Mr W Kurisaqila

Date of Hearing: 9 June 2015

Date of Ruling: 9 June 2015

**RULING/DIRECTIONS**

1. The applicant is charged with three counts of larceny in District Court case no. 154 of 2014.
2. This matter was initially set for trial on the 19 May 2015 and four witnesses were called by the prosecution on the 20 May 2015 and upon completion of the prosecution's case the defence counsel Mr. Vakaloloma sought an adjournment to 21 May 2015 to make a submission of no case to answer.

3. On the 21 May 2015 the counsel for the applicant instead of making a submission of no case to answer instead attempted to see the Resident Magistrate in her chambers which she declined and adjourned the matter to 2pm on 21 May 2015. At 2pm Mr. Vakaloloma appeared for the applicant together with Mr. Wilisoni Kurisaqila in the District Court which was open to the Public.
4. Mr. Vakaloloma made very serious allegations about the conduct of the learned prosecutor Mr. Livai Sovau in the District Court that he coached witness number 4 namely Cathy Degeago and therefore she did not give evidence freely.
5. The learned Magistrate made a ruling on 22 May 2015 in which she set out the facts in sufficient detail and I do not wish to repeat what she said as it is very clear from her ruling.
6. The learned Magistrate concluded that she will proceed to write and deliver her ruling on the submission of no case to answer and I understand from both counsel that her ruling will be delivered tomorrow 10 June 2015 at 10am.
7. Mr. Vakaloloma made an application for interim stay. He filed two applications in this Court, an application for interim stay of the proceedings in the District Court and also an application for permanent stay of the proceedings there.
8. Mr. Vakaloloma has made an application for interim stay alleging that his client the applicant will be prejudiced by the alleged coaching by the learned prosecutor Mr. Sovau. He has conceded that there is no abuse of process by the learned trial Magistrate.

**Onus**

9. The onus is on the applicant to satisfy the court that an abuse of process exists with the party against whom it is alleged; the totality of all factors involved in the case should be considered in determining the question as to whether there is an abuse of process. The standard is that the court has power described as discretionary but must be exercised where the grounds for it are proved.
10. I repeat that there is an only mere allegation against Mr. Livai Sovau which is yet to be proved and besides Mr. Sovau is entitled to the due process and in the circumstances the application for interim stay of the proceedings is refused.

DATED this 9<sup>th</sup> day of June 2015.

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Mohammed Shafiullah Khan  
Judge