



IN THE SUPREME COURT OF NAURU

[MISCELLANEOUS CAUSE]

MiscCause 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

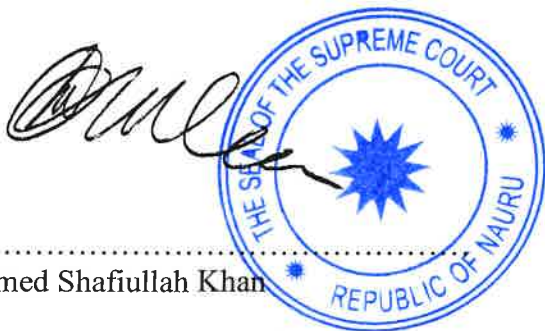
1. The applicant is charged with three counts of larceny in District Court case no. 154 of 2014.
2. This matter was initially set for trial on the 19 May 2015 and four witnesses were called by the prosecution on the 20 May 2015 and upon completion of the prosecution's case the defence counsel Mr. Vakaloloma 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 9th day of June 2015.



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Mohammed Shafiullah Khan
Judge