



IN THE SUPREME COURT OF NAURU

AT YAREN

[CRIMINAL APPELLATE DIVISION]

Case No. 101 of 2016

Between

JOHN JEREMIAH, JOSH KEPAE and
JOB CECIL

Plaintiffs

And

THE REPUBLIC

Defendant

RULING

1. On the 25 April 2017 I received an email from solicitor Christian Hearn (Annexure "A"), legal representative for the plaintiffs, that commences as follows:

"I write to request an urgent opportunity to make an application to you for urgent relief in the matter of John Jeremiah, Josh Kepae and Cecil Job v Republic of Nauru.

This application is made ex parte by necessity but I include the Director of Public Prosecutions on this email.

In making this application we ask that Your Honour sit as a Full Court of the Supreme Court of Nauru, pursuant to section 5(2) and 17(2) of the Courts Act 1972 (Nauru)."

2. The matter of *John Jeremiah, Josh Kepae and Cecil Job v Republic of Nauru* is currently before the Supreme Court of Nauru. It is proceeding, so I understand, on cross-appeals against the sentences imposed in the District Court in November 2016 following guilty pleas by the appellants.
3. The *Appeals Act 1972* provides in Part II for appeals from the District Court in Criminal Causes and in Part III for appeals from the District Court in Civil Causes and Matters. Parts V and VI deal with appeals to the High Court of Australia from the Supreme Court in Criminal Causes, and Other Causes and Matters respectively.

**PART II – APPEALS FROM THE DISTRICT COURT IN
CRIMINAL CAUSES**

3 Appeal to the Supreme Court

...
(3) Where the District Court has convicted any person in any cause, the Director of Public Prosecutions may appeal to the Supreme Court against the sentence passed on such person's conviction.

4 Limitation of appeal on plea of guilty and in petty cases

(1) Save with the leave of the Supreme Court, an appeal may not be brought by a person who has pleaded guilty and has been convicted on that plea by the District Court, except as to the extent or legality of the sentence.

4. Judge Khan is currently seized of the matter and the email from Mr Hearn informs that this morning the Judge refused to allow an adjournment of the case. Various orders were made in relation to affidavits placed before the Court, and following argument by counsel, the Judge refused an application to rescind the orders and disqualify himself from the case on an apprehension of bias.
5. Following the luncheon adjournment the plaintiffs filed a summons ("Annexure "B") seeking Constitutional relief, pursuant to section 54 of the Constitution, and Judicial Review under section 17 *Court's Act* 1972.
6. This was dismissed by the Court as an abuse of process. The information from Mr Hearn is that the *"ruling was primarily on the basis that the Full Court could not judicially review a superior court justice."*
7. Mr Hearn as the legal representative for the Plaintiff seeks the following by way of an *ex parte* application:

"We now seek an urgent interlocutory order from Your Honour on the basis that the orders made by Khan ACJ were extraordinary, seemingly for an improper purpose and made in breach of procedural fairness and that Khan ACJ no longer has jurisdiction to proceed with the appeals on the basis that the reasonable observer would apprehend that his is biased."

An additional basis is that Khan ACJ's order that the appeals not be adjourned pending the outcome of the fundamentally important stay application was unreasonable and patently wrong.

Unless the order is made the appellants will suffer prejudice in that they will be subject to their appeals being heard, dismissed and jail sentences imposed.

This will occur in breach of their fair hearing rights under Article 10 of the Constitution.

Orders from Your Honour will restrain this anticipated constitutional breach.”

8. The legal representative avers that I have power to grant the interlocutory orders sought under section 5(2) and 17(2) of the *Courts Act 1972*.

5 Powers of judges

(1) All the judges of the Supreme Court shall have in all respects, save as is expressly otherwise provided by this Act, equal power, authority and jurisdiction under this Act.

(2) Save as may be otherwise expressly provided by any written law, any judge of the Supreme Court may exercise all or any part of the jurisdiction vested in the Supreme Court by or under the provisions of this Act or any other law, and for such purpose shall be and form a court.

(3) The jurisdiction of the Supreme Court may be exercised in any cause or matter by a judge notwithstanding that it is being exercised at the same time in another cause or matter by another judge.

17 Jurisdiction of Supreme Court

(1) The Supreme Court shall have and exercise within Nauru all such powers and jurisdictions as are or may from time to time be vested in it under or by virtue of the Constitution, this Act and any other written law for the time being in force.

(2) The Supreme Court shall, subject to any limitation expressly imposed by any written law, have and exercise within Nauru all the jurisdiction, powers and authorities which were vested in, or capable of being exercised by, the High Court of Justice in England on the thirty-first day of January, 1968.

(3) The Supreme Court shall have within Nauru all and singular the powers and authorities vested in, or capable of being exercised by, the Lord High Chancellor of England on the thirty-first day of January, 1968, to appoint guardians of the persons and estates of infants.

(4) Save as provided by this Act, the Civil Procedure Act 1972, or any other written law or by rules of court, the jurisdiction of the Supreme Court shall be exercised by a single judge.

9. I can find no provision under the *Courts Act* 1972 or under the *Appeals Act* 1972 for a single judge to review a judgment, decree or order of another judge.
10. The Constitution in Article 57(1) allows for a review of a decision by a single Supreme Court judge by way of appeal as prescribed by law to "the Supreme Court constituted by not less than two judges".
11. This application by way of email was made directly to me during Court hours when the Registry was open. The matter should have properly been placed before the Registrar to be forwarded to me. Later in the evening of 25 April 2017 when I was considering this matter I received a second email from Mr Christian Hearn ("Annexure C"). Direct communication in this way is not in accordance with usual court practices.
12. On the 29 January 2015 Chief Justice Joni Madraiwiwi issued Rules for Empanelment of a Full Bench. Under 1(a) the full bench of the Supreme Court of Nauru is constituted of three judges; and under 1(b) if in the event that three were unavailable, accordingly it is to be comprised of two judges ("Annexure D").
13. There is nothing before me to indicate that a Judge of the Supreme Court of Nauru sitting alone can constitute a Full Bench and review a decision made by a brother Judge in a matter currently before that Court.
14. The application is refused.



Judge Jane E Crulci

25 April 2017

