



IN THE SUPREME COURT OF NAURU  
AT YAREN  
APPELLANT JURISDICTION

CRIMINAL APPEAL NO. 101/2016

BETWEEN

JOHN JEREMIAH

FIRST APPLICANT

JOSH KEPAE

SECOND APPLICANT

JOB CECIL

THIRD APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS (NAURU)      RESPONDENT

Before:                      Khan, ACJ  
Date of Hearings:        4 May 2017  
Date of Ruling:           5 May 2017

Case may be cited as *John Jeremiah and others v DPP*

**CATCHWORDS:**

Application for leave to appeal to the High Court of Australia- whether under s.39 (2) of the Appeals Act 1972 the stay of sentence is automatic- or- whether the court can defer the stay until the determination of application for leave to appeal or determination of the appeal.

**APPEARANCES**

Counsel for the First and Third Applicants: S Lawrence  
Counsel for the Second Applicant:            M Higgins  
Counsel for the Respondent:                    Mr D Tonganivalu

## RULING

1. I gave an ex tempore ruling in this matter on 4 May 2017 as the applicants' liberty was at stake and I granted them bail pending the hearing of the application for leave appeal to the High Court of Australia. I now perfect my ruling.
2. At about 2.30pm on 4 May 2017 I delivered a ruling refusing to grant stay the applicants' sentences pursuant to s.39(1) of the Appeals Act 1972 (the Act); and also, refused to grant bail under the provisions of s.39(3) of the Act.
3. Prior to the delivery of the ruling I was advised by the counsels for the applicants that an application for leave to appeal was filed in the Sydney Registry of the High Court of Australia.
4. After I delivered my ruling the counsels for the applicants made an application for the matter to be stood down so that they could produce filed copies of the application for leave to appeal and I had the matter stood over.
5. When the matter resumed, copies of the application for leave to appeal was provided by the applicants' counsel and during the break the Registrar also provided me with filed copies of the application which he had received from the solicitors for the applicants based in Sydney.
6. Mr Lawrence submitted that since the applicants have filed an application for leave to appeal, the sentences under s.39 (2) shall be stayed, unless the Court orders otherwise, and in that event an application has to be made by the DPP. S.39(2) states:

s.39(2) –

- (1) Where in respect of any cause an application for leave to appeal under this Part has been made or Notice of Appeal under this Part has been filed, the sentence and or any order made upon the conviction or by the Supreme Court on appeal under Part 2 of this Act, other than an order quashing a conviction, shall be stayed, unless the Supreme Court otherwise orders:
  - a) Where an application has been made for leave, until the application has been heard and determined by the High Court or discontinued and, if leave to appeal is granted, for a further period until the expiration of the time allowed for filing the Notice of Appeal; and
  - b) Where the Notice of Appeal has been filed until the appeal has been heard and determined by the High Court or discontinued;


but the Supreme Court shall not order the execution of a sentence of death until the appeal has been determined or discontinued.

7. The DPP did not make any application and conceded that since the application for leave has been filed by the applicants, the sentence should be stayed. He further conceded that the stay sentence was 'automatic', but he submitted that s.39(2) should be considered together the provisions of s.39(3) which states:

The Supreme Court may, if it thinks fit, make the stay of a sentence of imprisonment conditional upon the person subject to such sentence entering into such a bail recognizance, with or without sureties, as it considers reasonable.

8. The DPP's concession that the sentence should be stayed or the stay of the sentence is "automatic" since the applicants have filed an application for leave to appeal, is clearly flawed, as under subsections (a) and (b) the Court has powers to defer the stay until the hearing and determination of the application for leave to appeal or for a further period until the expiration of the time allowed for the filing of the appeal; or where the appeal has been filed until the appeal has been heard and determined.
9. In light of the DPP's concession that the sentence shall be stayed, although I find that it was clearly flawed, I make an order for the stay of the sentences and I release all the applicants on bail.

DATED this 5 day of May 2017

  
Mohammed Shafiullah Khan  
Acting Chief Justice

