IN THE SUPREME COURT OF NAURU
AT YAREN
CRIMINAL JURISDICTION

Criminal Case No 8 of 2017

BETWEEN

Republic

V

Mikala Teokila

Before: Khan, J
Date of Hearing: 16 &17 September 2019& 26 November 2019 & 13 February 2020
Date of Ruling: 14 February 2020

Case may be cited as: *Republic v Teokila*

CATCHWORDS: Criminal Law – Service of summons to witness – Submission of no case to answer – Where summons to witness served a day before trial – Where section 81 of the Supreme Court Act 2018 provides that the person served must have reasonable notice – Whether service a day before is reasonable notice
Where no evidence against the defendant – Whether submission of no case to answer should be upheld.

APPEARANCES:

Counsel for the Prosecution: S Serukai
Counsel for the Defendant: S Valenitabua

RULING

INTRODUCTION

1. The accused is charged with the following offences:

First Count

Statement of Offence

Engaging child to provide commercial sexual services: contrary to s.119(1) (a), (b), (ii) of the Crimes Act 2016.

Particulars of Offence

Mikala Teokila between 1 July 2016 to 31 July 2016 at Nauru, intentionally caused MS to provide commercial sexual services when the said MS was a child under 18 years old.

Second Count

Statement of Offence

Supply of liquor to young persons: Contrary to s.33(1) and s.45 of the Liquor Act 1967.

Particulars of Offence

Mikala Teokila between 1 July 2016 to 31 July 2016 at Nauru, supplied liquor to MS a person under the age of 21 years.

Fourth Count

Statement of Offence

Supply of liquor to young persons: Contrary to s.33(1) and s.45 of the Liquor Act 1967.

Particulars of Offence

Mikala Teokila between 1 October 2016 to 31 October at Nauru, supplied liquor to MJ a person under the age of 21 years.

2. This is a part-heard case. The evidence was taken on 16 September 2019 and after the complainants gave their evidence Miss Serukai sought an adjournment to consider her position. Upon resumption of the trial on 17 September 2019 she informed the Court that she will be filing nolle prosequi.

3. Mr Valenitabua objected to the filing of nolle prosequi and submitted that since the elements of the offence have not been proved, the prosecution should close its case, instead of filing nolle prosequi.

4. I delivered a ruling on 2 December 2019 in which I considered as to whether the court has powers to refuse to accept nolle prosequi. I held that under the inherent jurisdiction of the court, the court can refuse to accept nolle prosequi to ensure that its process is not abused.

5. I refer to my ruling of 2 December 2019 where I stated at [3], [4], [5], [6], [20] and [23] as follows:

[3] In her opening address Miss Serukai stated that the accused intentionally caused MS (the complainant) to provide sexual services for commercial purposes to the refugees. She stated the prosecution's case was that the accused would take young girls to the refugee camp to drink alcohol and then arrange for them to have sexual intercourse with the refugees; and in exchange she was paid money and given alcohol. In relation to counts two and four she stated that the accused supplied alcohol to the complainant and other girls who were below the age of 21 years. She stated that she intended to call 5 witnesses in the trial.

[4] After MS and MJ gave their evidence Miss Serukai advised the court that their evidence did not prove the elements of the offences in counts 1, 2 and 4; she further said that they were her main witnesses in relation to those counts. She sought an adjournment to consult the Director of Public Prosecutions and seek his directions. An adjournment was granted to 17 September 2019 for the continuation of the trial.

[5] On 17 September 2019 upon the resumption of the trial Miss Serukai informed the court that she will not be continuing with the trial and that she will be filing *nolle prosequi* and the matter was adjourned to 18 September 2019.

[6] On 18 September 2019 Miss Serukai filed nolle prosequi in the registry which was signed by the Director of Public Prosecutions (DPP), Mr RB Talasasa.

[20] Under the inherent jurisdiction of the Court I can decline to accept the nolle prosequi if accepting it will deprive the accused of a fair trial. The accused stands charged for a very serious offence in count 1 in which she is alleged to have engaged a child to provide sexual services in exchange of money and alcohol and a discharge would mean that she will have to live with that stigma for the rest of her life if she was discharged instead of an acquittal. The effect of a discharge and acquittal was discussed by Shepherdson J in R v Saunders[1] where at page 272 it was stated:

"In short, if I accede to the Crown's request to return the indictment in respect of the present count, the accused almost certainly never hold her head up and validly assert that she has been found not guilty on this count. Without an acquittal, the stigma, if that be the correct word, in respect of this unresolved charge will probably be forever imprinted on her and her reputation. Compliance with the Crown's request will cause the accused prejudice."

[23] In light of the intimation by the counsel for the prosecution that there is no evidence against the accused in respect of all the charges, and if that is so, then at the completion of the trial she would be acquitted. I therefore decline to accept the nolle prosequi filed in the Registry and I order that the prosecution shall call its remaining witnesses, and if it decides not to do so, then it should close its case.

[1]]1983] 2QbR 270

6. After my ruling Miss Serukai decided to call her remaining witnesses and the matter was set down for trial on 13 and 14 February 2020.

7. When this matter came up for hearing yesterday Miss Serukai closed her case and decided not to call her remaining witness who was served with the summons to witness on 12 February 2020.

8. The summons to witness was served on FH on 12 February 2020 by a police officer, and notwithstanding the service Miss Serukai stated that she was not asking for a bench warrant against this witness, as she had consulted the Director of Public Prosecutions and a decision was made that she should close her case.

9. The power to summon witnesses and to examine them is contained in s.100 of the Criminal Procedure Act 1972, which states:

> 1) Any Court may at any stage of any proceeding under this Act, of its own motion or on the application of any party, summon any person as a witness, or examine any person in attendance though not summoned as a witness, or recall and re-examine any person already examined, and the Court shall, unless the circumstances make it impossible to do so, summon and examine or recall and re-examine any such person if his evidence, or further evidence, appears to it essential to the just decision of the case:
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> Provided that the prosecutor, or the barrister or solicitor or pleader, if any, for the prosecution, and the accused, or his barrister and solicitor or pleader, if any, shall have the right to cross-examine any such person, and the Court shall adjourn the case for such time, if any, as it thinks necessary to enable such cross-examination to be adequately prepared if, in its opinion, either party may be prejudiced by the calling of any such person as a witness.
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> 2) The provisions of section 49 of the Courts Act 1972 shall apply mutatis mutandis in respect of any person who fails to attend before any Court in obedience to a summons issued under the preceding subsection as though that summons had been issued under section 48 of the said Courts Act.

10. Section 100 (2) refers to section 49 of the Courts Act 1972 which states:

> If any person summoned under the provisions of the last preceding section, having '**reasonable notice**' of the time and place at which he is required to attend, after tender of his reasonable travelling expenses to and from Court, fails to attend accordingly and does not excuse his failure to the satisfaction of the Court, he shall, independently of any other liability, be guilty of an offence and liable to a fine not exceeding one hundred dollars and may be proceeded against by warrant to compel his attendance.

11. The Courts Act 1972 was repealed and has been replaced by the Supreme Court Act 2018 and the relevant provisions are contained in sections 81 and 82. S.81 again mentions

'reasonable notice'. What is reasonable notice? That depends on the circumstances of each particular case, however, to serve a witness a day before the trial in my respectful opinion is not reasonable notice considering the fact that the summons to witness was issued by the court on 5 February 2020.

SUBMISSION OF NO CASE TO ANSWER

12. Upon close of the prosecution case, Mr Valenitabua made a submission of no case to answer and submitted as he had done earlier that there was no evidence against the accused to prove the elements of the offences.

13. Miss Serukai again concedes, as she had done earlier when she filed nolle prosequi, that there was no evidence against the accused in respect of the various counts. I dealt with the submission of no case to answer in *Republic v Dabwido*[2] and I adopt what I stated at [10] which is as follows:

> [10] Prosecution closed its case after calling two witnesses and the defense counsel, Mr Valenitabua, made a submission of no case to answer. In the *Republic v John Jeremiah and others*[3] Crulci J. issued guidelines on 'submission of no case to answer'. In her judgement she stated at [4], [5], [14] and [22] as follows:
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> > [4] In Nauru the statutory provision for a consideration of no case to answer is found in the Criminal Procedure Act 1972:
> >
> > '201. Where the evidence of the witnesses for the prosecution has been concluded and any written statements and depositions properly tendered in support of the prosecution case have been admitted, and the evidence or statement, if any of the accused taken in the preliminary enquiry has, if the prosecutor wishes to tender it, been tendered in evidence, the Court –
> >
> > a) If it considers that, after hearing, if necessary, any arguments which the prosecutor or the barrister and solicitor or pleader conducting the prosecution and the accused, or his barrister and solicitor or pleader if any, may wish to submit, that a case is not made out against the accused, or any one of the several accused, sufficiently to require him to make a defence in respect of the whole of the information or any count thereof, shall dismiss the case in respect of, and acquit that accused as to, the whole of the information or that count, as the case may be; …'
> >
> > [5] Section 201 is applicable to both the Supreme and District Courts as provided for by section 158 of the Criminal Procedure Act 1972.

[2] Criminal Case No 13 of 2019
[3] [2016] NRSC 42

[14] Lord Lane CJ then set out the process for a judge to follow when dealing with a submission of 'no case to answer':

> '*(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.*'

[22] The following are the guidelines when a submission of no case to answer is made:

(1) If there is no evidence to prove an element of the offence alleged to have been committed, the defendant has no case to answer.

CONCLUSION

14. As there is no evidence against the accused, I uphold the submissions of no case to answer and acquit the accused on Counts 1, 2 and 4.

DATED this 14 day of February 2020

Mohammed Shafiullah Khan
Judge