

IN THE DISTRICT COURT OF NAURU
(Criminal Jurisdiction)

CRIMINAL CASE NO. 40 of 2015

BETWEEN:

THE REPUBLIC OF NAURU
Complainant

AND:

DAMIEN JORAM
Defendant

Mr. Lacanivalu for the Republic
Mr. Knox Tolenoa for the defendant

Date of hearing: 20th April 2016
Date of Judgment: 25th April 2016

Judgment

1. The defendant is charged with 1 count of common assault contrary to section 335 of the Criminal Code 1899. He has pleaded guilty to the offence, but had disputed certain facts submitted by the prosecution to the court.
2. This matter first came before the court on the 7th December 2015. On that day the court released the defendant on bail with the following conditions:

"i. He is to enter into his own recognizance on bail in the sum of \$200.00. He is to be of good behavior whilst on bail.

ii. He is not to harass, intimidate or assault Mrs. Damien Joram anywhere or at any time.

*iii. He is to appear before the court on the 27th January 2016 at 10 am for mention and whenever required by the court to do so."*¹

3. On the 12th April 2016, the counsel for the defendant filed an application with the court for variation of bail conditions imposed by the court to the effect of allowing the defendant to gain access to the house where he used to live with the complainant under police escort to collect his personal properties. An affidavit in support of the application was also filed. In paragraph 8 of his affidavit the defendant deposed that:

*"One of the court order after being separated from Daina is not to set foot at her residence"*²

In paragraph 13 of the affidavit of the defendant he listed his personal belongings that he left at the house of the complainant when he left.

4. The prosecution filed an affidavit by the complainant arguing that the properties referred to by the defendant are matrimonial properties and that the only personal items that he had left behind at the house of the complainant are his clothes.
5. Firstly it is clear that the court never made any order restraining the defendant from entering the residence of the complainant. Paragraph 3 of the bail conditions imposed by the court is that he is not to assault, harass, intimidate or assault the complainant anywhere or at any time.
6. The application by defendant is in my view misconceived. The court never made the order he is seeking to vary as part of his bail condition. Secondly it is my view that the issues raised by both Mr. Tolenoa and Mr. Lacanivalu in their respective submissions are better dealt with in the proper forum which is the relevant Civil Court.
7. I have no jurisdiction to deal with the matters raised by Mr. Tolenoa in the application. I therefore dismiss the application

¹ Record of court proceedings 7 December 2015

² Paragraph 8 of the Affidavit of the defendant filed with the Court on the on the 12 April 2016.

Dated this 25 day of April 2016

