

**IN THE DISTRICT COURT OF NAURU
(Criminal Jurisdiction)**

CRIMINAL CASE NO. 20, 21, 22 and 24 of 2016

BETWEEN:

THE REPUBLIC OF NAURU
Complainant

AND:

PISONI BOP & OTHERS
Defendant

*Mr. David Tonganivalu Director Public Prosecution for
Republic*

Mr. Vinci Clodumar for the defendant

Date of hearing: 16th August 2016

Date of Ruling: 17th August 2016

Ruling

1. The defendant is charged together with 18 other defendants with the following offences riot contrary to section 61 and 63 of the Criminal Code 1899, disturbing the legislature contrary to section 56 of the Criminal Code 1899. The offences were alleged to have been committed on the 16 June 2015.
2. This matter was stated to the Supreme Court for certain questions to be answered on two occasions.

The Supreme Court has sent this matter back for the District Court to conduct the trial. This matter is now listed to be called before the District Court on Thursday 18th August 2016 for mention with a view to setting the date for all the defendants to take their plea and in the event the defendants plead not guilty then this matter be set for trial.

3. The defendant applies to have his bail condition imposed on him on the 17th July 2015 varied to the effect of releasing his passport to allow him to travel to Australia at his own expenses to seek medical treatment. The prosecution opposes the application. The first issue for this court to determine on the evidence is the medical condition of the defendant and whether it warrants him being sent overseas for further tests and treatment.
4. The defendant had attached a referral letter to his affidavit. The report is dated 17th July 2015 and is made by Dr. Patrick Timeon. The recommendation is "*overseas referral for stress ECG with a possibility of angiogram and recanalization*"¹
5. The applicant said he had been on government sponsored referral for 12 months now in respect of his condition with no sign of improvement and he now seek medical help privately before another episode of heart attack.² The applicant also said that he is now half blind in the right eye and just last month the eye specialist recommended that he get attention overseas to stop further deterioration.³ The applicant said that a recent incident at his home on 16 July 2016 where he was punched in the face hitting his right eye twice and this has caused additional problems.⁴ The applicant

¹ Paragraph 5 of the report by Dr. Patrick Timeon dated 17th July 2015

² Paragraph 6 of the affidavit of Sprent Dabwido filed with the Court on 9 August 2016.

³ Paragraph 7 of the affidavit of Sprent Dabwido filed with the Court on 9 August 2016

⁴ Paragraph 7 of the affidavit of Sprent Dabwido filed with the Court on 9 August 2016

says that is why this is urgent that he is allowed to travel as soon as possible.⁵ The applicant deposed that his medical referral should be completed within one month.⁶

6. The prosecution objects to the defendant being allowed to travel overseas to receive medical advice and treatment at his own expense submitting that the applicant could pose a risk of not returning to the jurisdiction to face trial submitting that:

- i) If the applicant is not available then this could prolong further delay;
- ii) The absence of the applicant if allowed to go overseas and no evidence before the court that his lawyers will be present in court could further affect the Republic's interest in this case
- iii) The nature of the charges against the applicant and as such the opposition to the application for the release of his passport to travel overseas for medical treatment.
- iv) The applicant has not shown any return date to Nauru even though he is suggesting that his appointment is for this Thursday 18 August 2016.
- v) There is no adequate surety or cash bond being offered by the applicant to be placed as adequate surety before this court.

7. The prosecution has also filed an affidavit from Dr. Selina Motufaga the Director Clinical Services at Republic of Nauru hospital. She stated that the

⁵ Paragraph 7 of the affidavit of Sprent Dabwido filed with the Court on 9 August 2016

⁶ Paragraph 8 of the affidavit of Sprent Dabwido filed with the Court on 9 August 2016

Committee has not approved the applicant's referral by Doctor Patrick Timeon dated 17th July 2015.⁷ Dr. Selina Motufaga did not explain why the Committee has not approved the applicant's referral by Doctor Patrick Timeon. An explanation should have been given to assist the court in determining this issue.

8. Dr. Motufaga further stated that the applicant should undergo another Medical Examination with Dr. Patrick Timeon and get a current assessment on his health as the medications provided by Dr. Timeon in 2015 should stabilize his condition and possibly improve his condition if he adheres to the medication.⁸ Dr. Motufaga did not explain the need for another assessment. Again an explanation should have been forth coming to assist the court in determining this issue.

9. Dr. Motufaga has stated that she is currently in the process of arranging for a Cardiac Team of Heart Specialist that visits Nauru annually to come around in October 2016.⁹ Dr. Motufaga said that the applicant could await the Cardiac Team and obtain a specialist advice to check seriousness and urgency in the treatment of his heart condition.¹⁰ Dr. Motufaga also said that from the records, it appears that the applicant was seen by the Eye specialist and has recommended further observation.¹¹

10. It could be deduced from the matters deposed to by Dr. Motufaga in paragraph 7,8,9 and 10 of her affidavit that the defendant's medical condition

⁷ Paragraph 7 of affidavit of Dr. Motufaga filed with the Court on 16 August 2016

⁸ Paragraph 8 of the affidavit of Dr. Motufaga filed with the Court on 16 August 2016

⁹ Paragraph 9 of the affidavit of Dr. Motufaga filed with the Court on 16 August 2016

¹⁰ Paragraph 10 of the affidavit of Dr. Motufaga filed with the Court on 16 August 2016

¹¹ Paragraph 11 of the affidavit of Dr. Motufaga filed with the Court on 16 August 2016

with regards to his heart condition and eye condition is not so serious so as to warrant him travelling overseas.

11. Dr. Patrick Timeon has been called by the defence to give evidence. The evidence of Dr. Timeon is that the defendant is one of his patients. He had produced a report on the medical condition of the defendant dated 17 July 2015.
12. Dr. Timeon recommended that the defendant be referred overseas for stress ECG with a possibility of angiogram and recanalization. Dr. Timeon further gave evidence that the major purpose for recommendation for overseas referral is that they do not do the test here in Nauru and the other one is called angiogram is to confirm the diagnosis and if confirmed then the treatment. In effect the evidence of Dr. Timeon is that the diagnosis and treatment of the defendant if confirmed that he is suffering from ischemic heart disease is not available at the Republic of Nauru Hospital and can only be done overseas.
13. Dr. Timeon further gave evidence that his findings and recommendations made on the 17th July 2015 regarding the heart condition of the defendant are still maintained. Dr. Timeon has given evidence to the effect that even if he were to conduct another review on the defendant as suggested by Dr. Motufaga the Director of Medical Services in Nauru, his opinion and recommendation would not change from his report made on 17 July 2015, including the diagnosis and recommendations made therein.
14. Mr. Clodumar has put the observation by Dr. Matufaga to the effect that the defendant could wait for the Cardiac team she has organized to come in October of 2016 to obtain specialist advice to

check seriousness and urgency in the treatment of his heart condition and invited Dr. Patrick Timeon to comment on this aspect of the observation by Dr. Motufaga. Dr. Timeon gave evidence that with Ischemic Heart Disease it is unpredictable when a patient is going to have a heart attack further giving evidence that his recommendations should be done as soon as possible so as to avoid negligent issues.

15. Mr. Clodumar has also put Dr. Motufaga's evidence to the effect that the medications he had prescribed to the defendant should stabilize his conditions and possibly improve his condition if he adheres to the medication¹² and invited Dr. Timeon to comment on Dr. Motufaga's observation.

16. Dr. Timeon gave evidence that the medication used to treat Ischemic heart disease, the first medicine helps the pump action of the heart. The second medication help to prevent blockage of blood vessels to the heart muscle and the third medication helps in an emergency situation when there is chest pain high lighting that the medications administered are only assisting but not curing the condition.

17. There are stark inconsistencies between the evidence of Dr. Motufaga given in her affidavit and the evidence given by Dr. Timeon in court. The inconsistencies between these two doctor's evidence goes to the heart of the issue for the court to determine. Whether there is urgency in situation of the defendant's medical condition so as to enable him to travel overseas at his own expense. Dr. Timeon's evidence is that the defendant should be sent overseas for referral treatment and that these should be done as soon as soon as possible. A

¹² Paragraph 8 of the affidavit of Dr. Motufaga dated 16 August 2016 and filed with the Court on 16 August 2016

failure to do this would border on negligence. On the other hand Dr. Motufaga's evidence is that the defendant could wait for the Cardiac team she has organized to come in October of 2016 to obtain specialist advice to check seriousness and urgency in the treatment of his heart condition.

18. The evidence before me from two experts both Medical Doctors regarding their assessment of the medical condition of the defendant are two opposing views. Mr. Clodumar did not cross-examine Dr. Motufaga on the issues and views raised by Dr. Patrick Timeon that are inconsistent with her views as expressed in paragraphs 8, 9, 10 and 11 of her affidavit filed with the Court on 16 August 2016. The defense did not put its expert witness's views and conclusions to Dr. Motufaga during cross-examination. Equally the prosecution did not put Dr. Motufaga's views as expressed in paragraphs 7, 8, 9, 10 and 11 to Dr. Timeon. The effect of this is that her evidence is uncontested. And the evidence of Dr. Timeon is uncontested. The court cannot accept both views. The failure by the defence to cross-examine Dr. Motufaga and the failure by the prosecution to cross-examine to Dr. Timeon on the matters which his views are in conflict with that of Dr. Motufaga must result in the court's inability to decide which version to accept.
19. At this stage I am unable to make a finding on whether or not the defendant's medical condition justifies this court's exercise of its discretion to vary the bail condition of the defendant to enable the defendant to travel overseas for medical treatment.
20. Because of my finding as expressed in paragraph 19 of this ruling I need not consider the other issues raised by counsels.

21. The application for variation of bail is dismissed.

Dated this 17th day of August 2016



Emma Garo
Resident Magistrate

