

Joram, Bureka Kakiouea, Debub Jeremiah and Hestakai Foilape in District Court Criminal Case No 24 of 2015 that were made on 10 July 2015 before this Court.

2. It should be noted from the outset that in these proceedings the learned Resident Magistrate has referred a Case Stated for the Court's opinion on certain constitutional issues in identical terms to that in Civil Case No 74 of 2015 and Civil Case No 77 of 2015 as follows:
 - (a) Whether or not they have the right to counsel of their own choice pursuant to Article 10 (3) (e) of the Constitution; and
 - (b) Whether or not the circumstances surrounding their arrest, detention and charges preferred against them are unconstitutional.

The Case Stated has been adjourned to 17 August 2015 for mention to allow all the applicants to engage alternative counsel.

3. The processes of bringing the applicants before the Court has been somewhat confusing, but that is probably attributable to the nature and scale of the events of 16 June 2015 which stretched and almost overwhelmed the logistics and human resources of the Nauru Police Force.
4. The Court will deal with the District Court Criminal Case No 23 first because whether John Jeremiah, Renack Mau and Peeroy Mau ought to have been brought before the District Court and the present forum is with hindsight somewhat contentious. There is no need to detail the minutiae of their appearances for the reasons which follow.
5. While Pisoni Bop is the only named defendant in District Court Criminal Case No 23 of 2015, it appears John Jeremiah, Renack Mau and Peeroy Mau were also in the contemplation of the police in relation to the following offences for which Pisoni Bop was charged:
 - a. Unlawful Assembly contrary to section 61 and section 62 of the Criminal Code 1899. The particulars of the offence state: "Pisoni Bop with three and unnamed others on the 16 June 2015 at Yarren in Nauru, with intent to carry out some common purpose, assembled together in such a manner as to cause people in the neighbourhood to fear that the said Pisoni Bop with three others and other unnamed persons, so assembled would tumultuously disturb the peace."
 - b. Riot contrary to section 61 and section 63 of the Criminal Code 1899. The particulars of the offence state: "Pisoni Bop with three and unnamed others, on 16 June 2015 at Yarren in Nauru, assembled together in such a manner as to cause people in the neighbourhood, to fear that Pisoni Bop with three and unnamed others would tumultuously disturb the peace and did disturb the peace."

Pisoni Bop was released on bail by the District Court on 29 June 2015.

6. For reasons which are not altogether clear but which probably relate to the situation described in paragraph 2, no cases have been registered against John Jeremiah, Renack Mau and Peeroy Mau. The attempt by the prosecution to cure the defect by implicating them by *reference to* "... three and unnamed others..." in the charges against Pisoni Bop must fail because the lack of specificity is fatal in accordance with section 93 (d) of the Criminal Procedure Act 1972 which reads:

"The following provision shall apply to all charges and informations and, notwithstanding any rule of law or practice, a charge or information shall, subject to

the provisions of this Act, not be open to objection in respect of its form or contents if it is framed in accordance with the provisions of the Act:

(d) Description of persons:

The description or designation in a charge or information of the accused, or of any other person to whom reference is made therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name or his abode, style, title or occupation; and, if, owing to the name of the person not being known or for any other reason, it is impracticable to give such a description or designation shall be given such as is reasonably practicable in the circumstances, or the person may be described as 'a person unknown.'

7. Furthermore, the learned Resident Magistrate in correspondence dated 14 July, responding to enquiries made by the Court through the learned Registrar, has confirmed there are no cases filed against the three applicants. Section 51 (3) of the Criminal Procedure Act 1972 provides:

“(3). A complaint may be made orally or in writing but, if made orally, shall be reduced to writing by the magistrate; and, in either case, it shall be signed by the complainant and the magistrate:

Provided that, where proceedings are instituted by a police officer or any other public officer acting in the course of his duty, a formal charge duly signed by that officer may be presented to the magistrate and shall, for the purpose of this Act, be deemed to be a complaint.”

That being the case it is not necessary to traverse the grounds for opposition to bail raised by the prosecution because it has yet to arise. There are no charges properly before the Court to consider, although the prosecution may remedy that situation subsequently by filing and registering charges in the District Court. Matters may then take their course. This situation, while unfortunate, is similar to the circumstances considered in *Peter Hou v The Attorney General*¹

8. While the prosecution considers its options, John Jeremiah, Peeroy Mau and Renack Mau are released forthwith.
9. In District Court Criminal Court Case no 24 of 2015, Josh Kepae, Bureka Kakiouea, Dabub Jeremiah, Hestakai Foilape and Joram Joram appeared before the Court the same day to seek bail. They were part of 13 defendants jointly charged with unlawful assembly contrary to section 62 of the Criminal Procedure Code 1899 in the precincts of Parliament and its environs on 16 June 2015. The Court will confine itself to the 5 applicants mentioned.
10. For the record, the Court notes that the learned Resident Magistrate recused herself from dealing with this matter on 30 June 2015 because one of the 13 defendants jointly charged with unlawful assembly is Lena Porte, the Chief Probation Officer, with whom she has a close working and personal relationship.
11. Section 80 (1) of the Criminal Procedure Act 1972 provides that a person may apply for bail “other than a person accused of murder and treason”. Subsection (3) confers a wide discretion on this Court to grant bail notwithstanding the provisions of subsection (1).
12. Renack Mau on behalf of the 8 applicants who appeared submitted they sought bail because they had been either suspended or terminated from their employment and needed

¹ [1990] SLR p 88

- to provide for their families. Some of them were sole breadwinners. They required bail to support their families whether through fishing or some other venture. One of Renack Mau's colleagues had a sibling with disabilities and was the only family member to be able to look after him. They also asserted their innocence of the charges.
13. The prosecution's objections to bail are set out in the affidavit of Sergeant Tom Raynor sworn on 9 July 2015 which deal with the strength of the prosecution case, the public interest and the alleged fear of witnesses from Menen District to approach the police. Counsel for the prosecution reiterated them before the Court.
 14. The allegations about intimidation and other inappropriate conduct are general and vague in nature. They do not, with respect, condescend upon particulars so as to single out any of the 5 applicants as having attempted to influence, threaten or in any way interfere with either police investigations or witnesses. The Court is therefore not satisfied there is evidence to demonstrate a real likelihood that any of the applicants will interfere with any of the witnesses if released on bail.
 15. In relation to the applicants having allegedly evaded arrest, Sergeant Raynor Tom testified that "in relation to their arrest warrants issued on 26 June 2015, patrols went to execute arrest warrants numerous times, going every day during every shift of every day to the accused persons' homes and they all evaded arrest." The absence of the applicants from their homes at the relevant times is open to a number of interpretations. Without further substantiation, the characterisation given by the police remains a bare assertion and no more than one perspective of the applicants' conduct. In any case, Sergeant Tom's evidence is nullified by the concession made by counsel for the prosecution on 9 July 2015 before the learned Resident Magistrate when he admitted Josh Kepae, Bureka Kakiouea, Dabub Jeremiah and Hestakai Foilape surrendered to police at the Nauru Police Station.
 16. It is also puzzling that the prosecution should oppose bail in these circumstances when it had no objection to the 8 other defendants, who are co-defendants with the applicants, being granted bail. It is trite law and a basic rule of fairness that like cases must be accorded similar treatment. There is no explanation forthcoming from the prosecution as to why the applicants before the Court should be treated differently from their co-defendants on bail.
 17. The Court is therefore satisfied that bail should be granted to Joram Joram, Josh Kepae, Dabub Jeremiah, Hestakai Foilape and Bureka Kakiouea on the following conditions:
 - (a) Be of good behaviour while on bail;
 - (b) Not to reoffend whilst on bail;
 - (c) Surrender their passports to the Court (where applicable);
 - (d) Not to interfere with prosecution witnesses;
 - (e) To reside at Menen District or at their current abode;
 - (f) Provide two sureties to the satisfaction of the Court;
 - (g) To appear in Court on 17 August 2015 at 10am and subsequently whenever required to do so.
 18. As stated earlier in paragraph 8 John Jeremiah, Renack Mau and Peeroy Mau are released forthwith from remand as charges have not been preferred and registered against them for the Unlawful Assembly and Riot matters arising from the events of 16 June 2015.

DATED this 17th day of July 2015

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Joni Madraiwiwi
CHIEF JUSTICE