



**IN THE SUPREME COURT OF NAURU
AT YAREN
[CRIMINAL JURISDICTION]**

Criminal Case No. 04 of 2021

BETWEEN: ROLEX DABWIDO

APPLICANT

AND: THE REPUBLIC

RESPONDENT

BEFORE: Keteca J

Date of Hearing: 19th November 2024

Date of Ruling: 20th November 2024

Case may be cited as: Dabwido v Republic

Catchwords: Application for variation of Bail to travel to Australia under Section 22(2) (c), Bail Act 2018

Appearances:

Counsel for the Prosecution: **S Shah**

Counsel for the Accused: **R. Tom**

RULING

BACKGROUND

1. The Applicant is charged with one count of attempted murder, contrary to Section 55A and a count of Intentionally causing serious harm, contrary to Section 71(a)(b)(c) and (i) of the Crimes Act 2016.
2. He was granted bail on 27th July 2021. The matter is listed for hearing on 14th – 18th April 2025.

APPLICATION

3. On 11th Nov 24, Mr Tom filed a Notice of Motion seeking the following orders:
 - i. Bail be varied under Section 22(2) (c) of the Bail Act 2018 and for the Applicant be allowed to travel to Australia for his son's graduation.
 - ii. The Applicant relies on his and the supporting affidavits of:
 - a. Barukh Dabwido- cousin of the Applicant; and
 - b. Kimmy – Dyke Dabwido – another cousin of the Applicant.
4. On 13th November 24, I dismissed the application with reasons recorded in that Ruling.
5. On 18th November 24, the Applicant filed another Motion seeking the same orders applied for in paragraph [3] above.
6. He seeks the bail variation so his passport maybe released to him **so he can travel to Australia to attend his son's graduation**. The Applicant again relies on his own and on the affidavits in support of his cousins Barukh Dabwido and Kimmy-Dyke Dabwido.
7. He also relies on the affidavit of Pastor Jezza Valentino Agadio of the Meneng Congregational Church.

AFFIDAVITS

8. The Applicant states:
 - i. He is currently married to Avnis Dabwido, the mother of their son, Aiwo Roland.
 - ii. He intends to travel to Brisbane on 13th November and to return on 12th December 2024. (I note that Annexure B is his Nauru Airline ticket which shows that he should have departed on 13th November 24.)
 - iii. His family runs a restaurant that is leased to a Chinese national. Annexure C is the Business licence of XINGCHU LIU, **proprietor** of SUSHI RESTAURANT at Meneng District.
 - iv. He has worked for Ronphos Corporation for 13 years.
 - v. At paragraph 1.4, he states- 'The variation I seek is as follows:
 - a. That I pray for this court to release my passport and allow me to travel with my wife to be with my son and wife as he will spend 1 month there with them.'
 - vi. He has complied with all existing bail conditions.
 - vii. At paragraph 3.1, he outlines his pride with his son graduating and he intends to 'provide a farewell party to his homestay family in Australia.'
9. Barukh Dabwido states:
 - i. He is 24 years old. At [7] he states- 'That I pray for this court to release his passport and allow him to travel with his wife **to see his son's graduation in Australia..**'
 - ii. He is willing to be a surety to the sum of \$1000.

10. Kimmy- Dyke Dabwido states:
- i. He also prays that I release the Applicant's passport 'to allow him to travel with his wife **to see his son's graduation in Australia.**
 - ii. He is willing to be a surety to the sum of \$1000.
 - iii. At [9] he repeats- 'I humbly seek this court to grant him this bail variation **for him to travel with his family to see his son's graduation.**'

11. In response, opposing the Application Senior Constable Francs Togagae states:
- i. 'That the applicant at paragraph 3.1 states that he wishes to visit his son post-graduation. That this is not a change in circumstance as required under the Bail Act for a review application.
 - ii. The Applicant has not specified his date of travel to Brisbane nor annexed a return ticket to show his intention of returning to the Republic.
 - iii. The Applicant has not demonstrated any change in circumstance to warrant a bail review.
 - iv. The application for review be dismissed.

DISCUSSION

12. I note the following:
- i. The Application for review of the bail is to allow the Applicant to attend his son's graduation.
 - ii. This graduation was held last Friday, 13th November as shown in the materials filed on 11th November 24.
 - iii. The intent of the Applicant to 'provide a farewell party to his (son's) homestay family in Australia' is not sufficient a reason under Section 22(2)(c) of the Bail Act 2018.
13. In *Denuga v R*, it recognised that the Court has powers to vary bail conditions under Sections 31(5) and (7) of the Bail Act 2016 as follows:
- (5) *A Court which has power to review a bail condition, or to hear a fresh application under s. 15(1), may, if not satisfied that there are special facts or circumstances that justify a review, or making of a fresh application, refuse to hear the review or application.*
- (7) *The power to review a decision under this Part includes the power to confirm, or reverse or vary the decision.*
14. Under Section 17(2) Of the Bail Act 2018:
- 'the primary consideration in deciding whether to grant bail is **the likelihood of the accused person appearing in court to answer the charges laid against him or her.**'
- This is also the consideration that the court must address in the variation to bail applications.
15. In *Quadina v Republic, Criminal Case No. 13 of 2022*, a ruling I delivered on 11th Oct 24, I said- *Further, there is the 'public interest and the protection of the community "factors that the court need to consider. Any possibility of the Applicant absconding whilst in Australia will defeat the public interest in ensuring that the Applicant answers to the serious charge of 'attempted murder' laid against him."*

16. Considering all the above, I hold that there is no concrete evidence of any personal, humane, compassionate or health reasons under Section 22(2)c) Of the Bail Act 2018 that amount to 'special facts or circumstances' to justify the variation of the Applicants bail under Section 31(5) & (7) of the same Act.

CONCLUSION

17. The application to review and vary the Applicant's bail and to have his passport released to him to travel to Australia is dismissed.

DATED this 20th day of November 2024


Kiniviliame T. Keteca
Acting Chief Justice

