



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

**Miscellaneous Case No. 07 of 2025**

**BETWEEN:** A.D.  
  
The Republic  
  
**Applicant**  
  
**Respondent**

**BEFORE:** Keteca J

**Date of Hearing:** 09<sup>th</sup> July 2025

**Date of Ruling:** **01<sup>st</sup> August 2025**

**Catchwords:** Writ of Habeas Corpus: Section 213 Criminal Procedure Act 1972, Section 21(2) (b) Correctional Services Act 2009, Section 3(3) Child Protection and Welfare Act 2016

**Appearances:**

Counsel for the Applicant: R. Tom  
Counsel for the Respondent: M. Suifa'asia

**RULING**

**BACKGROUND**

1. On 27<sup>th</sup> June 2025, Mr. Tom filed a Notice of Motion pursuant Section 213 *Criminal Procedure Act 1972*. This provision provides that the Court may direct that a person be brought before it and if the Court determines that the person is illegally or improperly detained, in public or private custody within the Republic of Nauru, to be set at liberty. As stated by JW von Doussa J in *AG & Ors v Sec of Justice* [2013] NRSC 10 :

*‘The power of the Court under s213 (1) mirrors the jurisdiction and powers which the Court would exercise on an application for habeas corpus. The writ of habeas corpus remains a remedial writ in Nauru through section 4(1) of the Custom and Adopted Laws Act 1971.*

2. The Applicant also relies on Section 21(2) (b) of the *Correctional Services Act 2009*, Section 3(3) *Child Protection & Welfare Act 2016* and Article 5(4) of the Constitution. In a supporting affidavit, the Applicant deposes as follows:
- He was born on 02<sup>nd</sup> April 2008 and is 17 years of age. **(I note that there is no birth certificate to support this.)**
  - He lives with his parents in Anetan District.
  - He was arrested on 25<sup>th</sup> April 25, detained at the Central Police Station with his friend Jjson Itsimaera. He was released the next day, 26<sup>th</sup> May 25 without any charges.
  - On 27<sup>th</sup> May 25, he was informed by his mother to go to the police station as the police had informed her to go to court. His mother and he asked the court staff and they were informed that his name was not on the cause-list. He went with his legal counsel for an interview with the police on that day and was later released without charge.
  - On the morning of 29<sup>th</sup> May 25, the police came to his home and informed his mother that they wished to interview him again. He was interviewed, charged for possession of illicit drugs contrary to Section 6 of the *Illicit Drug Control Act 2011*.
  - After court, he was taken to the Correctional Facility and shared a cell with an adult friend. After a week, his friend was moved to another cell as the Applicant was occupying a juvenile cell.
  - On 08<sup>th</sup> June 25, 2 adults were moved to the cell next to his. He believed that the 2 were mental patients. He believed that they had access to his cell.
  - He informed the warden and his mother that those in the adjacent cell were loud and he could not get proper rest.
  - He lives in fear every day.
  - He was advised by his counsel that – ‘I was to be afforded special treatment under the Convention of Children’s rights.’
  - Adult ‘remandees’ have access to television and he does not.
  - He should be allowed to attend school. The Minister of Justice said in Parliament on 19<sup>th</sup> June 2025 that there were limited facilities to house juveniles in prison.
  - He should be treated as a juvenile and ‘not live with adult criminals.’

## **AFFIDAVITS of THE RESPONDENTS**

3. On 09<sup>th</sup> July 2025, Sergeant Luke Agege deposed as follows:
  - He is in charge of the Drugs Unit under the Criminal Investigation Unit of the Nauru Police Force.
  - The Applicant was charged with one count of Unlawful Possession of Illicit drugs- Contrary to Section 6 of the Illicit Drugs Control Act 2004. He is the Investigating Officer in the case of the Applicant and his co-accused.
  - The Applicant and his friend were arrested for an alleged brawl and public nuisance. Their motor cycle was searched and a packet with some green substance tested positive for cannabis.
  - The Applicant was later charged for unlawful possession of illicit drugs.
  - At the district court, the Applicant was remanded with clear orders that he be kept separately from adult prisoners.
  
4. The Chief Correctional Officer, Jezza Uepa deposed as follows:
  - He is aware that the Applicant, a juvenile, was charged for unlawful possession of an illicit drug and he was admitted with his co-accused, Jjson Itsimaera to the Correctional Facility on 29<sup>th</sup> May 2025.
  - On the admission of the Applicant and his friend, he directed that the women's section be made available to house him. The Applicant and his co-accused were both placed in the women's section as they had requested to be housed together.
  - On 06<sup>th</sup> June 2025, he directed that the Applicant's friend, Jjson Itsimaera be moved to the adult remand section. This was to ensure that the juvenile be housed separately and in compliance with Correctional policy and Court orders.
  - The mental patient referred to by the Applicant is housed in the 'high risk section' and is separate from the women's section where the Applicant is housed. No mental patient has access to the Applicant's toilet. They are escorted to use the toilet in the adult remand yard and not the women's section.
  - As to the noise, sometimes prisoners make noise at night.
  - On the admission of the mental patient, 'Indy', prisoners had to be moved. The Applicant was moved from the women's section and placed at the main juvenile section. The inpatient 'Indy' was placed in the women's section. She, 'Indy' is not a threat to the Applicant.
  - On the provision of televisions, this is a privilege given to prisoners who have been in remand for more than 3 months and of good behavior. Juveniles have 2 hours recreational period and the Applicant has been let out of his cell for recreation periods for more than 2 hours.
  - All juvenile remandees are kept separate from adults in separate cells. This complies with court orders and the law.

## SUBMISSIONS BY THE APPLICANT

5. Counsel refers to Article 5(4) of the Constitution, Article 3 of the Convention on the rights of the Child, Section 21(2)(b) of the Correctional Services Act 2009 - and submits that the detention of juveniles in an adult correctional facility is contrary to law.
6. Section 213 of the Criminal Procedure Act 1972 is relevant here.

## SUBMISSIONS BY THE RESPONDENT

7. Counsel submits the following:
  - Section 4A of the Bail Act 2018 provides that persons charged with an offence under the *Illicit Drugs Control Act 2004* are not to be granted bail. Section 4C of the same Act provides that a child charged for an offence covered under Section 4A is not to be granted bail- notwithstanding the Child Welfare and Protection Act 2016.
  - The child was remanded by the District Court. The Applicant was not deprived of his liberty for the purposes of Article 5(4) of the Constitution. It was not an unlawful detention for the purposes of Section 213(1) of the Criminal Procedure Act 1972.
  - The Applicant was lawfully remanded. The offence that he is charged with is a 'non-bailable' offence.
  - *Relying on AG v Secretary of Justice* [2013] NRSC 10; Civil Suit 14 of 2013 (18<sup>th</sup> June 2013), Counsel notes-
    - i.* Was the Applicant detained? Yes- the Applicant was arrested, charged and remanded for a non- bailable offence under the *Illicit Drugs Control Act 2014*.
    - ii.* Was the juvenile unlawfully detained contrary to Article 5(1) of the Constitution? No- the Applicant was not unlawfully detained within the meaning of that provision. He was arrested, charged and remanded in custody.
    - iii.* As JW von Doussa said in the above case- 'On the return of an order nisi for habeas corpus the relevant date for determining whether an applicant is unlawfully detained **is the date of the hearing**. I consider that on applications under either Art 5(4) of the Constitution or s213 of the Criminal Procedure Act, it is also the **state of affairs at the date of the hearing that must be considered.**'
    - iv.* The state of affairs when this matter was heard on 09<sup>th</sup> July must be considered. The evidence from the affidavit of the Chief Correctional Officer, Jezza Uepa is clear that the Applicant is not kept with adult remandees.
    - v.* This is a bail variation for a non-bailable offence disguised under a Habeas Corpus Application.

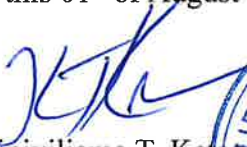
## DISCUSSION

8. The Applicant was arrested and charged under Section 6 of the *Illicit Drugs Control Act* 2004. Accused persons for offences under this Act are not to be granted bail; even if they are juveniles. Sections 4A and 4C of the Bail Act 2018 clearly provide for this.
9. I find that the current detention of the Applicant is pursuant to an order of the District Court. The remand order of the Resident Magistrate is authorized under the abovementioned provisions of the Bail Act. Such a law authorizes the deprivation of the Applicant's liberty pursuant to Art 5(1) of the Constitution.
10. The evidence is clear that 'the state of affairs at the date of the hearing 'of this application, the Applicant is kept separately from adult remandees.
11. It follows that such detention of the Applicant is not unlawful under Art 5(4) of the Constitution or Section 213 of the Criminal Procedure Act 1972.

## CONCLUSION

12. The application is dismissed.
13. The Applicant is further remanded in custody.
14. The matter is to be called before the Resident Magistrate on 15<sup>th</sup> August 2025.

Dated this 01<sup>st</sup> of August 2025

  
Kiniviliame T. Keteca  
Judge

