



IN THE SUPREME COURT OF NAURU
AT YAREN
CRIMINAL JURISDICTION

CRIMINAL CASE NO. 2 OF 2021

BETWEEN

THE REPUBLIC

AND

LAKENA DEGIA

Before: Khan, ACJ
Date of Hearing: 26 May 2022
Date of Ruling: 1 June 2022

Case may be referred to as: *Republic v Degia*

CATCHWORDS: Criminal Law – Judge alone trial under section 188 of the Criminal Procedure Act 1972 – Whether the judge is functus officio after delivery of judgement having made guilty finding – Whether he still retains jurisdiction until the sentencing.

APPEARANCES:

Counsel for the Prosecution: R Talasasa
Counsel for the Defendant: T Lee

RULING

INTRODUCTION

1. I delivered my judgement in this matter on 19 May 2022 finding the accused guilty of two counts of indecent act. The victim was referred to as CG to suppress her identity pursuant to s.55(1)(b) of the Child Protection Welfare Act 2016.
2. Unfortunately, at paragraph 20 of the judgement I reproduced the record of interview in which the victim, her parents and her grandmother's names were written in full.

3. Having delivered the judgement I adjourned the matter for victim impact statement and on 25 May 2022 the Director of Public Prosecutions raised that in paragraph 20 the victim, her parents and her grandparents' names were written in full and it may lead to the identity of the victim.
4. He filed a motion on 26 May 2022 seeking orders for suppression of the victim's, her parents' and her grandmother's name. The motion is not opposed by the counsel for the accused, Mr Lee, however, both counsels raised the issue as to whether the court is *functus officio* in making any changes to the judgement.
5. Under s.188 of the Criminal Procedure Act 1972 this matter was heard by me as a judge alone trial.
6. I refer to the judgement of *R v MacDonald*¹ where it was stated at pages 2 and 3 as follows:

“We refer to the judgement of Chief Justice Bayda in Bertucci at p.88:

“I reject the contention that a trial judge lacks jurisdiction to declare a mistrial after an adjudication of guilt and before the imposition of sentence. It has been authoritatively decided that the power of a judge to disqualify himself for good and sufficient reason and declare a mistrial is one which exists apart from the express provisions of s.499 of the Criminal Code: [the equivalent section now is 699.2] see *R v Buchholz* (1976), 1976 CanLII 1324 (ON CA), 32 C.C. (2d) 331. In my opinion, an adjudication of guilt does not foreclose the application of that principle. This approach is consistent with the principle that a trial judge sitting without a jury is not **functus officio** following the finding of guilt until he has imposed sentence or otherwise finally disposed of the case.”

Chief Justice Bayda Bertucci then refers to the decision of the Ontario Court of Appeal in *Regina v Lessard*. In *Lessard*, Martin, J.A., stated at p.73:

“A Judge exercising the functions of both judge and jury is not *functus officio* following a finding of guilt until he has imposed sentence or otherwise finally disposed of the case. It has been recognized for well over 100 years that a trial judge may permit an accused who has pleaded guilty to change his plea of guilty to one of not guilty at any time before the imposition of sentence, notwithstanding the acceptance of the plea by the Court, because up to that time the proceedings have not been completed: *R v Clouter and Heath* (1859), 8COX C.C.237.”


Later on in *R v MacDonald* it is stated as follows:

“In our opinion, the law is correctly stated in Bertucci and Lessard. It follows that the trial judge sitting without a jury retained jurisdiction after conviction and before sentence to hear an application for a mistrial. Until the imposed sentence, there was no final disposition of the case.”

¹ [1991] CANLII 24(NSCA) 10 August 1991 file No. S.C.C. No. 02477

7. In the circumstances I find that I am not functus officio and I have powers to amend part of paragraph 20 where the victim, her parents and her grandmother's name is referred to as CG, W & RG and C respectively.
8. Other than these changes the judgement is left unaltered and I make the following orders:
 - 1) That the judgement delivered on 19 May 2022 be amended in accordance with this ruling and shall be referred to as "amended judgement";
 - 2) That the "amended judgement" and this ruling shall be read in conjunction with each other and can be published in the Law Reports and other publications;
 - 3) That the original judgement delivered on 19 May 2022 shall be left in the court file and copies of that shall not be published in any publications or released to anyone.

DATED this 1 day of June 2022


Mohammed Shafiullah Khan
Acting Chief Justice

