

JUDGMENT

1. **BY THE COURT:** This is an appeal against the decision of Keteca J. On 21 June 2024, he granted bail to the respondent.
2. On 18 April 2024, the respondent aged 16 years was charged with an offence of being in possession of illicit drugs contrary to s6 of the *Illicit Drugs Control Act 2004*.
3. He was denied bail under s4A of the *Bail Act 2018* and was remanded in custody by the Magistrate.
4. The Magistrate also made an order that as a juvenile he is to be kept separate from the adult remand prisoners.
5. We understand that the respondent was kept with adult remand prisoners and therefore an application was made in the District Court to vary the remand orders.
6. Unfortunately, that application including the subsequent orders made by the Magistrate as a result of which this appeal was filed was not included in the Appeal Book – nor were we provided with copies of the relevant documents by Ms Suifa'asia during the hearing of the appeal.
7. We had to peruse the Supreme Court file to retrieve copies of the Notice of Motion dated 13 May 2024 and an affidavit filed in support by the respondent's grandmother deposed on 13 May 2024.
8. For the sake of completeness, we reproduce the Motion and affidavit which states as follows:

"Notice of Motion to vary Court Order (18 April 2024)"

TAKE NOTICE that the District Court will move on 20 May 2024 by on behalf of the accused for an order that:

- 1) Amran Ledger Grundler, 16 years old, a child who is held in remand in Nauru Correctional Centre since 18 April 2024 and that he be removed from the practical access of adult remand prisoners for his safe keeping as order by the Court dated 18 April 2024; and, alternatively, failing to comply with the said Order, then the juvenile is released into the care of Mrs Marsella Grundler, his grandmother, till the outcome of the trial.
- 2) The order for safe keeping by separation of the said juvenile from the adult population was breached since the accused was delivered to the correctional centre on 18th April 2024. The non-compliance breaches Nauru law and the UN Convention of the Rights of the Children as to uphold the best interests of the child.
- 3) This application is made pursuant to Child Protection and Welfare Act 2016: section 3(4); section 4; section 5(1)(2)(iii)(a), (b) and (c) ... (n)."

Affidavit of Marsella Grundler reads as follows:

"I, Marsella Grundler, 57, grandmother resides in Boe District do hereby swear on oath that what is said in this affidavit is true and to the best of my knowledge, correct. My application is to vary the order of 18th May 2024 in the best interests of the child.

- 1) I am the grandmother of the accused juvenile who is 16 years of age.
- 2) As I understand, the police arrested my grandson in the early hours of 18th April 2024 and detained him at the police station and later that day he was remanded to the correctional centre and to be brought to the District Court at 3pm on 23rd April 2024.
- 3) As far as I later understood, the police did not inform any member of his family of his arrest and remand. There was also no legal counsel for my grandson.
- 4) On Sunday 21st April 2024, the police called me to the police station in the afternoon and I waited around for them to call on a pleader. At about 5pm or thereabouts, Julie Olsson arrived for legal representation. After Julie, Barbara Derangatamo and Justin Gioura from Child Protection, Luke Agege escorted us into a small room where there was a computer to conduct the interview with my grandson and write what he said.
- 5) Luke Agege said something which I did not understand and Julie asked him what happened on Thursday when police arrested my grandson. She asked the police if the police interviewed my grandson then because my grandson said Luke had already asked him questions and said certain things to him and that to me sounded very self-incriminating, or so I thought. I don't why that interview then stopped and did not continue to finish.
- 6) Julie was asking to confirm if there had been an interview on that Thursday. Luke got very angry and said that Julie was arguing with him. Julie said she was not arguing only to find out of what happened on Thursday and if there was already conducted an interview. Luke refused to answer that.
- 7) Luke got up and called on a police standing outside in the open area to remove Julie from the premises. Julie complied and left the police. Julie was waiting outside the police station when I came out after signing documents later that night.
- 8) When Luke was talking to Julie, Barbara got up and walked out. I don't know why she walked out but for me I felt very scared of the angry policeman that he might lock me up if asked questions. Barbara returned later but I cannot remember when.
- 9) I felt for my grandson because this police behaviour will be scary to him as well. I am an adult and I felt intimidated even though I was not expected to say anything.
- 10) Julie later told me that on 23rd April that my grandson was sharing with an adult who was also against his remand order.

- 11) On Saturday 11th May 2024, I accompanied Julie on a visit to my grandson and in our conversation, he confirmed that he was sharing the same room as an adult but in the last 2 days he and another juvenile removed from the cell area that contained adults to sleep in the open outside the fence that separated the 2 areas. The 2 juveniles were still accessible at all times to the influence of adults. This is my concern. The order said to keep my grandson separate from the adult remand prisoners as he is a juvenile. This is not the case.
- 12) I am afraid that the shared access with the adult and experienced prisoners may compromise his basic safety and wellbeing and also affect his ability to later reintegrate into the society. He is only a silly child who is vulnerable and there is no telling what more an adult influence under this desperate situation can do to his mental health and statement.

This is my paramount concern that this living arrangement is not in the best interest. I therefore ask the Court that if the conditions in the prison cannot meet the orders of the Court, then I am willing to take care of him until the trial of the Court will be so release from bound by conditions including for example daily reporting to the police and attending school.

I ask this appeal is considered in the best interest of the child”.

9. The Motion was transferred to the Supreme Court, and again as stated earlier, it was not included in the Appeal Book. We asked Ms Suifa’asia as to why it was not part of the Appeal Book as it was the relevant document which conferred the necessary jurisdiction on the Supreme Court. Her response was it was included as part of her written submissions. Once again we had to peruse the Supreme Court file to search for the transfer orders of the Magistrate.
10. We found the transfer order dated 23rd April 2024 which states as follows:

“Transfer of Notice of Motion and Affidavit in Support

Upon hearing Preliminary Submissions on Jurisdiction by Miss J. Olsson and Miss M. Suifasia on the Notice of Motion to Vary Court Order filed on 13th May 2024 by the defendant’s counsel. I make a finding that since the basis of the application is on human rights, Constitutional right and rights of the child only the Supreme Court has Jurisdiction to deal with the Notice of Motion, and it is hereby transferred to the Supreme Court of Nauru.

AND the Notice of Motion is beyond the jurisdiction of this Honourable Court.

I THEREFORE TRANSFER this Notice of Motion to the Supreme Court and it is to be called on Wednesday 29th May 2024 at 10am for mention.”

DIFFERENT LAWS FOR TRANSFERRING CASE FROM THE DISTRICT COURT TO THE SUPREME COURT

11. There are three different modes or means of transferring cases from the District Court to the Supreme Court, which are:

- a) Firstly, under s162(1) of the *Criminal Procedure Act 1972*, where a charge is filed against a person for an offence which is not triable by the District Court;
- b) Secondly, and again under s162(1) of the *Criminal Procedure Act 1972*, where the District Court is of the opinion that it ought to be tried by the Supreme Court. Once it forms that opinion it may transfer the charge and proceedings to the Supreme Court – see *DPP v District Court and Others*¹ where it was stated at [43] as follows:

“[43] My reading of s162 gives the power to the District Court to transfer this case to this court if the District Court is of the opinion that it ought to be tried by the Supreme Court; and of course, in making that determination the District Court would no doubt take into consideration the complexity and public importance of this case.”

- c) Thirdly, under s31 of the *District Court Act 2018* by way of case stated. Section 31 states as follows:
 - 1) Subject to any other written law, the District Court may, of its own motion or upon the application of any party to a proceeding:
 - (a) report to the Supreme Court dependency of any cause or matter which it considers, is outside the jurisdiction of the District Court or ought to be transferred to the Supreme Court for any other reason; and
 - (b) a judge shall forthwith consider the report in (a) and direct whether the cause or matter is to be heard in the Supreme Court or is to be remitted to the District Court for hearing and determination.
 - 2) Where an issue arises involving the interpretation or the fact of any provision of the *Constitution*, including it being part of one or more issues in any civil or criminal cause or matter, the resident Magistrate shall report the cause or matter to the Supreme Court for the determination of the issue or the entire cause or matter;
 - 3) Where the District Court has no jurisdiction in the proceeding referred to in subsection (2) and it appears to the judge that one or more of the plaintiffs knew or ought to have known that the District Court had no jurisdiction in the proceeding, the judge may, instead of ordering that the proceeding be transferred under subsection (2), order that the proceedings be dismissed and order costs in the same manner as if the District Court had jurisdiction and the claim had not been established.
 - 4) Wherein any cause or matter are reported to the Supreme Court under the provisions of subsection (1), any counterclaim or set off and counterclaim has been filed by any defendant, the judge may:

¹ [2017] NRSC 50; Misc Case No. 20 of 2017 (10 July 2017)

- (a) order that the whole proceeding be transferred to the Supreme Court; and
 - (b) order that the whole proceeding be heard and determined in the District Court; or
 - (c) order that the proceeding be transferred to the Supreme Court to hear and determine any specific issue and remit the cause or matter to the District Court, with such directions as may be necessary for the hearing and determination of any such cause or matter.
- 5) For the purposes of subsection (4)(c), where a judgment, decision or order for claim or issue is given in favour of a party, execution shall be stayed until the proceeding transferred to the Supreme Court has been determined, unless the proceeding transferred to the Supreme Court has been determined, unless leave is granted by the Judge to execute any such judgment, decision or order.
 - 6) The practice and procedure for stating a case or referring a matter to the Supreme Court under this Section, shall be in compliance with Section 30 of the *Supreme Court Act 2018*.

12. The procedure for transferring or referring matters is set out in s30 of the *Supreme Court Act 2018* which states:

s30 Reference by the subordinate court by way of case stated on the Constitution or an important question of law

- (1) A question referred to the Supreme Court pursuant to any written law by a subordinate court for the interpretation and effect of the provisions of the Constitution or an important question or interpretation of a law shall be by way of a case stated in a pending case before the subordinate court.
- (2) The case stated in subsection (1) shall be referred to the Supreme Court within 14 days of the decision of the subordinate court to refer the question.
- (3) The case shall:
 - (a) set out the facts which have been established by evidence or admitted;
 - (b) set out the concise constitutional question which is referred to the Supreme Court for its determination; and
 - (c) be transmitted by the subordinate court referring the constitutional question to the Registrar who shall list it before a Judge.
- (4) The Registrar shall notify:
 - (a) the party, if any, on whose request the case was stated;

- (b) other parties to the proceedings;
 - (c) the Secretary for Justice in all matters; and
 - (d) in a criminal cause or matter, the Director of Public Prosecutions unless the Director of Public Prosecutions is already representing the Republic in the criminal matter.
- (5) The Secretary for Justice and the Director of Public Prosecutions under subsection (4), shall be entitled to appear and be heard in the determination of the constitutional question before the Supreme Court.
- (6) The Registrar shall notify the subordinate court by which the constitutional question was referred of the decision of the Supreme Court.
13. Upon transfer of the case to the Supreme Court under s162 of the *Criminal Procedure Act 1972*, it is vested with full jurisdiction to deal with the matter, however, upon transfer of the case to the Supreme Court under s31 of the *District Court Act 2018* in compliance with the practice and procedures set out in s30 of the *Supreme Court Act 2018*, the court's jurisdiction is limited to the issues or questions raised in the case stated for determination.
14. The Magistrate did not transfer this case under s162 of the *Criminal Procedure Act 1972* and unfortunately he did not state as to what provision of the *District Court Act 2018* was invoked to transfer the matter. The transfer order amongst other things stated that the application before the Magistrate was in relation to human rights issues and constitutional rights of children. In our respectful opinion, the transfer fell within the purview of s31(1) of the *District Court Act 2018*.
15. As soon as the learned judge received the application from the District Court, he should have considered it and he should have given directions as to whether it should be heard by the Supreme Court and/or whether it should be remitted to the District Court. In making those considerations, the judge would have noticed that the practice and procedures set out in s30 of the *Supreme Court Act 2018* had not been complied with and he could have issued directions that s30 ought to be complied with if he was of the view that the matter should have been heard by the Supreme Court.
16. Unfortunately, His Honour did not issue any such directions and instead embarked on a fact finding mission. He visited the correctional centre on 18 June 2024 (we are informed without informing the parties of his visit) and made certain observations.
17. His Honour did not have any powers to ascertain the facts of the matter and the facts should have been ascertained by the District Court under the provision of s30(3)(a) of the *Supreme Court Act 2018* – see *Republic v Batsiua and Ors*² where it is stated at [10] as follows:

[10] In the case stated the Magistrate did not make any finding of facts in relation to the issue number 2, as she was required to do. In "*Practice Note*" [1972] 1 ALL ER 286 per (Lord Widgery CJ, Ashworth and Griffith JJ) in issuing

² [2015] NRSC 17 Misc.13/2025

directions on "case stated" by the Magistrate to the superior court stated that:-

"It is necessary to draw attention to r 68 of the Magistrates Court Rules 1968, the terms of which are frequently disregarded. Every magistrate's case should contain a full statement of facts proved or admitted and should not contain any statement of evidence unless it is to be contended that there was no evidence to support a particular finding of fact. .."

18. We wish to make two observations. Firstly, the matter was not correctly stated by the Magistrate in accordance with laid down practice and procedures and therefore the jurisdiction was not conferred on the Supreme Court to deal with the matter. Secondly, His Honour without any jurisdiction, ascertained the facts of the matter and made orders. It follows that the orders made by His Honour that it was a *habeas corpus* application and that the detention was unlawful and further that he had inherent powers to grant bail, were *ultra vires*.
19. There is no need for us to consider this matter any further but we feel compelled to do so because this case raises important issues on the detention of juvenile offenders under the *Bail Act 2018*.

INHERENT JURISDICTION

20. Under s17(k) of the *Supreme Court Act 2018*, the jurisdiction of the Supreme Court includes *inherent jurisdiction*. His Honour stated at [65] that:

[65] This means that it is a practice that juveniles are housed with relatives who are or may be adults. What happens when a juvenile has no relative in the remand centre? He will be placed amongst "adult" remandees as was done to LACG. This type of arraignment is unlawful as it is contrary to section 21(2)(b) of the *Correctional Services Act 2009*. **This type of arraignment is unlawful.**
21. And later at [70], he states that the respondent has questioned the lawfulness of his detention under Article 5(4) of the *Constitution* and His Honour found that at [65] that his detention was unlawful.
22. With respect, the judgment mentions at [65] that: "This type of arrangement is unlawful" for possible breaches of s21(2) of the *Correctional Service Act 2009*; and at [70] he made a finding that the detention is unlawful.
23. The respondent was remanded in custody under s4A of the *Bail Act 2018* and that remand order was lawful and we accept that there were some issues in regards to compliance of the order to keep him separate from the adult prisoners but that in itself did not render the remand to be unlawful.
24. At [72], His Honour found that he still had inherent jurisdiction and discretion to grant bail – that unfortunately is incorrect as the doctrine of inherent jurisdiction cannot be

exercised to override an existing law – see *College Housing Co-Operative Ltd v Baxter Student Housing Ltd*³.

25. The *Bail Act 2018* was amended in June 2022 by incorporating s4C(3) which provides:

“The Cabinet may by a Notice in the Gazette, designate a place for the remanding of a child in custody.”

26. It has been four years since the amendment was made by parliament and indeed is a very long period of time. We urge the Republic to make the necessary provisions for the remand of juvenile offenders in the correctional centre as a matter of urgency failing which the *Bail Act 2018* should be amended to allow bail to be granted to juvenile offenders for similar offences.

27. We allow the appeal and set aside the orders made by the learned judge and order that the respondent shall appear before the Magistrate who shall make orders for remand under the *Bail Act 2018*.

ORDER

1. The appeal is allowed

DATED this 10 day of July 2026



Khan, P
President of the Nauru Court of Appeal



Palmer, JA
Justice of the Nauru Court of Appeal



Salika, JA
Justice of the Nauru Court of Appeal



³ [1976] 2 S.C. R.475