

**IN THE DISTRICT COURT OF NAURU  
(Criminal Jurisdiction)**

CRIMINAL CASE NO. 33 and 34 of 2015

BETWEEN:

**THE REPUBLIC OF NAURU**  
Complainant

AND:

**NATHAN SOLOMON, NIVED GRUNDLER, OAEON JOSEPH KUN, SHISHEN DABWIDO,  
RILEY HUBERT, BOSS ENOS, CONZALEY DETABENE AND SHERMAN DABWIDO**  
Defendant

*Mr. Filimoi Lacanivalu office of the Public Prosecutions for the  
defendant*

*Mr. Vinci Clodumar for Nathan Solomon*

*Mr. Knox Tolenoa for Sumich Detenamo*

*Mr. Ravunimase Tangivakatini for Nived Grundler, Oaeon Joseph  
Kun, Shishen Dabwido, Riley Hubert, Boss Enos, Conzaley Detabene  
and Sherman Dabwido*

*Date of Hearing: 18 and 19 May 2016 and 20, 22, and 25 July 2016*

*Date of Submissions: 29 July 2016*

*Date of Judgment: 10 August 2016*

## **Judgment**

1. The defendants are charged with 1 count of assault occasioning actual bodily harm contrary to section 339 of the Criminal Code 1899. Section 339 of the Criminal Code 1899 read:

*"Any person who unlawfully assaults another and thereby does him bodily harm is guilty of a misdemeanor, and is liable to imprisonment with hard labor for seven years"<sup>1</sup>*

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<sup>1</sup> Section 339 of the Criminal Code 1899

2. Mr. Nathan Solomon pleaded guilty and is waiting to be sentenced. The other defendants pleaded not guilty. The prosecution called four witnesses at trial. The medical report was tendered by consent.

**THE EVIDENCE**

3. Tabulated in the tables below is a summary of the nature of the evidence given by each of the four witnesses called by the prosecution against each of the defendants.

<b>NAME OF WITNESS</b>	<b>EVIDENCE AGAINST NIVED GRUNDLER</b>
<i>Dimas Kabokia</i>	- No mention of Nived Grundler
<i>Ms. Ray Detabene</i>	- No mention of Nived Grundler
<i>Mr. Hosea Maladusu</i>	<ul style="list-style-type: none"> <li>- When vehicle arrived Nived got off vehicle and he and Sherman beat mi up.</li> <li>- Know his face and is able to point him out in court</li> <li>- Cannot remember what Nived did to him at Sumich's place</li> <li>- After left Sumich place Nived did not join them</li> </ul>
<i>Dr. Wyn</i>	- No mention of Nived Grundler

<b>NAME OF WITNESS</b>	<b>EVIDENCE AGAINST OAEON JOSEPH KUN</b>
<i>Dismas Kabokia</i>	<ul style="list-style-type: none"> <li>- One of the lady securities told Oaeon to tell Nathan Solomon to stop hitting the complainant with what looks like a hammer wrapped in a cloth</li> <li>- First heard the lady called out the name Oaeon and then later saw Oaeon</li> <li>- Oaeon said no mama no father he was stealing at our place. He stole motor bike</li> <li>- Oaeon told Nathan to stop and he then</li> </ul>

	went to Hosea and punched him in the face about twice
Ms. Ray Detabene	<ul style="list-style-type: none"> <li>- Saw Joseph Oaeon Kun punching and kicking defendant</li> <li>- Could tell Joseph Oaeon Kun from light of mobile and know Joseph Oaeon Kun from being in the same year group at school.</li> <li>- Nathan Solomon and Joseph Oaeon Kun were right next to complainant</li> <li>- Identified Joseph Oaeon Kun in court</li> </ul>
Hosea Maladusu	- No mention of Joseph Oaeon Kun
Dr. Wyn	- No mention of Joseph Oaeon Kun

<b>NAME OF WITNESS</b>	<b>EVIDENCE AGAINST BOSS ENOS</b>
Dimas Kabokia	- No mention of Boss Enos
Ms. Ray Detabene	- No mention of Boss Enos
Mr. Hosea Maladusu	<ul style="list-style-type: none"> <li>- Sumich, Sherman and Boss ganged up on him just them</li> <li>- Some people outside told him about Boss</li> </ul>
Dr. Wyn	- No mention of Boss Enoss

<b>NAME OF WITNESS</b>	<b>EVIDENCE AGAINST SHISHEN DABWIDO</b>
Dimas Kabokia	- No mention of Shishen Dabwido
Ms. Ray Detabene	<ul style="list-style-type: none"> <li>- Saw Shishen</li> <li>- Shishen did nothing</li> <li>- When car go off Shishen spoke with Winston</li> </ul>

	<p>Was just standing there</p> <ul style="list-style-type: none"> <li>- Agree Shishen did not assault complainant that night</li> </ul>
Hosca Maladusu	<p>Conzaley and Shishen picked up at Sherman's place</p> <ul style="list-style-type: none"> <li>- Shishen present in court</li> <li>- No adverse evidence given against Shishen Dabwido other than the fact that he was picked up at Sherman's place</li> </ul>
Dr. Wyn	No mention of Shishen Dabwido

<b>NAME OF WITNESS</b>	<b>EVIDENCE AGAINST RILEY HUBERT</b>
Dimas Kabokia	No mention of Riley Hubert
Ms. Ray Detabene	<p>Saw Riley</p> <p>Riley did nothing</p> <p>Agree Riley did not assault Hosea that night</p>
Hosea Maladusu	No mention of Riley Hubert
Dr. Wyn	No mention of Riley Hubert

<b>NAME OF WITNESS</b>	<b>EVIDENCE AGAINST CONZALEY DETABENE</b>
Dimas Kabokia	- No mention of Conzaley Detabene
Ms. Ray Detabene	- No mention of Conzaley Detabene
Mr. Hosea Maladusu	<ul style="list-style-type: none"> <li>- Conzaley and Shishen picked up at Sherman's place</li> <li>- Know Conzaley as a relative</li> <li>- Conzaley in court</li> <li>- No evidence of Conzaley Detabene having assaulted him</li> </ul>
Dr. Wyn	- No mention of Conzaley Detabene

<b>NAME OF WITNESS</b>	<b>EVIDENCE AGAINST SHERMAN DABWIDO</b>
<i>Dimas Kabokia</i>	- No mention of Sherman Dabwido
<i>Ms. Ray Detabene</i>	- No mention of Sherman Dabwido
<i>Mr. Hosea Maladusu</i>	<ul style="list-style-type: none"> <li>- In his first statement to police said it was Shishen Dabwido who called him out of the house to go see his friends and then held him.</li> <li>- In evidence in chief said it was Sherman Dabwido who called him out of the house, held him and whacked him to the ground. Held him at the back of his neck. Their car arrived and they took him to</li> </ul>

**DATE AND TIME OF INCIDENT**

4. The incident is alleged to have happened between 8pm and 11:30pm on the night of the 21<sup>st</sup> November 2015. By then it would have been dark.

**THE EVIDENCE OF THE COMPLAINANT**

5. In terms of how things unfolded the evidence of the complainant is that at about 6pm on the 21<sup>st</sup> November 2015, he was at home. Sherman called him to go to his friends. Sherman then held him and whacked him to the ground and held him at the back of his shirt. After he was whacked by Sherman their vehicle arrived. The vehicle was gold in color and had a truck like trailer at the back. When the vehicle arrived Nived got off and he and Sherman beat him up. He gave evidence that he knew both Nived and Sherman. The complainant was then put into the car and taken to Sumich's place. The complainant gave evidence that at that time he was afraid.
6. At Sumich's place the complainant gave evidence that he was asked about where the motorbike was and he told them that it was not him and they put him on the ground. Nathan then took a hammer placed the hammer in a piece of cloth and Sumich held his hand down. Nathan got the hammer put it in

a piece of cloth and they hit his arm with the hammer. He then said that it was Sumich who held him down. The complainant gave evidence that at Sumich's place he was dragged out of the car but was not able to recall who dragged him out of the car. They then ganged up on him. That is Sumich, Boss and Nived. Only these three. They ganged up on him by kicking him in the face, hitting his head and they also kicked him. The complainant gave evidence that he cannot recall what Nived did to him when they were ganging up on him at Sumich's place. He gave evidence that he was lying down and covering his face his face.

7. From Sumich's place the complainant gave evidence that he was put in the car and taken to Juvenin's place. He said that he knew Sumich because Sumich is a relative. The complainant gave evidence that he can't remember what happened at Juvenin's place.
8. From Juvenin's place the complainant gave evidence that he was taken to ice's place and that nothing happened at ice's place. And that from Ice's place they went to Aiwo and at Aiwo they picked up more kids and they went to the Aiwo oval. The complainant gave evidence that from Ice's place in Buada they went to sherman's place picked up Conzaley and Shishen and on the way some kids hitched a ride with them and they stopped at the Aiwo oval.
9. The complainant gave evidence that he knew both Conzaley and Shishen. The complainant is not able to remember how many kids were picked up. He gave evidence that Aiwo oval they ask the kids if they want to line up and the kids said yes. Sumich and another person whom he cannot recall held onto him and the kids took turns punching him in the face. Whilst the kids were punching him the rest of the boys just stood around behind the car.
10. The complainant gave evidence that from the oval at Aiwo they went to Buada at the place called Tango one. The complainant gave evidence that at tango one, he was dragged out of the car by Sherman and thrown down and was lying down on the ground and covering his head. At the tango one area Frica his aunty tried to stop Nathan and so he stood up and ran behind Frica. After that he went with his aunt to the hospital.

11. During cross-examination by Mr. Tangivakatini the complainant gave evidence that he gave his first statement to the police on 21<sup>st</sup> November 2015. He was at hospital that time and that it was not a complete report. During cross-examination he gave evidence that he was hospitalized for one week. He gave evidence that the second statement he gave was to complete the statement he gave at the hospital 6 months after he had given the first statement explaining that he was called to complete the statement. The complainant gave evidence that he was admitted for 24 hours at the intensive care unit and later discharged to the men's wing where he was admitted for one week. During cross-examination, when it was put to the complainant that in his first statement he said that it was Shishen who called him out from his house, he explained that he told the police that it was Shishen's brother but the police got it wrong and put Shishen instead in his first statement. I point out the no evidence was elicited from the police officer who took his statement to verify this.
12. The complainant also explained that what was not in his first statement was where the kids were lined up and the second was that Shishen was not named but Sherman explaining that he did notice the error in the first statement where kids line up and the second one was that Shishen was not named but Sherman. When it was put to him that even though he noticed those errors he still went ahead and signed the first statement, he answered that he did not sign his first statement. It was further suggested to the defendant during cross-examination that he could not have seen those whom he said were ganging up on him that is Boss, Sumich and Sherman the defendant said that he saw them before he covered his face.
13. During cross-examination Mr. Tangivatini put to the defendant that he was never taken to Juvenin's place that night. The defendant maintained that he was taken to Juvenin's place that night. The complainant maintained during cross-examination that Boss, Sumich and shishen punched him. During cross-examination he explained that he was not able to identify the kids who punched him at the Aiwo oval because they covered their faces with their clothes that night. Despite admitting that a group of children punched him repeatedly in the face at the Aiwo oval, the defendant denied that they caused any harm to his face.



14. During cross-examination by Mr. Tolenoa the complainant was asked who actually punched you. And he answered:

*"I don't recognize them at all. There's so many hands coming at me."*

15. During cross examination by Mr. Tolenoa the complainant said that they were at Sumich place at about 8pm. When it was put to the complainant that it was dark by then, the complainant said that the car was parked at the neighbor's house and there was light coming from the neighbor's place. When it was put to him that the neighbor's house was about 100 and 150 meters away from Sumich's house, the complainant denied this and said it was about 20 to 30 meters. When it was put to the complainant that he only said that Sumich assaulted him for the reason that he Sumich was at the scene, that complainant agreed but maintaining that he saw Sumich punch him because when he was lying down he wasn't completely covering his face. He further gave evidence during cross-examination that when the car passed by Nathan was saying to Sumich words to the effect of why did you not punched him because Sumich was discouraged from punching him. And when it was put to him during cross-examination by Mr. Tolenoa that Sumich did not punch him, the complainant agreed. During re-examination by Mr. Lacanivalu, the complainant agreed that he only said that the defendant Sumich assaulted him because he was there. The complainant then said in re-examination that the defendant Sumich only assaulted him when he was in the car but not when he was outside of the car.

16. From the cross-examination by the defence, the defendants Nived Grundler, Riley Hubert, Sumich Detenamo, Oaeon Joseph Kun. Boss Enoss, Conzaley Detabene and Sherman Dabwido do not deny being present at Sumich's place, Juvenin's place, Ice's place, Aiwo Oval and at Tango one area. What they deny is being involved in assaulting the defendant that night.

#### **INCONSISTENCY IN THE PROSECUTION CASE OF WHAT TOOK PLACE AT TANGO ONE AREA**

17. Mr. Kabokia (PW1) gave evidence that at about 9:50pm on 21 November 2015, he and his girlfriend Ray Detabene (PW2) were asked by Raymond Dekarube to go and drop him and



his friends Winston Degeoua and Paul Amasia at Buada to repair their motor-bike. So he and his girlfriend took them to Buada at Tango one. After three or five minutes of their arrival at the Tango one area in Buada a car approached them and everyone in the car got off. There were about 6 or 7 of them. He then saw that they were hassling someone but he was not sure who because it was dark. He then called out to Nathan Solomon and told him to stop. He then went up to them and saw Nathan Solomon had something in his hand covered it with cloth and it looked like a hammer. He was hitting the complainant with the hammer. At that time there were two securities at Tango one and one of them told Oaeon to tell Nathan to stop but Oaeon said words to the effect of No mama no father he was stealing at our place. He then saw Oaeon grab hold of him, punched the complainant in the face twice and then told Nathan to stop. Mr. Kabokia only recognized Nathan Solomon and Joseph Oaeon. Mr. Kabokia gave evidence that the lighting at Tango one that night was from mobile phones. No evidence was adduced about what type of phone it was or how many phones were used to provide light. Mr. Kabokia was not able to recall whether or not the vehicle lights were turned on that night. During cross-examination Mr. Kabokia said that he did not know but when the security called out Oaeon's name that was he saw the defendant Oaeon that night at Tango one. Mr. Kabokia maintained that Oaeon was at the Tango one area that night. The securities who were on duty that night at the Tango one area one of whom according to the evidence asked Joseph Oaeon Kun to tell Nathan Solomon to stop hitting the complainant were not called to give evidence about what they may have seen or heard. Also there were three other persons who on the evidence were present at the scene about 15 to 20 meters away. They are Raymon Dekarube, Winston Degeoua and Paul Amasia. These three persons were also not called by the prosecution to give evidence about what they may have heard or seen that night.

18. The evidence of Ms. Ray Detabene is that at about 10 O'clock in the night when she and her boyfriend Mr. Kabokia got home that night, her nephew Raymond Dekarube asked them to take him and his friends Winston Degeoua and Paul Amasia to Buada to fix their motor-bike. This they did and took them to Tango one and they stopped near the security guard close to the road. Her nephew and his friends went to fix their motor bike about 10 to 15 meters from where she and Mr. Kabokia were in the car. A car came and she couldn't tell who they were but that it looked like they were

hassling someone. She then ran out to stop it before they assaulted the complainant. She gave evidence that she saw Nathan Solomon holding something that looked like a stick wrapped in a cloth. She is not able to tell what it is that was wrapped in a cloth but Nathan was smacking the complainant with it whilst Joseph Oaeon Kun was punching and kicking the complainant. She could tell it was Nathan and Joseph because she used torch from her mobile. She gave evidence that there were about six or seven people but that she only recognized Riley and Shishen. She gave clear evidence that Riley and Shishen did not assault the complainant. They eventually stopped assaulting the complainant and they left. She then took the complainant to the hospital.

19. It is important to note that PW1 and PW2 with at least five other persons were at Tango one before the complainant and the others arrived at the tango one area. At Tango one the complainant gave evidence that Nathan asked Sherman what's up with you and Sherman said oh he's your friend and Nathan kept hitting him with the hammer. After that his aunty Frisca stopped them and said to them this is your motor bike why do you keep on going?
20. At Tango one the complainant only gave evidence about being dragged out by Sherman and continuously being hit with the hammer by Nathan before his aunty Frisca came and stopped them and they ran away. Both Mr. Kabokia and Ms. Detabene gave evidence about seeing Mr. Nathan Solomon hitting the complainant with something that looked like hammer or a stick. This is consistent with the complainant's evidence that he was continuously being hit by Nathan Solomon at Buada. Nathan Solomon had pleaded guilty.
21. Other than this there is no other consistency between the evidence of the complainant and Mr. Kabokia and Ms. Detabene. For instance Mr. Kabokia and Ms. Detenamo gave evidence about seeing Oaeon Kun hitting and punching the complainant about twice at Tango one area at Buada. Whereas the complainant only gave evidence about being continuously hit by Nathan Solomon with a hammer wrapped in cloth until his aunty Frisca stopped him and they left. The complainant in fact gave evidence to the effect of Sherman being reluctant to assault him and being questioned by Nathan Solomon. Also complainant gave evidence about being dragged out from the vehicle by Mr. Sherman and another person not

named. However Mr. Kabokia and Ms Detenamo gave no evidence about the complainant being dragged out from the vehicle. Mr. Kabokia and Ms. Detenamo gave evidence about everyone in the vehicle going out. Nothing about anyone being dragged out from the vehicle when it arrived.

**EVIDENCE ABOUT BEING HIT, KICKED AND PUNCHED AT OTHER PLACES  
OTHER THAN TANGO ONE NOT CORROBORATED**

22. The complainant first gave evidence about being whacked to the ground by Mr. Sherman Dabwido at his place before the vehicle arrived and they took him away. This was challenged by counsel for Sherman Dabwido during cross-examination. The complainant gave evidence that he was punched by both Nived Grundler and Sherman Dabwido at his place. There is no evidence regarding where he was punched and how he was punched by Nived Grundler and Sherman Dabwido before he was taken in the vehicle to Sumich's place. Again this was challenged during cross-examination by counsel for Mr. Grundler and Sherman Dabwido. The third occasion on which the defendant gave evidence that he was assaulted was at Sumich's place. At Sumich's place he gave evidence about Sumich holding his arm and Nathan Solomon hitting his arm with a hammer wrapped in a cloth. The complainant also gave evidence that he is not able to recall who dragged him out of the vehicle but that it was Sumich Boss and Sherman who ganged up on him by kicking him, punching him. But later said he cannot remember what Nived did to him at Sumich's place. At Juven's place and at Ice's place the complainant said nothing happen. The next place the complainant gave evidence about being assaulted is at Aiwo oval. His gave evidence that he was being held by Sumich and another whilst be punched in the face by a group of children. He didn't know how many or who the children were. His evidence regarding being held by Sumich at the Aiwo oval was again challenged during cross-examination by counsel for the defendant.
23. At most the complainant gave evidence that he was indiscriminately and continuously assaulted by being punched in the face and kicked repeatedly by at least 10 different persons at two different places, and being indiscriminately and repeatedly hit in the arm with hammer at two different places, and then indiscriminately and repeatedly punched in the face by a group of children in the face at the Aiwo oval. The alleged assaults that did not take place at Tango one area in Buada were not

witnessed by anyone other than the complainant. It is the complainant's evidence against the denial by the defendants. Both versions can't be true. Which version the court will accept must be determined on the other evidence available before the court to enable the court to determine the issue of credibility.

#### **MEDICAL REPORT**

24. According to the medical report dated 21 November 2015 by Dr. Wyn, the Physical examination show the defendant was fully conscious, vital stable. Complains of pain at the back of neck and there were two small soft tissue swellings at the sides of the head. Small laceration 0.5cm between 2 eye brows and Small laceration on lower end of the left arm. No open wounds. All joints normal. Discharged after 24 hours.
25. Dr. Wyn was called to give evidence. Her evidence is that she attended to the complainant that night who complained about pain at the back of his neck without showing her. So she did not see it. Dr. Wyn gave evidence in terms of her finding as is contained in her report signed and dated the 21 November 2015. Dr. Wyn further gave evidence that the two small lacerations were on the side of the head above the ear. She gave evidence that the size of the swelling was very small about 1 cm. Dr. Wyn further gave evidence that the soft tissue swelling can be caused by blunt trauma that is a blunt object and in terms of the force applied in this case the amount of force is not much force causing the soft tissue in her opinion. She further gave evidence that blunt trauma would include kicking, punching and being hit with something blunt. She further gave evidence that the laceration to between the eyes could be caused by being kicked and being punched or if punched and fell down and hit something on the floor. Dr. Wyn is not able to comment on whether the blunt trauma can be caused by hammer. In effect Dr. Wyn is not able to give an opinion on whether or not any of the injuries sustained by the complainant could have been caused by a harmer.
26. During cross-examination Dr. Wyn gave evidence that from the medical report the complainant was only admitted at the emergency for 24 hours and then was discharged. Dr. Wyn was asked by Mr. Tangivakatini during cross-examination

if she recalled after he was discharged he was moved to another wing in the hospital and she answered no.

27. The complainant gave evidence that he sustained a broken forehead, got broken arms, broken lips and got swollen around his eyes. During cross-examination he gave evidence that he was admitted to the intensive care unit and was later moved to the men's wings and was hospitalized for one week. He denied being kept at the emergency for 24 hours and discharged during cross-examination.

28. On the evidence it is clear that there are stark and irreconcilable inconsistencies in terms of the injuries that the complainant said he sustained and the injuries that Dr. Wyn observed to have been sustained by the defendant upon his admission. Also the complainant said he was admitted at the men's wing for one week whereas the medical report (Exhibit PE1) shows that he was discharged after 24 hours. This is also confirmed by the evidence of Dr. Wyn that he was kept for observation for 24 hours and was discharged. Also in the medical report it is clear that there was no bony fracture and no jaw fracture and no fracture to the skull, cervical spine, chest and left arm.

29. The physical evidence in terms of the medical report (exhibit PE2) and the evidence of Dr. Wyn, simply does not support the evidence of the complainant about the injuries he said he sustained. I must reject the complainant's evidence about the injuries he said he sustained in terms of a broken forehead, broken arm and broken lips including his evidence that he was admitted to the RON hospital for one week.

#### **SUBMISSION BY DEFENCE**

30. Mr. Tangivakatini and Mr. Knox Tolenoa filed a joint submission and in essence submit that the medical report and the evidence of Dr. Wyn does not support the evidence given by the complainant in court and that this is crucial to this case and as such this court should find that the evidence adduced by the prosecution is insufficient to support the charge and is not enough to put the defendants to their defense.

#### **SUBMISSION BY PROSECUTION**



31. Mr. Lacanivalu submits that the evidence of Dr. Wyn could only confirm that Hosea was discharged after 24 hours, she could not recall whether he actually discharged or moved to another wing. This aspect of the submission by Mr. Lacanivalu overlooks the comments in the medical report which read "discharged after 24 hours"<sup>2</sup>. This aspect of the submission by the prosecution also overlooks the evidence of Dr. Wyn during cross-examination that the complainant was kept for observation only and was discharged after 24 hours. The prosecution has not re-examined Dr. Wyn on this point to elicit evidence to support the conclusion or the interpretation of this aspect of Dr. Wyn's evidence, that it now seeks this court to draw. It is not for this court to take a leap beyond the evidence that is available and to draw a conclusion that is simply not supported by the evidence. I reject this aspect of the submission by Mr. Lacanivalu.

32. Mr. Lacanivalu has also submitted that there is evidence to show that Nived Grundler, Shishen Dabwido and Conzaley Detabene aided and abetted the assault on Hosea and that this is in line with Section 7(b) of the Criminal Code 1899 (which was in effect at the time of the alleged offending). Section 7(b) of the Criminal Code 1899 reads:

*"When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say:*

*a)...*

*b) Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence:"<sup>3</sup>*

33. Defendants Nathan Solomon, Nived Grundler, Oaeon Joseph Kun, Shishen Dabwido, Riley Hubert, Boss Enos, Conzaley Detabene, and Sherman Dabwido were charged on the 23<sup>rd</sup> November 2015 and brought before the District Court.<sup>4</sup> There is no reference to section 7(b) of the Criminal Code 1899 in the statement of offence filed with the District Court by the prosecution on 23 November 2015 and there is no reference to aiding and abetting in the particulars of

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<sup>2</sup> Medical report dated 21 November 2015 exhibit PE1

<sup>3</sup> Section 7(b) of the Criminal Code 1899

<sup>4</sup> District Court Register Case No. 33 of 2015

the offence charged.<sup>5</sup> Mr. Sumich Detenamo was separately charged and brought before the District Court on the 26 November 2015.<sup>6</sup> Again no reference was made to section 7(b) of the Criminal Code 1899 in the statement of offence of the complaint filed with the District Court on the 26 November 2015.<sup>7</sup> On the 27 January 2016 what is purported to be a consolidated charge or complaint was filed by the prosecution.<sup>8</sup> Again there is no reference to section 7(b) of the Criminal Code 1899 in the statement of offence and there is no reference to aiding and abetting in the particulars of the offence.

34. The Criminal Code 1899 deals with parties to offences either as principal offenders in any of the circumstances described in section 7 (a)(b)(c) or (d) or offenders committing offences in the prosecution of a common purpose as prescribed for in section 8 of the Criminal Code 1899. It is incumbent on the prosecution when preferring charges against alleged multiple offenders to specify in the complaint or charge whether such persons are charged as principal offenders under any of the circumstances in section 7 of the Criminal Code 1899 or as offenders in prosecution of the common purpose under section 8 of the Criminal Code 1899. That has not been done in this case. No application was made by the prosecution for an amendment to be made to reflect this.

35. The submission by Mr. Lacanivalu that section 7(b) of the Criminal Code 1899 captures the defendants in terms of aiding and abetting the assault of the complaint is not supported by the evidence. Who did they aid and abet to assault the complainant? There is no evidence of this. The failure by the prosecution to specify which of the limbs under section 7 or 8 of the Criminal Code 1899 the defendants are being charged with; is fatal to the whole of the proceedings. This failure is not open to rectification by way of an amendment being granted by the court of its own motion.

## CONCLUSION

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<sup>5</sup> Complaint dated 23 November 2015 filed with the District Court on 23<sup>rd</sup> November 2015 in District Court Criminal Case no. 33 of 2015

<sup>6</sup> District Court Register Case No. 34 of 2015

<sup>7</sup> Complaint filed with the District Court on 26 November 2015 in District Court Criminal Case No. 34 of 2015

<sup>8</sup> Complaint dated 27 January 2016 filed with the District Court in Criminal Case No. 33 and 34 of 2015.



36. I find on the evidence that there is insufficient evidence to put each of the defendants to answer to the charge. In addition to this the incurable defect in terms of the framing of the charge against the defendants must also result in a finding that each of the defendants has no case to answer.

37. I dismiss the charge against each of the defendants. I Find Nived Grundler, Oaeon Joseph Kun, Shishen Dabwido, Riley Hubert, Boss Enos, Conzaley Detabene, Sherman Dabwido, Sumich Detenamo and Boss Enos not guilty.

Dated this 10 day of August 2016

  
Emma Garo  
Resident Magistrate

