



**IN THE DISTRICT COURT OF NAURU**  
**CRIMINAL JURISDICTION**

Criminal Case No. 04 of 2020

**THE REPUBLIC**  
**-v-**  
**ABWAEOR ADAM**  
**YEMER AGIGO**

**JUDGMENT**

*Before:* RM P. R. Lomaloma  
*For the Prosecution:* Ms. Francis L Puleiwai  
*For the Defendant:* Mr. Thomson Lee  
*Trial dates:* 21-22 June 2021  
*Oral Submissions:* 2 July 2021  
*Judgment:* 21 July 2021

**Catchwords:** *Intentionally causing harm—section 74 of the Crimes Act 2016; self-defence—section 51 of the Crimes Act. Self defence not available where the threat is retreating; Self-defence— not available where defendant is attacking, retaliating or revenging himself. Self defence not available where defendant wants to teach the victim a lesson.*

**Introduction**

1. The accused stands charged with the following offence:-

**Statement of Offence**

**Intentionally causing harm:** Contrary to section 74(a)(b)(c) and (ii) of the Crimes Act 2016

**Particulars of Offence**

**Abwaeor Adam** and **Yemer Agigo** on the 26<sup>th</sup> of January 2020 at Nauru intentionally engaged in conduct and the conduct caused harm to Arbon Duburiya without his consent and Abwaeor Adam and Yemer Agigo intended to cause harm to Arbon Duburiya by the conduct.

2. The accused pleaded not guilty. At the trial, the prosecution called 6 witnesses, namely Arbon Duburiya (PW1), Sheik Daoe (PW2), Bendixon Gadeanang (PW3), WPC Pikita Dabuae (PW4), Snr Constable Drusky Dabwadauw (PW5) and Sgt Kirsty Karl (PW6). After I found that the defendants had a case to answer, both the accused elected to give evidence on oath but called no other witnesses.

**The Charge**

3. Section 74 of the Crimes Act provides: -

***74 Intentionally causing harm***

*A person commits an offence if:*

*(a) the person intentionally engages in conduct; and*

- (b) the conduct causes harm to another person without the person's consent; and
- (c) the person intends to cause harm to that or any other person by the conduct.

4. The elements of the offence are that: -
  - a. the accused;
  - b. intentionally engaged in conduct;
  - c. the conduct caused harm to Arbon Duburiya without his consent;
  - d. the accused intended to cause harm to Arbon Duburiya.
5. The accused raised the defence of self-defence which is in section 51 of the Crimes Act 2016 which will be discussed only if the prosecution prove beyond reasonable doubt all the elements of the offence.

## THE EVIDENCE

### Facts not in Dispute

6. It is common ground in the evidence of the prosecution witnesses that Arbon Duburiya had been drinking on Saturday 25<sup>th</sup> of January 2020 in Meneng District. He went to sleep for sometime and continued the next day. In the afternoon of Sunday 26<sup>th</sup> January, he drove his motorbike to Yaren to drop off a friend. When they got there, the friend invited Arbon to a drinking party that was in progress at a drinking spot opposite the Odn Yaren store in Yaren. The youths of Yaren are not on good terms with those from Meneng.
7. Both accused were drinking at the party before Arbon arrived. Both are from Meneng, as is their friend Fonzi. Fonzi is a police officer and he was off duty and sitting with both accused. Both accused testified that they are good friends with Fonzi and they have been friends since childhood.
8. An argument developed between Arbon and Fonzi. Both accused said during the argument, Arbon poured vodka on Fonzi. Arbon said however that he was challenged by the first accused, Abwaeor Adam to a fight. Both the first accused and Arbon said that they then grabbed each other's collar but were stopped from throwing punches by other people at the party. The owner of the house where the party was held asked the first accused and Arbon to leave the party. At the time he left the drinking spot, Arbon did not have any injuries to his head.
9. Sometime after he left the party, Arbon was assaulted by Yemer Agigo and later he was joined by the first accused causing injuries to his head. Both the first accused and the second accused testified and said they assaulted Arbon. They claim that it was in done in self-defence. I will look at the evidence relating to the elements of the offence and the defence of self defence.

### Prosecution Witness 1 (PW1)— Arbon Duburiya

10. PW1 said a little after he got there, the first accused, Abwaeor Adam (A1) thumped the table and challenged him to a fight. PW1 said that he then stood up and exchanged punches with the first accused. The fight was stopped and he was asked by the Lady who owns the house where they were drinking to leave. He then got on his bike and went past Jarod's house and he saw the first accused and he stopped. He continued: -

*I stopped because Abwaeor was carrying a weapon. I asked him to fight but he did not put the weapon down. The weapon was a rake. Don't remember whether it was plastic or steel. His other friend attacked me and I don't remember after that.*

11. In cross-examination, defence counsel put to him the defence case which he denied. PW1 denied that he ever fought with Fonzi and said when the lady of the house asked him and Abwaeor to leave, he got on his bike and started it. He went past Jarrod's house and saw Abwaeor there with the rake.

**PW2— Sheik Daoe**

12. Sheik Daoe is 23 and was sober. He was sitting with his family at the restaurant opposite where the fight took place. He saw Yemer, the second accused, strike Arbon's head with a rock. He ran across, grabbed Yemer and threw him on the side. He saw Arbon, lying on the ground and covered with blood. He told Arbon to get on his bike and go home. As Arbon got on his bike and drove away, he saw Abwaeor and challenged him to a fight. Arbon stopped on the road in front of Jarrod's residence. He continued: -

*I was at the drinking spot, walking back to the restaurant at this time. Abwaeor was holding a rake. Yemer attacked Arbon on his bike. Arbon fell and Yemer started attacking him on the ground. Abwaeor did not do anything. He was just standing provoking Arbon with the rake. I ran towards where Yemer was attacking Arbon. I grabbed Yemer on top of Arbon and pushed him aside. Yemer didn't do anything. He stopped. Yemer did not fight with me. I waited for Arbon to get back up. I know Arbon—we come from the same district. Arbon was unconscious, he was knocked out. I was still at the scene when police arrived.*

**PW3— Bendixon Gadeanang**

13. Bendixon is 19 years old and works at the Meneng Hotel. He was sober. On 26<sup>th</sup> January 2020, he was driving and stopped in front of the Oden Yaren store because of the fight across the road from the store. He said: -

*The fight was across from Oden Yaren. I saw Yemer chasing after Dadenamo on the footpath on the roadside. I know Yemer. [identified him in court] I was at Jarrod's place when I saw this. Yemer and Dadenamo came out of the drinking spot. Yemer was chasing Dadenamo and Dadenamo was calling him from the PK store. I saw Arbon come out. He was on his motorbike. Abwaeor chased after Arbon. Abwaeor was telling Arbon to stop. He was calling him. When Arbon stopped, that's when Yemer came out and punched Arbon when he came back from chasing Dadenamo. After Yemer punched Arbon, he fell on the ground. Abwaeor came and hit him with the rake. I went right close by. Abwaeor struck Arbon 3 times with the rake. I know Abwaeor. He is a friend of the family. I saw the rake. Can't recall if it was plastic or steel. Arbon was on the ground. I don't know Arbon's condition whilst he was on the ground. He was still on the scene when police arrived.*

14. In cross-examination, PW3 said that he knows Arbon; that he is from the same District as Arbon but is not related to him; and that he works with Arbon at Meneng Hotel but in a different section from Arbon.
15. PW3 said he did not see Arbon get on his bike but when Arbon was on his bike, Abwaeor was calling after him although he did not remember the words.
16. PW3 denied that Arbon challenged Abwaeor to a fight; and denied that Arbon told Abwaeor to go somewhere else to have the fight. This witness was shown his statement to police which contradicts these denials. He explained that someone else wrote the statement and he was asked to sign it. He said he did not read the statement before he signed it.

17. In cross, PW3 said that he saw the first strike from the rake land on Arbon's head and the remaining two on his body. He said that he was 4-5 meters away from Yemer when he saw him punch Arbon and that only one punch was thrown.
18. In re-examination, PW3 said that he was telling the truth in court; that his statement to police was not read back to him and that he had no reason to lie.

**Prosecution Witness 4—WPC Pikitta Dabuae**

19. Woman Police Constable Pikitta Dabuae has spent the last 7 years in the Nauru Police Force. She was off duty on the day in question and was on a motorbike with her son when she saw the people drinking opposite the Odn Yaren. She stopped because she saw Yemer chasing Dadenamo on the roadside towards Meneng. She asked a Joey who was there for her phone and reported the matter to the police. She continued: -

*I saw Arbon coming from the drinking spot on his motorbike and I saw Abwaeor going after him with his rake. Arbon was on the road heading towards Meneng and they were calling out to each other. Arbon was driving slowly and Yemer came from Meneng side and punched Arbon once. Arbon fell on the ground with his motorbike. Yemer started punching Arbon on the ground and Abwaeor came as well. He was holding a rake. It was a steel rake. Abwaeor hit Arbon with the rake. I didn't see what way the rake was used. I know Abwaeor and Yemer. They are from Meneng. They have a lot of police reports coming in. I was at the Mystique restaurant next to Jarrod's house.*

...

*Arbon was covered in blood and lying flat on the ground. There was so much blood I couldn't see his face. He was awake but he was lying down. I didn't hear Arbon say anything to Abwaeor. Arbon was not armed.*

20. PW4 said she was about 5 meters away from the fight. It was between 2-3 p.m. and there was nothing obstructing her view of what was happening. She made a sketch plan of the scene and tendered this as Prosecution Exhibit 1 (PE1). The police arrived about 20-30 minutes after the fight and she went to assist them. She collected the rake and took it to the police station. She recognized it in court and tendered this as Prosecution Exhibit 2 (PE2).
21. In cross-examination, WPC Pikitta was not shaken from her evidence. She said that she is from Meneng and that the boys from Yaren and Meneng were not on good terms that month.
22. PW4 said that she saw Abwaeor hit Arbon in the upper part of his body with the rake; that she did not see exactly where it landed; that she could not recall how many times he was hit; that Yemer punched Arbon once only and he fell on the ground; that Arbon and Abwaeor were calling out to each other but she did not hear the words.
23. In re-examination, PW4 said Yemer punched Arbon once and he fell off his motor bike and Yemer got on top of him and continued to punch him.
- 24.

**Prosecution Witness 5 (PW5)—Senior Constable Drusky Dabwadauw**

25. PW5 is the arresting officer and came on the scene after the fight and after enquiries at the scene, ordered the arrest of both accused.
26. SC Drusky explained the procedure regarding how the statement of a witness is recorded and signed. The statement is taken down in their presence and read back to

them in English and Nauruan. If the witness agrees that the statement is true, they sign the statement.

#### **Prosecution Witness 6—Sgt Kirsty Karl**

27. Sgt Kirsty Karl took the photographs of the injuries to Arbon's face and head on 27<sup>th</sup> January 2020, one day after the fight. They were tendered as Prosecution Exhibits 2A-D. They showed stitches to the skin below the eyebrow and on the top of the head. She said there was no medical report because the victim was taken to hospital by his relatives and no one at the hospital could identify the person who stitched his injuries.
28. At the end of the prosecution case, I found that both accused had a case to answer and I put them to their defence.

### **THE DEFENCE EVIDENCE**

#### **Defence Witness 1 (DW1)—Abwaeor Adam**

29. Abwaeor Adam elected to give evidence on oath. He is 28 years old and single. He recalls that on the 26<sup>th</sup> of January 2020, he was drinking with his friends including Fonzi and Yemer when Arbon came. There was no tension at the time and Arbon sat with Fonzi and Yemer. He continued: -

I saw Arbon spill the drink on Fonzi but I did not know what they were arguing about. I asked him why he did it. He replied, "because I am a bad boy, I can fight." I asked Arbon that because Fonzi is my friend and he is a policeman and he is smaller than Arbon, not fit to fight Arbon. I saw Arbon was about to hit Fonzi, that's when I came over to help my friend. After Arbon said he was the strongest, we started challenging each other, holding each other by the shirt and the crowd stopped us. When the crowd stopped us, we were moved away from the drinking spot except for Fonzi. As I looked over at the drinking spot, I saw Arbon hitting Fonzi with the bench. I went and took the bench away from Arbon and we started pushing each other but didn't fight because the crowd stopped us.

Then I took the rake and ran after Yemer who was chasing Dadenamo. I saw Fonzi chasing after Yemer so I followed them.

When I was chasing after Yemer and Fonzi, Arbon came on his motorbike behind me and challenged me. He said, "get on the bike so we can go to Meneng and fight there." He said this repeatedly. Arbon said, "Fuck your mother." I started provoking him with the rake after he told me this. By provoking, I mean just trying to scare him. I was holding the rake and telling him to get away from me or I will hit you with the rake. [He demonstrated by holding the rake vertically.]

When I did that, Aizom stopped me from going after Arbon. Arbon was driving slowly away from me and he just met up with Yemer just a few meters away. That's when they had the fight and Arbon fell off his motor bike. When I saw him fall off the bike, I saw Sheikh who ran over to Yemer and Arbon to stop Yemer from fighting Arbon. I also ran over to see what was happening. **When I got there, Arbon was facing down and I hit him with the rake on his back just once. I hit him with the back of the rake. I**

**hit his back to teach him a lesson not to come back here but I did not hit his head or any other part of his body. I just wanted him to go away.**

30. Later in his evidence, Abwaeor explained why he hit Arbon: -

The rake did not hit any part of his face. I took the rake and followed Yemer and Dadenamo just to scare him. The purpose of using the rake at Arbon was I didn't mean to hit him. I just wanted to scare him to go away.

I approached him because he knows that Fonzi is a policeman and he will not be able to fight because of his job. I am a security officer at the Australian High Commission.

### **Defence Witness 2 (DW2) – Yemer Agigo**

31. The second accused took the oath and said he is 21 years old. He was drinking with his friends on 26<sup>th</sup> January 2020. It was the first time he drank. He said:

Everything was peaceful till the boys from Meneng came—he recognized Arbon, Aizon, My-man Ronin and Dadenamo. Arbon started making challenging gestures to Fonzi and we started arguing. He was swearing a lot, talking foul of others, saying he is the strongest and he can fight. He was telling the other boys puffers and not man enough. Arbon spilled the drink on Fonzi and that's when Abwaeor came in. He came in and they started holding each other by the neck but did not get into a big fight.

32. The second accused said that Dadenamo came and aggressively pushed Abwaeor away so he fought him. They fought right up to the main road and Dadenamo ran towards Meneng. Yemer said he chased Dadenamo up to the PK store and then returned. He continued: -

When I turned back, I saw Arbon driving up slowly, calling out to my friend Abwaeor. I couldn't clearly hear what he was saying but when he was closer, he was saying, "Fuck your mother," and he shouted at me, "Fuck your mother." When he came closer, he was still shouting at the both of us, swearing. **And that's when I hit him [points at the right side of his jaw/neck] because I was angry and because it hurt me when he said those words about my mother. It really touched me—that's why I hit him. It hurt me because I love my father and my dad just recently passed away. I hit him because I was angry. I just wanted to hit him anywhere.** After I hit him, he fell off his bike. I was about to hit him when Sheikh came running and aggressively pushed me aside. I was waiting for him to fight me but he didn't. Abwaeor then came and fought with Sheikh because he is my friend. I have known him since we were children. We are friends and we live in the same area. I have known Fonzi since we were children.

33. In cross-examination, Yemer refuted using a stone to strike Arbon. Yemer stuck to his explanation of how and why he fought Arbon.

### **The Submissions**

34. I thank both counsels for their submissions. I will address each where relevant in this judgment.

### **ANALYSIS**

35. In a fast-moving incident described by the witnesses above, no two witnesses could agree on everything as the focus of each person's attention is different at different

times. In fact, if the evidence of two witnesses are exact, I would suspect some form of collusion but this was not so. The evidence of the accused do not vary very much from the prosecution witnesses except in some minor details which I will deal with in this analysis.

### **Findings of Fact**

36. I have taken account of the fact that Arbon, Abwaeor and Yemer had been drinking and each has a good reason to lie or not tell the whole truth. I have taken account of the fact that Arbon's memory could have been affected by the blows he suffered on the day. I have considered the evidence of PW2, PW3 and PW4 who were all sober and saw the fight unfold from very close range. I have taken account of the demeanour of the witnesses and the plausibility of their evidence and I make the following findings of fact.
37. From the evidence set out above, I find the following:
- a. Arbon and the first accused, Abwaeor Adam got into a tussle at the drinking spot. They traded blows but were separated by the others.
  - b. Arbon left the party and headed to his motor cycle, got on and was driving slowly towards Meneng;
  - c. On passing Jarrod's house, Arbon's saw the first accused carrying a rake;
  - d. Words were exchanged between the two.
  - e. Yemer Agigo meanwhile was chasing Dadenamo on the road towards Meneng. When he returned, Arbon was swearing at him and his mother. This provoked Yemer Agigo into punching Arbon Duburiya who then fell to the ground.
  - f. Abwaeor Adam then struck Arbon at least once with the rake when he was on the ground.
  - g. Thereafter, Arbon Duburiya was seen bleeding from the face whilst he was on the ground. The injuries required stitches to the skin on the top of the head and below the eyebrow.
  - h. Abwaeor Adam said he hit Arbon to teach him a lesson not to come back to Yaren.
  - i. Yemer Agigo said he hit Arbon because he was angry at him for what Arbon had said about his mother.

### **Evidence for each element of the offence**

38. The elements of the offence are that: -
- a. the accused;
  - b. intentionally engaged in conduct;
  - c. the conduct caused harm to Arbon Duburiya without his consent; and
  - d. the accused intended to cause harm to Arbon Duburiya.
39. From the evidence, there is no doubt about that the accused were identified as the perpetrators. The conduct they engaged in is the assault on Arbon Duburiya which started with Yemer punching him and Abwaeor hitting him with the rake.
40. The third element of the offence is whether they intentionally engaged in the conduct. This offence has two intents that must be proved by the prosecution. The first is that the accused intentionally engaged in conduct. The second intent is that

the accused intended to cause harm by his conduct. Section 17 of the Crimes Act deals with intention:

**17 Intention**

(1) *A person has 'intention' with respect to conduct if the person means to engage in the conduct.*

(2) *A person has 'intention' with respect to a circumstance if the person believes that it exists or will exist.*

(3) *A person has 'intention' with respect to a result if the person means to bring it about or is aware that it will occur in the ordinary course of events.*

41. From the evidence of the prosecution witnesses, we can infer that both accused intended to assault Arbon Duburiya. Their own evidence clearly state that each intended to hit Arbon.
42. The fourth element of the offence is whether they intended to cause harm to Arbon Duburiya. Section 17(3) of the Crimes Act is relevant in establishing this element.
43. Yemer Agigo heard Arbon say foul words about his mother that made him angry. He decided to hit him because he was angry. He clearly was in control of his senses and he should be aware that punching Arbon on the face with a fist so hard that Arbon falls to the ground could lead to injuries *in the ordinary course of events* as set out in s. 17(3) above of the Crimes Ac. I find therefore that this element of the offence has been proved beyond reasonable in the case of Yemer Agigo.
44. The first accused, Abwaeor Adam, intentionally used a rake to hit Arbon. Abwaeor was aware of what he was doing. He should have been aware that hitting someone on the ground with a steel rake could lead to injuries in the ordinary course of events. I find therefore that Abwaeor Adam intended to cause harm to Arbon Duburiya.

**Who caused the injuries?**

45. No other person assaulted Arbon Duburiya so we can infer that the injuries were either caused by the assault of either the first or second accused or both. The two accused are charged jointly with the offence but there is no evidence showing who caused which injury. This is covered by the law of joint enterprise which was described by Brennan CJ Deane, Dawson, Toohey and Gummow JJ of the High Court of Australia in McAuliffe v The Queen<sup>1</sup> as: -

*Those terms – common purpose, common design, concert, joint criminal enterprise – are used more or less interchangeably to invoke the doctrine which provides a means, often an additional means of establishing the complicity of a secondary party in the commission of a crime.*

46. In Gillard v The Queen<sup>2</sup> the doctrine of joint enterprise or common purpose was described by Hayne J, with whom Gleeson CJ, Gummow and Callinan JJ agreed as: -  
*In its simplest application, the doctrine of joint criminal enterprise means that, if a person reaches an understanding or arrangement amounting to an agreement with another or others that they will commit a crime, and one of other of the parties to the arrangement does, or they do between them, in accordance with the continuing understanding or arrangement, all those things which are necessary to constitute a*

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<sup>1</sup> (1995) 183 CLR 108 at 113

<sup>2</sup> (2003) 219 CLR 1 at 35-36



*crime, all are equally guilty of the crime regardless of the part played by each in its commission.*

47. In R v Jacobs<sup>3</sup> Woods CJ, with whom the other judges agreed said at 479<sup>4</sup>:  
*A joint criminal enterprise need not be pre-planned. It can develop and be formed instantaneously.*
48. Yemer Agigo punched Arbon causing him to fall to the ground. Abwaeor Adam seeing this used the steel rake he was holding to hit Arbon with it. I find that there was no pre-planning in this assault but that Abwaeor Adam joined in the assault instantaneously and thus became a joint offender.

### **SELF DEFENCE**

49. The accused rely on the defence of self-defence set out in s. 51 of the Crimes Act 2016:  
*51 Self-defence*  
*(1) A person is not criminally responsible for an offence if the person engages in the conduct constituting the offence in self-defence.*  
*(2) A person engages in conduct in self-defence only if:*  
*(a) the person believes the conduct is necessary:*  
*(i) to defend the person or another person; and*  
*(b) the conduct is a reasonable response in the circumstances as the person perceives them.*

### **The onus of proof**

50. The onus is on the prosecution to negative self-defence where the evidence discloses a possible defence of self-defence. In Zecevic v DPP<sup>5</sup>, Wilson, Dawson & Toohey JJ said:  
*Although self defence is still commonly referred to as a defence, the ultimate onus of proof with respect to self defence does not rest on the accused. Since Woolmington v Director of Public Prosecutions [1935] AC 462, it has been clearly established that once the evidence discloses the possibility that the fatal act was done in self defence, a burden falls on the prosecution to disprove that fact, that is to say, to prove beyond reasonable doubt that the fatal act was not done in self defence. The jury must be instructed accordingly whether or not the plea is actually raised by the accused.*
51. Defence Counsel submitted that the second accused, Yemer Agigo was justified because his actions are in response to (1) the attack by Arbon on Fonzi and Abwaeor; (2) Arbon being verbally abusive; (3) Arbon was challenging Abwaeor to a fight; and (4) Arbon had sworn at his mother.
52. For the first accused, Abwaeor Adam, defence counsel submitted that he was entitled to the defence of self defence considering that: (1) Arbon attacked his friend Fonzi; (2) Arbon attacked Fonzi with a wooden bench; (3) Fonzi is a police officer and is not

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<sup>3</sup> (2004) 151 A Crim R 452

<sup>4</sup> NSW Court of Criminal Appeal

<sup>5</sup> (1987) 162 CLR 645 at 657

fit to fight; (4) Arbon challenged him to a fight on the road; and (5) Arbon was abusive.

### Analysis

53. The first step in the defence is to consider whether it was necessary in the circumstances pertaining just before and at the time of the assault by each of the accused to defend either themselves or another person. Whether it was necessary depends on the immediate threat posed to the accused or to Fonzi immediately before the act of self-defence.
54. The circumstances are that after the arguments in the drinking place, Arbon and the first accused were separated and they left the drinking spot. Arbon got on his bike and left. As he slowly drove past Jarrod's house, he saw the first accused carrying a rake. Arbon challenged the first accused to go on the motorbike with him to fight in Meneng and the latter was swinging the rake to scare him. Swears were exchanged. Yemer then came and punched Arbon. When Arbon was on the ground, the first accused hit him at least once with the steel rake.

### Yemer Agigo

55. Clearly, Arbon was not an immediate threat to Abwaeor or Yemer or Fonzi to justify the punch on his neck by Yemer. Arbon was in the process of retreating and was still on his bike when he was hit. Swearing at Yemer provoked him and provocation does not amount to a threat. Even if it was threatening, the conduct by Yemer was not a reasonable response to very foul words directed at him and his mother. In R v Clegg<sup>6</sup>, the House of Lords dealt with an appeal on a charge of murder. The appellant was a soldier in the British Army in Northern Ireland who was on patrol when a vehicle driven at high speed broke through a checkpoint and threatened a member of his patrol. The appellant fired 4 shots at the vehicle. Three were fired as it was approaching them and the fourth was fired after it passed and hit and killed a passenger. Their Lordships found that the first 3 shots were justified as the threat was approaching the patrol and posed a danger to them. The fourth shot was not justified in self-defence as the threat was retreating. The situation is the same here and I conclude on that ground that the second accused cannot rely on the defence of self-defence.
56. In R v Bird<sup>7</sup>, the English Court of Appeal dealt with the issue whether it was necessary for the defendant to show his unwillingness to fight in self-defence. The court held that it was not necessary to do so as it was merely a factor to be taken into account in considering whether the defendant was acting in self-defence. Lord Lane CJ said at 516:
- If the defendant is proved to have been attacking or retaliating or revenging himself, then he was not truly acting in self-defence. Evidence that the defendant tried to retreat or tried to call off the fight may be a cast iron method of casting doubt on the suggestion that he was the attacker or retaliator or the person trying to revenge himself.*
57. Yemer Agigo said he hit Arbon because he was angry for what Arbon said about his mother. This was either retaliation or revenge and it clearly was not in self-defence.

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<sup>6</sup> [1995] 1 All ER 334

<sup>7</sup> [1985] 2 All ER 513

58. For the reasons given, I find that Yemer Agigo was not acting in self-defence either of himself, or Abwaeor Adam or Fonzi when he struck Arbon.

**Abwaeor Adam**

59. Abwaeor Adam, the first accused struck Arbon when he was lying on the ground after being hit by Yemer. I repeat what I said above about a retreating threat and that is then reinforced by the fact that the victim was already on the ground. Abwaeor said that Arbon was asking him to get on the bike so they could go and fight in Meneng. He was on his motor bike, having left the drinking spot and therefore not a danger to the defendant or his friends. In the circumstances, it was not necessary to hit Arbon. On this ground the defence of self-defence fails.

60. Further, Abwaeor said he hit Arbon "to teach him a lesson not to come back here." This is not self defence as explained in R v Bird.<sup>8</sup> Striking Arbon with the rake was not necessary in the circumstances to defend either himself or Yemer or Fonzi.

61. For the reasons given, I find that the first accused, Abwaeor Adam was not acting in self defence when he struck Arbon Adam.

**Conclusions**

62. I had found earlier that the prosecution had proved beyond reasonable doubt all the elements of the offence charged against both accused and their conduct being not justified in self-defence, I find both accused guilty as charged.

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**Penijamini R Lomaloma**  
**Resident Magistrate**

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<sup>8</sup> [1985] 2 All ER 513