IN THE HIGH COURT OF SOLOMON ISLANDS.
(Faukona, DCJ).

R V JOHN RICHARD SEKETALA.

Criminal Case No. 142 of 2020.

Ms Nagu H for the Crown.
Mr. S. Aupai for the Defendant.

Date of Submissions: 8th July 2025.
Date of Ruling: 28th November 2025.

RULING ON NO CASE SUBMISSIONS.

Introduction.

1. The defendant, Mr John Richard Seketala was charged and tried for a charge of Attempt Murder contrary to section 215 (a) of the Penal Code and one count of Malicious damage contrary to section 326 (1) of the Penal Code.

Brief background facts:

2. The dispute sprouts out in respect of FTE PN: 192-018-63 originally owned by Levers Solomons Limited (LSL). The land was located just beyond alligator creek/ bridge on the left side.

3. The defendant says he entered the land and started clearing it in 2002 and settled therein in 2004.

4. In 2013, nine years later he applied for the parcel to the Commissioner of Lands. In 2014 he agreed to purchase the land from LSL for $1.8 million via instalments. The first payment of $300,000.00 was paid in May 2014. The second payment of $30,000 was paid in May 2015 and later another $20,000.00 that month. He says all the receipts were lost during the flood. The total amount he paid was $350,000.00.

5. From those land transactions that the defendant thought the land that was sold to the complainant is still part of his land he purchased from LS L. Premise on the two extreme claims, prompted conflict between the defendant and the complainant which subsequently gave rise to this case.

No Case to answer:

6. The procedure at the close of prosecution case in a trial is prescribed in S.269 (1) of Criminal Procedure Court (CPC) - see Bosamete V R [1] as well..

7. S.269 reads, *"When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence (if any) of the accused person before the committing court has been given in evidence, the Court if it considers that there is no evidence that the accused,--- shall, after hearing, if necessary, any arguments which the public prosecutor or advocate for the prosecution or the defence may desire to submit, record a finding of not guilty".*

8. The test called for in S. 269 [1] is outline in the case of R V Tome,[2], it is whether or not there is "no evidence that the accused committed the offence". That must mean that if there is some evidence that the accused committed the offence, the case must proceed to final determination by the tribunal of fact.

9. The Court in Tome case had drawn similarity or identical to the case in High Court of Australia in Doney V The Queen (1990) HCA 51; (1990) 171 CCR 207, which stated, "..if the evidence cannot sustain a guilty verdict or, if there is no evidence upon which a jury could convict, then the trial judge to direct the jury to return a not guilty verdict".

10. *In the case of R v Tara and R V Maeaniani and Others, the High Court adopted an identical verbatim which in terms of, the test to be applied is that there is either no evidence or insufficient to prove the charge.*

11. *I noted the warnings expressed in Doney case "..that inconsistencies in evidence (whether within testimony of a witness or as between witnesses) are not relevant at the no case stage. The Court must take the prosecution evidence at its highest, that means,*

[1] (2013) SBCA 16; SICA 5 & 6 of 2013 (8 November 2013).
[2] (2004) SBCA 13; CA-CRAC 004 of 2004 (10 November 2004).

accepting the evidence most favourable to the prosecution when determining whether an accused has a case to answer. Finally, the Court reiterated that the test is, whether there is evidence capable of supporting a conclusion beyond reasonable doubt that the accused is guilty".

12. *A similar notion, or if not the same was expressed by the Court of Appeal when making reference to Doney case (171 CCR at 215). " In order to establish a case to answer, there must be some evidence capable of establishing whether directly or inferentially every element of the offence charged beyond reasonable doubt".*

13. *In any view sufficiency of evidence would also mean, there is evidence capable of supporting a conclusion beyond reasonable doubt that the accused is guilty.*

The evidence in all:

14. The test in a no case to answer has been well versed and being addressed as above. It is the evidence that will support the test that needs to be identified.

15. Before the subdivision of the land was done on 7th October 2016, the original land Parcel was 192-018-63. The area of land was one hectare. The sub-division process had created 65 new parcels, one of it was parcel no. 192-018-110 which was transferred to Mr. Oliva Salopuka for a consideration of $10,000.00. Mr. Oliva then sold the land to the T. H. Enterprises Ltd, a company owned by the Complainant in this case Mr. Lai Tza Hong. The consideration involved was $200,000.00. Eventually, the title was transferred to Mr Hong on 26th November 2019.

16. Mr. Hong was intending to develop his company's land. Therefore, on 5th February 2020 he sent his workmen to proceed to the land to construct a perimeter fence around the land. At 4 pm he went to Alligator Creek where the land was located to check on his boys.

17. On arrival, after a little time, he saw a man (the defendant) with a black eye glasses, wearing blue shirt. He shouted at him, "you Waku, you come out, I will cut you", he was holding a bush knife. The complainant was afraid so he ran to the end of his area.

That moment the man armed with a knife was standing opposite of his area, he then chased him and shouted at him, holem hem, holem hem. So, some of his boys held him, but the man was fast approaching. The boys started to push the man away. However,

the complainant was still afraid and so he started to run again for about ten meters his legs were tired so he suddenly fell down on the road.

18. He stood up but defendant was in front of him and sliced him with his knife and landed on the left side of his head. Then the defendant cut him again the second time and by attempting to block the knife it landed on his right hand. The first cut was made when the complainant was sitting down from the fall. The defendant in fact sustained two injuries.

19. As he looked forward, he saw a car coming in front. The car stopped so he went in and the driver took him to Henderson Police Station. As he escaped in the car the defendant still ran after the car and strike the screen of the car with his knife.

20. The medical report from the Doctor who examined the Complainant on 5th February 2020. The finding of the Dr is very clear on page 3 that the complainant sustained laceration to the left side of his head. At the time of examination, it was bleeding. He also sustained bruises to his left knee on the side, and his right little finger.

21. The Dr. also found the laceration was deep and the underlying skull lens has involved. Therefore, an Xray was taken and it was confirmed that the skull had a fracture. The laceration was sutured with 3 stitches and abrasions of his knee and finger were cleansed.

22. The third witness is Miss Nadine Tovosia. She is from Sukiki village, Guadalcanal Province. She was working with the World Vision Solomon Islands so she is an educated person.

Discussions:

23. I have outlined the complainant's evidence in Court from paragraph 15- 19 above. He told the Court how the defendant attacked him with a bush knife. As a result, he sustained two injuries to his body. Luckily, he escaped by passing car which took him to Police Station at Henderson.

24. Prosecution witness 3, Miss Nadine Tovosia, was standing about 5 meters away from the spot of incident. She saw the defendant cut the head of the complainant with his bush

knife. Then she went back into the shop to attend to her little brother crying. When she returned the defendant cut the 2 tyres of the complainant's vehicle that was parking on the side of the road.

25. The 6th Crown Witness is Philip Liuga, a workman employed by the complainant. He was present at the time of the incident. He was standing about 12 meters away. After the defendant challenged the complainant then he cut the 2 tyres of the vehicle owned by the complainant. Then he chased the complainant and cut his head with his bush knife. After that a vehicle went by so the complainant ran to it and escaped. The vehicle was driven by PW 4 who saw both men when they were arguing and also saw the Chinese man was injured.

26. PW1 is a Police Officer working with the Forensic department. He attended the Crime scene and took photographs of the crime scene and also took photograph of the Complainant's injuries on the head and arm. He also took photograph of a 2-ton truck.

27. It may appear PW3 and 6 did not see the second assault upon the complainant. However, PW3 may have a reason that she went back into the shop to attend to her crying brother. For PW6, the reason could be the distance where he stood witnessing the incident. However, both witnesses saw the defendant damage the 2 tyres of the complainant's vehicle. Timing may be different but the graphical view is the same.

28. In regards to the element, the defence Counsel argues that the prosecution has to prove an intention to kill. He refers to the case of R V Walker and Hayles[3], where the Court Stated;

> "Since the charge was attempted murder, the prosecution had to prove an intention to kill. Intention to cause really serious harm would not be enough".
>
> "If he desires serious harm, and death results from his action, he is guilty of murder. A simple direction suffices in such cases. There are exceptional cases where the defendant does not desire a serious harm, or any harm at all. But where a defendant desired serious harm, without desiring death. So, the desire of serious harm does not provide the answer. It does not go hand in hand with relevant intention, as it does in the great majority of cases, since in attempted murder the relevant intention must be an intention to kill".

[3] (1990) 90 Cr App

29. In another case which the defence Counsel refer to is R V Whybrow which stated;

> "If one person attacks another, inflicting a wound in such a way that an ordinary reasonable person must know that at least a grievous bodily harm will result, and death results, there is the malice aforethought sufficient to support the charge of murder, but attempted murder needs intent to kill".

30. The Counsel concluded after discussing the two cases submits that the courts had said that attempted murder requires an intention to kill, not just intention to cause serious harm. In Whybrow case it reinforces by explaining that for murder intent to cause grievous bodily harm suffices, but attempted murder needs intent to be.

31. The Counsel argues that by using a fatal weapon, a 20 inches knife and chasing the Complainant and attacked him twice, to cut the head were overt acts encompassing harm. However, the Crown fails to link those acts to a specific intent to kill.

32. The Crown evidence does to commence when the defendant chased the complainant and attached him with his knife. It started earlier when the defendant asked for the complainant but he was told the complainant was still in town. Later the defendant returned in the afternoon saw the complainant and shouted at him, you waku, you come out I will cut you. He was armed with a bush knife at that time. He chased him and attacked him with his bush knife twice.

33. The word "attempt" is defined by S. 378 of the Penal Code. "Where a person, intending to commit an offence, begins to put his intention in to execution by means adopted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his intention to such an extend as to commit the offence, he is deemed to attempt to commit the offence.

34. Therefore, the element of S. 378 Penal Code is;

    1. A defendant intends to commit an offence.
    2. The defendant begins to put that intention into execution by committing an overt act, ie, the defendant does an act necessary to commit the intended offence.
    3. The intention is not fulfilled.

35. In the case of Haughton V Smith[4], their Lordships' observation of the expression, actus reus, means an act does not make a man guilty of a crime, unless his mind be also guilty. It is thus not the actus which is reus, but the man and his mind respectfully".

36. Their Lordships derive certain propositions in the case and they are:
    1. There is a distinction between the intention to commit a crime and an attempt to commit it. In this case, respondent intended to commit a crime under S.22 of the Theft Act. But his dishonest intention does not amount to attempt.
    2. In addition to intention, there must be an overt act of such a kind, that it is intended to form and does not form part of a series of act which would constitute the actual commission of the offence if it were not interrupted.
    3. The act relied on as constituting the attempt must not be an act merely preparatory to commit the completed offence but must bear a relationship to the completion of the offence, as being proximate to the completion of the offence and as being immediately and not merely remotely connected with the completed offence.

37. Lord Chancellor in this case also agreed with the decision in Percy Dalton (London) Ltd[5], and quote a passage from Biiket J which said, "steps on the way to the commission of what would be a crime, if the acts were compeleted, may amount to attempt to commit that crime, to which, unless interrupted; they would have led; but steps on the way to the doing of something which is thereafter; done, and which is no crime, cannot be regarded as attempts to commit a crime".

38. In the case of Davy & Others V Lee[6], CJ stated,

    "what amounts to an attempt has been described variously and for my part I prefer to adopt the definition given in Steven's Digest of Criminal Law (5th Edi) that to commit a crime is an act done with intent to commit the crime and forming part of serious of act which would constitute its actual commission if it were not interrupt".

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[4] 1974 58 Cr App R 198
(1975) AC 476.
[5] (1949) 33 Cr App R 102
[6]

39. Therefore, to constitute an attempt the defendant must do an act which is a step towards the commission of the offence which the defendant intended to commit. Furthermore, that act must also be reasonably regarded as having no other purpose than the commission of the offence in question.

40. Intention which is a state of mind, can never be proved as a fact, it can only be informed from other facts which are proved as a fact. If there is no admission, the quilt of the defendant must be the only rational inference open to the Court to find in the light of evidence.

41. This case flair up due to dispute between the defendant and the complainant concerning a registered land PN: 192-018-63, at Aligator Creek, East Honiara. Land is a formidable property (asset) often regarded as most valuable and it plays an integral part of human life. It offers social security, lays down foundation for future development of the family etc.

42. When its ownership is dwindled by dispute, it touches the crevices of the heart of a person.

43. The background facts and the evidence in this Court is very clear.

44. It started with the defendant enquiring whether the complainant had arrived at the land he claimed as part of his. He was told by PW6, Mr Luiga that he would arrive in the afternoon in the area.

45. In the afternoon the Complainant arrived at the area therefore the defendant went to see him. Upon seeing him in his area the shouted at him and told him, you waku you come out I will cut you mean you come out and I will kill you". The defendant was armed with a bush knife that time. The words spoken were heard by PW6 Mr Liuga who described them as swearing at the complainant. The shout was also heard by PW3 whilst in their family shop. She came out and saw the defendant cutting the boundary rope as he entered into the complainant's area, where the workmen were constructing a fence.

46. In a rural Solomon Islands context, the words "you come out I will cut you would simply mean you come out I will kill you". The fact that the shout was from a distance whilst armed with lethal weapon, a bush knife. That implicate he was preparing for something. Those words actually came out from his own mouth. I will cut you. In Solomon Islands common reasoning, the defendant had already formed a motive to kill the complainant

not just to harm him or injure. If the defendant's intention was to harm or injure, how well would he assess the difference in intention.

47. If at that stage the defendant acted no more and retreated, then it would apparently appear as a challenge without any motive, even to harm.

48. However, the defendant continued to chase the complainant with his knife and eventually attacked him twice causing injuries to the head and finger. That manifested the defendant had intention which form part of the series of act which will constitute the actual commission of the offence of murder, if it were not interrupted. Those kind of action bears a relationship to the completion of the offence, as being immediately and not merely connected with completed offence.

49. In this instance the overt acts directly link to his own words come by me cutem you," it is an intention to kill wholly self-manifested and not just merely an intention to harm.

50. Those acts indeed bear a relationship to the completion of the offence, as being proximate and as being immediate and not merely remotely connected with the completed offence of murder.

51. Furthermore, the defendant's overt actions can be viewed as steps on the way to the commission of a crime, if they were completed, would amount to attempt to commit the crime, to which unless interrupted.

52. The graphical scenario is that, had the complainant failed to escape in the car, the defendant would have committed the substantive crime. The interruption that saved the life of the complainant was the intervening factor which provide an escape route for the complainant. Therefore, the fact that the defendant did not fulfil the completion of the crime but for the interruption falls with the definition of attempt murder.

Unlawful without legal justification.

53. Under this particular issue the Counsel for the defence, for some reasons, submit that he will rely on defence of property. However, despite that pre-emption the Counsel has

yet to formally inform the Court that he will rely on such a defence. Perhaps his ultimate reasons are to justify the assaults and the injuries the complainant sustained.

54. At this stage that assertion can be rated as pre-mature, the proper time will come later down the process. Meantime the pre-empted defence implicates that the defence has supported a case to answer, a leeway that will prove towards conclusion requiring the defendant to raise his defence, of course he must explain it by way of evidence.

55. Hence, in my opinion to raise or even to mention reliance of a legal defence at this stage does not assist the defence at all, rather favours the Crown case.

56. At this stage, there is no need to mention any legal defence yet, but for the Counsel to address the Court on the Crown evidence adduce so far, whether there is evidence supporting the charges that is capable of convicting the defendant or not.

57. Let me quote paragraph (6) of the case R V Tome, "the test calls for by S. 269 (1) is whether or not there is no evidence that the accused committed the offence." That must mean that if there is some evidence that the accused committed the offence the case must proceed to final determination by the tribunal of fact.

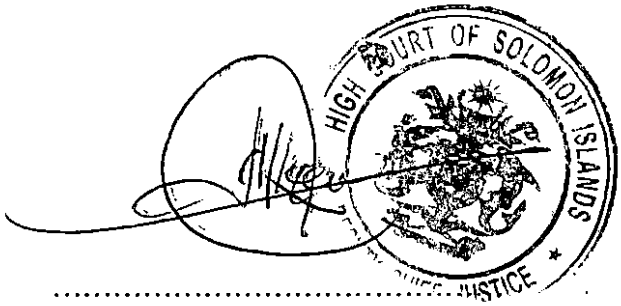
58. In my observation of the Crown evidence, indeed there is evidence that the defendant committed the offence of attempt murder, therefore the case must proceed to final determination.

59. In regards to the charge of malicious damage, there is evidence from PW3 (Ms Tovosia) and PW6 (Mr Liuga) who actually saw the defendant damaged the two tyres of the complainant's vehicle which was parked on the side of the road. The defendant was using his knife to inflict the damages.

60. From defence submissions there is nothing noted as concerning the charge of malicious damage, maybe they are conceded to it.

61. From the narratives of evidence which supports the charges, I find they are capable of proving the defendant's guilt. I must therefore conclude that there is a case to answer which will require the defendant to make his defence.

The Court.



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Hon. Justice Rex Faukona.

DEPUTY CHIEF JUSTICE.