

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

**JOHN DALA
JOSHUA ARU
BASIL SALE
ANDREW ARU
DENIS SALE
MALCOLM WELE
PATRICK ULI**

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Ms Kayleen Tavoia, Public Prosecutor
Mr Jacob Kausiama and Mr Tevi for the Defendants

Dates of Hearing: 21st – 23rd September 2010
Date of Verdict: 24th September 2010

VERDICT

The Prosecutions have charged these 7 defendants with three charges as follows:-

- (a) John Dala – Inciting Intentional Homicide contrary to sections 35 and 106(1)(b) of the Penal Code Act Cap 135 (the Act).
- (b) All the 7 Defendants – Unlawful Assembly contrary to section 69 of the Act.
- (c) All the 7 Defendants – Intentional Homicide contrary to section 106(1)(b) of the Act.



Rec. 30/09/10

All the Defendants entered Not-Guilty pleas to the three charges and the case was called for trial at Saratamata for one week.

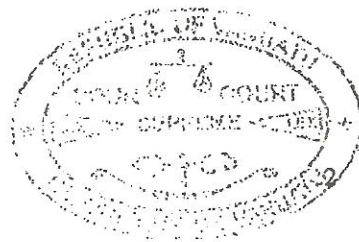
The legal and evidential burden of proof lies on the prosecutions. The standard of proof required is proof beyond reasonable doubt.

The Prosecutions produced evidence by calling 16 witnesses. Of these only the evidence of Patrick Bwibwi was challenged and his credibility and demeanor in the witness box render his evidence unsafe and not capable of being relied upon. The evidence of the other 15 witnesses including of Police Officers are admitted.

The 7 Defendants gave evidence themselves in their defence after the Court had ruled the Prosecutions had made out a prima facie case against them.

As the 7 Defendants were acting in a joint enterprise in executing an alleged order of the chiefs, they had formed a strong alliance among themselves that they would not tell on or against each other as regards the offence of Intentional Homicide. This they could only achieve either by dodging answers to questions or by lying. That brings the credibility of the Defendant's evidence into question. It is really impossible for any of them who had a common purpose and a high interest in executing a chiefly order and then on the scene they just stood back and not concentrate on what their colleagues were doing. I find the 7 Defendants were dodging or lying in order to conceal the truth of their involvements in the matter. Their evidence is therefore not capable of being believed. The Court prefers the evidence of the Prosecution witnesses (apart from that the Patrick Bwibwi).

Upon those observations and remarks on the evidence both by the Prosecutions and the Defence, the Court rules as follows:-



(1) Count 1 on the Inciting Charge – The Prosecution has not proven the charge beyond reasonable doubt against John Dala. I therefore return a verdict of Not-Guilty. John Dala is therefore acquitted of that charge.

(2) On Count 2 – Unlawful Assembly – I find the Prosecutions has proven the charge to the required standard against all the 7 Defendants herein. I therefore return a verdict of Guilty on all the 7 Defendants namely:-

- (a) John Dala
- (b) Patrick Uli
- (c) Malcolm Wele
- (d) Basil Charley
- (e) Joshua Aru
- (f) Denis Sale (Charley)
- (g) Andrew Aru.

Accordingly, I convict each and every Defendant of this charge.

(3) On Count 3 – Intentional Homicide – I find the Prosecutions has proven the charge to the required standard against –

- (a) Patrick Uli,
- (b) Malcolm Wele,
- (c) Joshua Aru; and
- (d) Basil Charley.

I find there to be insufficient evidence against the following Defendants on this charge:-

- (a) John Dala,



- (b) Denis Sale (Charley); and
- (c) Andrew Aru.

I therefore return a verdict of Not-Guilty against the three of them. Accordingly, I acquit them of this charge.

I defer sentence of the Defendants. I will hear submissions and consider sentence on Thursday 7th October 2010 at 8 O'clock a.m in Luganville, Santo.

I order all the Defendants be kept under remand in custody at the Correctional Centre in Luganville in Santo to await their sentences.

Each of you have a right to appeal against conviction within 14 days.

DATED at Saratamata this 24th day of September 2010.

BY THE COURT


OLIVER A. SAKSAK

Judge

