

THE APPLICATION

3. The Defence contends that the prosecution has failed to prove beyond reasonable doubt that ‘the accused’s conduct caused *serious harm*’ to the complainant. Secondly, Counsel submits that ‘the evidence led by the prosecution has been manifestly discredited through cross examination that no reasonable tribunal could convict upon it.’
4. On the elements of the offence, Counsel refers to Republic v Kepae [2021] NRSC 47; Criminal Case 19 of 2020 (12 November 2021) where Khan J summarised them as:
 - a. That the defendant intentionally engaged in conduct;
 - b. That the conduct caused serious harm to the complainant; and
 - c. That he intended to cause serious harm to the complainant.’
5. On the first element of ‘intentionally engages in conduct’, Counsel refers to my judgment in *R v Elkojoe Agir* Criminal Case No 23 of 2019 where I found where PW1 had his back towards the accused and he was struck with a cane knife supported my inference that the accused had intentionally struck the complainant with a knife.
6. On ‘conduct causing serious harm’ Counsel refers to Section 8 of the Act on the definitions of:
 - a. ‘Serious harm’ and
 - b. ‘endanger’

EVIDENCE

7. Counsel refers to PW6, Dr Bill. In particular:

Examination in Chief

Ques- In your expert opinion, would you say that the injuries are serious?

Ans- In my expert opinion the patient’s injuries are non-life threatening- they’re not serious’
8. On Cross Examination Dr Bill said that when he attended to the complainant, PW1, was conscious. The complainant was kept overnight for observation as a precautionary measure. Based on the radiologist’s report, Dr Bill interprets it as- ‘It’s just a tissue injury. There’s no bone fracture. No signs of bleeding or increased pressure in the head due to bleeding.’ The injury was not ‘life threatening.’
9. Based on the above, Counsel argues that – ‘it is clear that the injuries that were sustained by the complainant were not life threatening and were not life endangering for the complainant.’ Counsel adds that there is no evidence that ‘the injuries impacted his life and the temporal component of serious harm *being longstanding and significant.*’ Counsel adds that since the complainant ‘works in construction and in the absence of any other relevant evidence, the prosecution fails on establishing *serious harm.*’

Inconsistencies in PW1's and PW5's Testimony

10. Counsel contends that the evidence of PW1 and PW5 were inconsistent. PW1 stated that the accused kept challenging him to a fight. PW5 did not agree. He said that it was PW1 that was challenging others in the drinking group to a fight. PW5 said that it was PW1 that challenged the accused, got up and approached him to a fight. Both PW1 and PW5 could not recall everything that happened as they were both drinking Vodka at that time. PW1 could not recall anything from when he was hit over the head. He later recalls waking up in hospital. Notwithstanding this, when questioned by the court, PW1 said that it was the accused that hit him over the head.
11. PW1 testified that PW5 took photos of his head injuries. PW5 denied this.
12. On Cross- Examination of PW1:
 - Ques- Did you hear anything my client was saying to you while you were fighting?
 - Ans- No I did not hear anything, I don't remember
 - Ques- I put it to you that my client was saying to you to stop and in fact he said to you- you win
 - Ans- Correct
 - Ques- You remember that?
 - Ans- Yes, that the part I remember
 - Ques- Even though my client was begging you to stop you continued to attack him?
 - Ans- Yes
13. PW5 testified that the accused hit PW1 with the handle of the rake and not the 'steel comb.' This rake was on the ground and the accused picked it up and hit PW1. Counsel submits that this shows that 'there was no forethought, premeditated or intended plan to use the object.' It was a '*defensive response to a situation where he (the accused) was being beaten by PW1 and was weakened and begging PW1 to stop fighting him.*' It was evident from PW5's testimony that PW1 was the aggressor. He instigated the fight. PW1 admitted that he has a reputation as a fighter. PW1 caused the fight.
14. Counsel questions the conduct of the Police in their investigations. In particular, visiting witnesses 'multiple times' even though they had refused to give statements.
15. Counsel refers to the guidelines for 'Section 201 CPA applications in *R v Jeremiah* [2016] NRSC 42 where Crulci J said (at para 22):

[22.] Taking the above matters into consideration, the following are guidelines when a submission of no case to answer is to be made at the end of the prosecution case:

(1) If there is no evidence to prove an element of the offence alleged to have been committed, the defendant has no case to answer.

(2) If the evidence before the court has been manifestly discredited through cross- examination that no reasonable tribunal could convict on it, the defendant has no case to answer.

(3) If the evidence before the court could be viewed as inherently weak, vague or inconsistent depending on an assessment of the witness' reliability, the matter should proceed to the next stage of the trial and the submission of no case to answer be dismissed.'

16. Based on the above, Counsel concludes that the accused has no case to answer as the prosecution has failed to prove beyond reasonable doubt that 'that the accused's conduct caused serious harm to the complainant. Secondly, Counsel submits that the evidence adduced by the prosecution 'has been manifestly discredited through cross-examination that no reasonable tribunal could convict upon it.'

SUBMISSIONS BY THE PROSECUTION

17. Counsel firstly referred to *R v Jeremiah (supra)* on the relevant law relating to 'no case to answer' submissions. She then considered the elements of Section 71(a)(b)(c)(i) of the Act and the definitions of the following terms:

- a. 'serious harm' under Section 8;
- b. 'intention' under Section 17.

18. On the prosecution evidence, Counsel submits that the accused cannot claim 'self-defence' 'because at that time, the fight was stopped and both were separated and the complainant, PW1 was facing the other way...' when the accused 'approached him from behind' and hit him on the head with the rake. This conduct showed 'his intent to cause serious harm' to PW1.

19. Counsel submits that the main issue here is whether 'the conduct of the accused caused serious harm to Josh Kepae.'

20. On conviction of a minor offence, Counsel submits that the court consider Section 129 of the Criminal Procedure Act 1972 and that there is sufficient evidence to satisfy the elements Section 74 of the Act- Intentionally causing harm.

21. Counsel concludes that there is sufficient evidence adduced to for the trial to proceed to the next stage and the accused to submit his defence.

CONSIDERATION

22. **PW1 – Joseph Kepae**, said the following- He knows the accused very well. The accused kept challenging him to fight, one on one. They fought. Others stopped them. The accused bothered him again. They started to fight again. Again, others stopped them. He got onto his motor bike. Someone hit him. He remembers waking up in hospital. He didn't know the time or the day. He spoke to Const Ralton. He identified photos shown to him about his injuries.

23. **On cross-examination-** he was drinking at Yaren the night before. He drank till morning then went to Aiwo for more drinks. He had no previous arguments with the accused. He did not speak to the accused or others at the drinking group. He denied calling out to the accused in May 25 to continue their fight. In 2018, he asked the accused to get his mother's consent to connect his electricity. The electricity transmission box was on the accused's land. He was not happy because the electrician could not connect his electricity.

Ques- You told the accused he's not tough?

Ans- No

Ques- You challenged the accused to a fight?

Ans- No

Ques- You told the accused you'll get someone to beat him up?

Ans- No

Ques- You caused the fight as the aggressor?

Ans- No

Ques- You got Daniel- what did you tell Daniel?

Ans- Don't know. I didn't tell Tommy Daniel to attack the accused.

Ques- You walked to the accused and punched him?

Ans- No

Ques- You continued to beat the accused and he asked you stop?

Ans- Yes

Ques- You said the accused and his mother had a sexual relationship?

Ans- Don't remember, don't know

Ques – You continued to follow the accused when he walked away?

Ans- **No. I remember the accused telling me to stop- you win**

Ques- You continued to attack him though he begged you to stop?

Ans- Correct

24. PW1 conceded that he has fought other people before.

Ques- You have a reputation as a fighter?

Ans- Yes. I just fight- not to endanger anybody

Ques- **You saw the accused hit you over the head?**

Ans- **No, I didn't see the accused hit me. Somebody told me. I didn't see what hit me. Can't recall from being struck to time waking up in hospital.**

PW1 denied being the aggressor and causing the fight.

25. On re-examination, PW1 said that he does not remember the fight. He fights not 'to kill someone' but just fight. He didn't recall causing any injuries to the accused.

26. **PW5- Johnson Taumea** said- he knows both the accused and PW1 as his friends. On the day, PW1 was acting disorderly, disturbing- challenging everyone including the accused who stood up and they fought. He and two others stopped the fight and separated them. The accused threw the first punch. He saw the accused pick up a rake, approached PW1 from behind. He ran towards the accused when he picked up the rake. The accused hit PW1's head with the handle of the rake. PW1 fell on the ground- knocked out. He approached PW1. He was bleeding. He and another took PW1 to hospital.

27. **On Cross- examination-** he heard PW1 challenging others- looking for anyone who wants to fight. Accused tried to pull away, he couldn't continue but PW1 kept challenging him.

Ques- The accused was losing the fight?

Ans- Yes

Ques- The accused picked up the object to defend himself?

Ans- I don't know

Ques- No one really stopped them?

Ans- **We stopped them but PW1 kept pursuing the accused.**

Ques- The accused tried to avoid the fight?

Ans- Yes, I was observing both of them.

Ques- PW1 got up and went towards the accused to fight?

Ans- **Yes. I heard the accused beg PW1 to stop, saying- you have won. PW1 kept challenging him.**

PW1 was conscious when he walked to the truck, got in and they went to hospital. He got off the truck at the hospital.

28. **PW6- Dr David Bill-** he examined PW1 on the day of the incident- 23rd June 2024. On D12 of PEx 2, medical findings- 'Parietal right-side laceration, right eye lid laceration, multiple abrasions. At Appendix 2- Laceration 5cm, (back of the head- right side)- minimum bleeding. Laceration of right eyelid-1cm- no bleeding.

Ques- Were the injuries severe?

Ans- Not life threatening- not serious.

29. **On Cross- examination-**When examined, PW1 was conscious and knew what he was doing. Initial impression recorded at D11- good- no serious injury. Not life threatening. PW1 was kept overnight as a precaution as they did not know the status of the brain. Shown a radiologist's report- 'no demonstrable fracture- only tissue/ flesh injury. No bone fractures.

30. I remind myself of the elements of Section 71(a)(b)(c)(i) of the Act-

- A person commits an offence, if
- The person intentionally engages in conduct
- The conduct causes serious harm to another person; and
- The person intends to cause serious harm
- To that person
- By the conduct

31. From the evidence before the court, PW1 was the aggressor. He challenged not only the accused but others to a fight. He fought the accused until the accused begged him to stop, saying- you win. PW1 continued to harass and challenge the accused. There is prima facie evidence that the accused picked up a rake. He hit PW1 with the handle. PW1 fell. He claims to have come to his senses in hospital. PW5 says otherwise as he saw the accused get onto the truck at Aiwo and get off at the hospital. The medical evidence says that injury caused to PW1 was only tissue/ flesh injury. There were no fractures to any bones and the injuries were not life threatening.

32. I note the definition of ‘serious harm’ in Section 8 of the Act as-
- a. That endangers or is likely to endanger, a person’s life; or
 - b. That is likely to be significant and longstanding.
33. I find that the element of ‘serious harm’ is not satisfied here. Based on the guidelines in *R v Jeremiah* above, the accused has no case to answer for the offence of ‘Intentionally causing serious harm’ as charged.

Applicability of Section 273 of the Act?

34. Does the accused have a case to answer for an alternative offence under Section 273? On Division 5.1-Assaults, listed in Schedule 1 of the Act, it provides – “A person found not guilty of the offence charged may be found guilty of any other offence in Division 5.1 that is proven on the evidence provided that the maximum penalty for the alternative offence is equal to or less than the maximum penalty for the offence charged.
35. Based on the evidence adduced so far, I find that the accused has a case to answer for the lesser offence of ‘Intentionally causing harm’ pursuant to Section 74 of the Act.

CONCLUSION

36. The accused has a case to answer for the lesser offence of ‘Intentionally causing harm’ under Section 74 of the Act.
37. Explain the options to the accused.

DATED this 23rd day of February 2026.


Kiniviliame T Keteca
Judge

The seal of the Supreme Court of Nauru is circular, featuring a central emblem with a shield and a crown, surrounded by the text 'SUPREME COURT OF NAURU' and two stars.