



**IN THE SUPREME COURT OF NAURU
AT YAREN
[CRIMINAL JURISDICTION]**

Criminal Case No. 14 of 2024

BETWEEN: THE REPUBLIC
PROSECUTION

AND:
JANDO ANDREWS
ACCUSED

BEFORE: Keteca J

Date of Hearing: 08th – 22nd October 2025

Closing Submissions: 11th December 2025

Date of Judgment: 23rd February 2026

Catchwords: Intentionally Causing Serious Harm: Contrary to Section 71(a) (b) (c) and (i) of the Crimes Act (**the Act**) 2016; Self-Defence; Pre-emptive Strike.

Appearances:

Counsel for the Prosecution: **M. A. Suifa'asia**

Counsel for the Accused: **S. Hazelman**

JUDGEMENT

BACKGROUND

1. The accused is charged with one count of 'Intentionally Causing Serious Harm' contrary to Section 71(a)(b)(c) and (i) of the Act. It is alleged that on 13th December 2023, the accused used a cane knife to strike and cut the lower back of the complainant, Javic Dube, and caused him serious harm. The complainant is PW10.
2. The prosecution called 10 witnesses. The Defence did not dispute that the accused engaged in conduct that caused harm to PW10. The Defence relies on Section 51 of the Act in that the accused acted in self-defence and is not criminally responsible for the offence.

3. It is to be noted that the accused struck PW10 twice. Once, in the accused's house and the second more than 100 meters away when PW10 was fleeing and the accused was in pursuit of him.

THE LAW

4. 'Intentionally Causing Harm

Section 71 (a)(b)(c) and (i) of the Act

A person commits an offence, if:

- (a) the person intentionally engages in conduct;
- (b) the conduct causes serious harm to another person; and
- (c) the person intends to cause serious harm to that or any other person by the conduct.

Penalty:

- (i) if aggravating circumstances apply- 20 years imprisonment; or
- (ii) in any other case- 15 years imprisonment.

5. Section 8 of the Act

'Physical harm'

(a) Includes any of the following, whether temporary or permanent:

- (i) Unconsciousness;
- (ii) Pain;
- (iii) Disfigurement;
- (iv) Infection with a disease; or
- (v) Any physical contact with a person to which the person might reasonably object in the circumstances, whether or not the person was aware of it at the time; but
- (vi) Does not include being subject to any force or impact that is within the limits of what would be acceptable to a reasonable person as incidental to social interaction or to life in the community.

'Serious Harm' (except in Part 14) means harm, including the cumulative effect of any harm, whether or not treatment is, or could have been, available:

- (a) That endangers or is likely to endanger, a person's life; or
- (b) That is likely to be significant and longstanding.

6. Section 17 of the Act

'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.

7. Section 51 of the Act
‘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;
 - (ii) To prevent or end the unlawful imprisonment of the person or another person;
 - (iii) To protect property from unlawful appropriation, destruction, damage or interference;
 - (iv) To prevent unlawful entry to land or premises; or
 - (v) To remove from land or premises a person who unlawfully entered; and
 - (b) The conduct is a reasonable response in the circumstances as the person perceives them.
- (3) The Section does not apply if:
 - (a) The person uses force that involves the intentional affliction of death or serious harm:
 - (i) To protect property;
 - (ii) To prevent criminal trespass; or
 - (b) The person is responding to conduct that the person knows is lawful.
- (4) For the purposes of subsection (3)(b), conduct is not lawful merely because the person carrying out the conduct is not criminally responsible for it.

SUBMISSIONS BY THE PROSECUTIONS

8. Counsel refers to the following cases:
 - i. *R v Harris* [2024] NRSC 1; Criminal Case 25 of 2021 (6th February 2024) where the court considered *Beckford v The Queen* [[1987] UKPC- common law on ‘self- defence and pre-emptive strike’
 - ii. *R v Lawrie* [1986] 2 Qd R 502(CCA-) JConnolly said (at 505):
“*An honest and reasonable belief that a blow is about to be struck may justify a pre-emptive blow.*”
 - iii. *Zecevic v DPP (Vic)* [1987] HCA 26; (1987) 162 CLR 645; Wilson, Dawson and Toohey JJ said (at 661): - common law test for ‘self- defence’ and burden of disproof
 - iv. *R v Sapa* [2022] SBCA 21- the principle of pre-emptive strike in self-defence.
9. Counsel considered the elements of the offence and asks whether the conduct of the accused, Jando Andrews, was in self- defence? Counsel concedes that when the accused first struck PW10 in the house with the cane knife, self- defence will apply as the accused was defending DW3 and DW2. **The issue to be determined here is whether the accused’s conduct on the road, when he struck PW10 again with the same knife, was in self- defence of himself or others.**

10. Counsel highlights that after PW10 had exited the house (after the first knife strike), the evidence shows the following:
 - a. The accused followed PW10 and scratched the pavement with the cane knife saying- *'you don't want to mess with me, you don't know I'm a Fijian? Your life is in my hands. You think you're tough?'* said the accused.
 - b. The accused agreed that PW10 ran away because he was afraid of the knife.
 - c. The distance from the accused's house to where the accused followed and struck PW10 again with the same knife was more than 100 meters.

11. On the accused striking PW10 with the cane knife on the road, more than 100 meters from the accused's house, Counsel highlights that the evidence show:
 - a. Whilst PW10 was running away from the accused, he felt dizzy. He felt weak in the legs. He saw a stone on the road. He tried to pick it to scare the accused. The stone was 'rooted in the ground', he couldn't take it out. When he bent to pick the stone, the accused struck him on his back with the cane knife. Shocked, PW10 ran away as fast as he could.
 - b. The accused said that he was about 2-3 meters from PW10 when he struck him on the back with the knife.
 - c. The accused denied seeing any blood on PW10's head before striking him with the knife.
 - d. Self -defence will not apply here as it was the accused that was armed with a dangerous weapon. PW10 was already wounded, unarmed, losing blood, feeling dizzy and weak. The accused struck PW10 on the back. PW10 was not facing the accused. The circumstances could not have given rise to an honest or reasonable belief by the accused that PW10 was about to strike back that would justify a 'pre-emptive strike' as in *R v Laurie* [1986] 2 Qd 502 (CCA).
 - e. 'It cannot be said that DW1's (the accused) act was done in the reasonable belief that his life was imminently threatened.'
 - f. **'His action of a deliberate pursuit of PW10 over a distance of more than 90 meters to catch up with him and execute that strike when the opportunity presents itself is not self- defence for his safety or safety of others.'**

SUBMISSIONS BY THE DEFENCE

12. The main contention by the defence is **'whether the force used by the accused was lawful and reasonable in the circumstances and whether the Prosecution has discharged its burden of excluding self- defence beyond reasonable doubt.**

13. Counsel refers to the following provisions of the Act:
 - i. Section 71- elements of the offence and concedes the 'occurrence of the injury.' The court takes this to mean that the defence agrees that the accused 'caused serious harm' to PW10.
 - ii. Section 51- self- defence.
 - iii. Section 13- establishing criminal responsibility for offences.
 - iv. Section 17(3) – intention.

14. Counsel focussed on the evidence – ‘Outside the House- Continuing Threat and Pursuit and submits that PW10 was not ‘genuinely fleeing’ because:
- i. He refused multiple opportunities to get into vehicles;
 - ii. Kept turning back to confront his pursuer;
 - iii. Bent down to arm himself; and
 - iv. Threatened his pursuer that he will come back.
15. On the application of self- defence, Counsel refers to:
- i. *R v Hackell* [2202] NZCA 131-
‘pre-emptive- strike could be an act of self -defence and extends to threatened force.
R v Wang [1990] 2 NZLR 529- two limbs- *subjective view of the circumstances as the accused believed them to be and an objective view as to the reasonableness of the force used in self-defence or the defence of another in those circumstances.*’
And further that a pre- emptive strike, even with a cane knife, may in particular circumstances qualify for consideration a self- defence.’
At page 536- imminence and seriousness of threat, opportunity to seek protection, alternative courses of action open.
 - ii. *Beckford v R* [1988] AC 130- pre-emptive strike.
 - iii. *R v Whyte* [1987] 3 All ER 416- Reasonableness is assessed in the ‘agony of the moment’- in the of crisis moment, not by later, calm hindsight.
16. On the subjective limb of Section 51(2)- **Counsel asks- What did Jando believe?**
Counsel submits that the accused ‘perceived an immediate and escalating danger’ and ‘delivered a single defensive strike’ in response to what he believed to be an imminent threat. The moment, Counsel argues, was a ‘crisis’ and the accused cannot be expected to exercise perfect judgment.
17. On the objective limb- **Was the Response reasonable in the circumstances as he perceived them?** This is the objective limb under Section 51(2)(b). Counsel submits that this is to be assessed ‘within the agony of the moment.’
18. Counsel then posed the following questions and suggested the answers:
- i. Whether reasonable alternatives existed?
 - ii. **The accused could have stopped and gone home?** – ‘Pursuing the complainant to the main road ‘to ensure the threat actually left the vicinity.’
 - iii. **The accused could have dropped the knife?** ‘Dropping the knife would have left the accused defenceless against a still- aggressive man who had already demonstrated willingness to use violence.’
 - iv. **The accused could have run away?** The accused was only 2 meters behind the complainant when he bent down to pick up the unknown object. Turning his back to flee would have increased exposure, especially following the earlier hammer attack and violent home invasion.’
 - v. **He should have recognised the complainant was injured?** The accused did not perceive the complainant to have been weakened. ‘Whether **blood was**

objectively present is irrelevant; what matters is that the accused perceived continued danger.'

- vi. **The accused acted out of anger, not fear?** 'Jando consistently described himself as 'scared' 'nervous', 'shaken.' 'His demeanour was consistent. No evidence of 'retaliatory anger.'
- vii. **The complainant was fleeing?** The complainant 'refused to enter slowing vehicles.' He kept calling the accused to fight. 'You wait, I'll come back is inconsistent with flight and consistent with continued aggression.'
- viii. **The accused could have waited rather than striking?** The accused 'reasonably believed that the complainant was about arm himself again.'

19. Counsel then questions the chain of custody of the cane knife and argues that 'the absence of blood on the knife in PEX6 does not support the Prosecution, it undermines their version of events.'

20. Counsel concludes that the prosecution 'has failed to prove that the accused's use of force was unlawful.'

CONSIDERATION

21. I thank Counsels for their submissions.

22. The accused does not deny striking the complainant with a cane knife on the day in question. Not once, but twice. The second incident where the accused struck the complainant's back with the same cane knife, is the subject of the charge that the accused is facing.

23. The question that is determinative in this case is – **When the accused pursued PW10 for more than 100 meters and struck him on his back with a cane knife, was the accused acting in self- defence?**

EVIDENCE

24. The accused and PW10 share a chequered history. They were friends. PW10 was the best man at the accused's wedding. Their wives are sisters.

25. On the morning of 13th December 23, PW10, went to the accused's house looking for his wife. They had been separated for 2 months. His intent was to seek reconciliation with his wife. His wife was then having an affair with a woman. On that morning, PW10 let himself into the accused's house uninvited. His first attempt to see his wife failed. She couldn't wake up as she had been drinking the night before. PW10 left. He returned with a hammer. The sliding door through which he had entered the house earlier was now closed and locked. The accused and his wife refused to open the door. PW10 hit the glass door with the hammer. It broke. He walked into the house. The accused and his wife were standing in front of the room where PW10's wife was sleeping. PW10 told them to move. They moved to the side. He pushed the door open. His wife was still sleeping. PW10

wanted to see the woman who was with his wife in the room. PW10 tried to hit that woman with the hammer. He kicked her. Something hit the back of his head. This was the accused striking the back of his head with a cane knife; the **'first strike.'** PW10 wrestled with the accused. The accused dropped the knife. PW10 ran out of the house. This 'first strike' is not the subject of the present charge. It forms part of the evidence leading to the **'second strike.'**

26. Whilst standing in front of the house, PW10 challenged the accused to drop the cane knife and fight him. The accused came out of the house with his knife. He scraped the knife on the pavement saying- *"You don't want to mess with me. You don't know I'm a Fijian?"* PW10 responded- *'I don't care you're a Fijian or Rotuman. Put the knife down – we fight.'* The accused did not take up the challenge but went towards PW10 with the cane knife. Seeing this, PW10 ran away. PW10 said- *'I ran because of the knife.'* As PW10 ran, the accused chased him saying- **'You think you're tough? Your life is in my hands.'**

27. Whilst running away, PW10 felt dizzy and weak. He reached a small pond on the road. He saw a 'rock/stone.' As he bent down to pick it up, the accused struck him on his back with the same cane knife. PW10 ran on as fast as he could. The accused still pursued him. When he reached the main road, he turned around. The accused was still chasing him. As the accused ran towards him, a bus stopped. A lady in the bus told him to get in. PW10 was taken to hospital where he was admitted for 2 weeks. He suffered injuries to the back of his head, lower right back and his fingers.

28. On cross- examination of PW10, this transpired-

Before the second strike

Ques- After being struck with the knife, you challenged the accused to a fight?

Ans- Yes

Ques- When you bent down to pick the rock, it was stuck- he was close to you?

Ans- Correct. He was close by. I wanted to frighten him with the rock. I could hardly feel my legs.

Ques- He never tried to hit you until you bent down?

Ans- As I bent down, he closed in and hit me with the knife.

Ques- The knife was the only thing that made you leave?

Ans- Correct.

The second strike

Ques- The accused struck you because he felt danger to himself?

Ans- **He hit me when I had my back towards him**

Ques- You walked away after being hit the 2nd time?

Ans- **I ran.**

Ques- You didn't get into the car as you still wanted to fight?

Ans- **No, cars going at slow pace, if I got in the car- he would have got me.**

Ques- When you got into the bus- still angry?

Ans- Of course, I was bleeding

Ques- You said- 'you wait, I'll come back?'

Ans- Yes. To let him know I was not afraid of him even though he caused me injury.

Ques- On the second attack, **he swung the knife to defend himself?**

Ans- **Don't agree.**

29. The accused testified that after the first strike, PW10 left. The accused picked up the knife again to scare PW10 and make him leave. He scraped the knife on the pavement. On examination I chief-

Ques- Why did you keep going with the knife?

Ans- He might come back. I wanted him to go away. I didn't run after him. The distance between us about 2 or 3 meters. He bent down to pick something up. I **struck him with the cane knife- only once. When he bent down, I felt frightened- trying to pick something, he was about 2 meters away.**

Ques- After striking him the second time?

Ans- He ran off, I continued following him.

Ques- Why not go home?

Ans- Still a chance of him returning. He was still aggressive, swearing and challenging me. He ran towards the main road. I followed him to the main road.

30. On cross-examination this transpired-

Ques- **You were a threat to him because you had the knife?**

Ans- **Yes.** I was about 2-3meters away from him. I couldn't see any bleeding. **He bent down, I moved up and struck him. He wasn't looking at me.** He bent forward when I struck him. **I cut him to 'scare himself.'**

Ques- You could have returned home?

Ans- Didn't want him to return.

31. There is no dispute that the accused struck PW10 with a cane knife. At that instant, PW10 had bent down, had his back towards the accused. **As the accused said- 'He bent down to pick something. I struck him. He wasn't looking at me'**

32. In assessing the testimonies of PW10 and the accused, the following are apparent. After the 'first strike' inside the accused's house, the accused continued with his pursuit of PW10. The accused had the cane knife in his hand the whole time.

Did the accused 'intentionally strike PW10 with the cane knife as PW10 bent over to pick something on the road?

33. To answer this question, the conduct of the accused, leading up to the second strike need closer scrutiny. He scraped the knife on the pavement. This can lead to the inference that he wanted to scare PW10 to leave the neighbourhood. The accused then said- 'You want to mess with me? You don't know I'm a Fijian? PW10 responded- "I don't care if you're Fijian or Rotuman. Put the knife down, we fight.' PW10 started running away. The accused kept chasing him. The accused said- **'You think you're tough? Your life is in my hands.'** As PW10 bent down, the accused struck his back with the knife. I note that to reach this point, the accused had chased PW10 for more than 100m. The accused had

more than ample time and opportunity to disengage and return home. He could have stayed at home and called the police. He didn't. He could have left the cane knife at home. He didn't. I find that the events leading up to the second strike shows the clear intention of the accused to engage in the conduct of striking PW10 with the cane knife.

Did the conduct of the accused, in striking PW10 with the cane knife cause PW10 'serious harm'?

34. **PW3, Dr Philip Duburiya** described PW10's injuries as serious. On the specific wound caused by the 'second strike' to PW10's back, this measured '7.5cm long x 2.5 cm deep to the muscle. When questioned by the court, Dr Philip described the harm caused to PW10 as 'life threatening, he lost a lot of blood and he became unconscious.' He referred PW10 to the surgical team due to the serious injuries suffered and blood loss.
35. I remind myself of the definition of 'serious harm' under the Act. I find that the conduct of the accused in striking PW10 with a cane knife on his back, such conduct did cause serious harm to PW10. I also find that the evidence shows that the accused intended to cause such serious harm to PW10.

Is the court to accept the accused's reliance on Section 51- self-defence?

36. Section 51(2) provides that – 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;
 - (ii) – (v)
- (b) The conduct is a reasonable response in the circumstances as the person perceives them.

37. **Did the accused believe that striking PW10 with the cane knife was necessary to defend himself or another person?** To answer this, guidance is sought from case-law.

In *Beckford v The Queen* [[1987] UKPC 1; 1988] AC 130; Lord Griffiths said (at 144):

*“The common law recognises that there are many circumstances in which one person may inflict violence on another without committing a crime... The common law has always recognised the right of a person to protect himself from attack and to act in the defence of others and if necessary to inflict violence on another in so doing. If no more force is used than is reasonable to repel the attack, **such force is not unlawful and no crime is committed.** Furthermore, a man about to be attacked does not have to wait for his assailant to strike the first blow or fire the first shot; circumstances may justify a pre-emptive strike.”*

In *R v Lawrie* [1986] 2 Qd R 502(CCA) Connolly said (at 505):

“An honest and reasonable belief that a blow is about to be struck may justify a pre-emptive blow.”

38. Counsel for the defence argues that the accused pursued PW10 for more than 100m and struck his back with the cane knife because the accused was frightened. The accused was frightened that PW10 was going to pick up something. Counsel relies on *R v Hackell* (supra) that self-defence extends to ‘threatened force.’ Was the accused in any form of imminent danger? This leads to the next question.

39. **Did the accused have a reasonable belief that PW10 was about to strike him with a blow or fire the first shot?**

The common law test. - In *Zecevic v DPP* (Vic) [1987] HCA 26; (1987) 162 CLR 645; Wilson, Dawson and Toohey JJ said (at 661):

“The question to be asked in the end is quite simple. It is whether the accused believed upon reasonable grounds that it was necessary in self-defence to do what he did. If he had that belief and there were reasonable grounds for it, or if the jury is left in reasonable doubt about the matter, then he is entitled to an acquittal. Stated in that form, the question is one of general application and is not limited to homicide.”

40. The case of *R v Wang* (supra) relied upon by the Defence is informative here. At page 536 the court said:

‘It is accepted in the context of self-defence, ‘force’ includes not only the use of physical power but a threat to use physical power. But what is reasonable force to use to protect oneself or another when faced with a threat of physical force must depend on the imminence and seriousness of the threat and the opportunity to seek protection without the recourse to the use of force. There may well be a number of alternative courses of action open, other than the use of force, to a person subjected to a threat which cannot be carried out immediately. If so, it would be reasonable to make a pre-emptive strike.’

41. Did PW10 engage in conduct where the accused had reasonable belief that there was **imminent and serious threat to his life? Was PW10 about to strike the accused with the first blow or fire the first shot?** The accused said that when PW10 bent over to pick something, ‘he felt frightened.’ Frightened of what? The accused did not say. The time was after 7am in the morning. As usual on Nauru, the sun would have been up. The accused was only 2-3 meters away from PW10. From that distance, he would have clearly seen that PW10 was not picking up a weapon like another cane knife, a spear gun or a rock. Counsel argues that it was a pre-emptive strike. Pre-emptive against what? PW10 was not armed. He simply bent down. PW10 was bleeding too from the ‘first strike’ on the back of his head. I do not accept the accused’s claim that he did not see any bleeding on PW10. The evidence is clear that there was **no** imminent and serious threat posed by PW10 to the accused.

42. Further, from the *R v Wang* case, the accused had several ‘alternative courses of action’ open to him ‘without recourse’ to striking PW10 with the cane knife. In this regard, I do not agree with the submissions of Counsel on the reasons as to why the accused did not take these alternative courses of action and decided to strike PW10 with the cane knife instead.

43. I agree with Ms Suifa'asia that 'His (*the accused*) action, of the deliberate pursuit of PW10 over a distance of more than 90 meters, to catch up with him and execute that strike when the opportunity presented itself, is not self- defence for his safety or safety of others.'

44. Considering all the above, I find that the accused could not have believed on reasonable grounds that in order to defend himself, he had to strike the unarmed, weakened and dizzy PW10 with the cane knife. Further on the second limb of Section 51(2)(b), in striking the unarmed PW10 who had bent down and had his back towards the accused, with a cane knife, this was not a reasonable response to his 'make- believe' notion of defending himself.

45. Taking all the evidence into account, I find that the prosecution has proved beyond reasonable doubt, the fact, that the accused in striking PW10 with a cane knife was not done in self-defence.

CONCLUSION

46. I find that self- defence does not apply here.

47. I find the accused guilty as charged.

DATED this 23rd of February 2026


Kiniviliame T. Keteca
Judge

