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IN THE SUPREME COURT OF TONGA

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

CR 158/2019

BETWEEN : REX

- **Prosecution**

AND : SINELA FIFITA

- **Accused**

BEFORE HON. JUSTICE NIU

Counsel : Mr Joe Fifita for prosecution

Mr Sunia Fili for defence

Trial : 2, 3 and 4 March 2020

Submissions : by Sunia Fili on 11 March 2020

by Joe Fifita on 18 March 2020

Ruling : 16 April 2020

RULING (VERDICT)

The charge

[1] The accused is charged that on 14 January 2015, at Fatai, he willfully and without lawful justification caused bodily harm to Neiafutahi Bloomfield by stabbing him on his back and chest with a knife, contrary to S. 107 (1) AND (2)(c) of the Criminal Offences Act.

[2] S. 107(1) AND (2)(c) of the Criminal Offences Act provides as follows:

“107. Bodily harm

(1) Every person who willfully and without lawful justification causes harm to any person in any manner or by any means whatsoever shall be guilty of an offence under this section.

- (2) "Harm" for the purpose of this section means -
...
(c) any wound which is not severe, or
..."

[3] And S. 107 (3) and (4) provide as follows:

"(3) An offence under this section may be the offence of serious causing bodily harm or the offence of simple causing bodily harm.

(4) The offence of serious causing of bodily harm -

(a) is punishable by a term of imprisonment for any period not exceeding 5 years.

(b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court."

[4] Sections 35 and 36 of the Magistrate's Court Act provide for the committal of cases from the Magistrate Court which are triable in the Supreme Court.

[5] This case of the accused has been committed from the Magistrate's Court in accordance with the provisions of sections 35 and 36.

Plea and election

[6] The accused has pleaded not guilty to the charge and has elected to be tried by a judge instead of by a judge and jury.

Burden and standard of proof

[7] The burden of proving the charge is upon the prosecution. It must prove all the elements of the charge, namely, that the accused seriously caused an injury to the complainant and that the accused had no lawful excuse for seriously causing that injury to him. To do that, the prosecution must call witnesses to give evidence as to what happened and that evidence must satisfy me beyond reasonable doubt that the accused did seriously cause the injury and that he had no lawful justification to cause it.

[8] Because it has the burden of proving that the accused had no lawful justification for seriously causing the injury, the prosecution also bears the burden of proving that any defence of self-defence which may be raised by the defence cannot be upheld, irrespective of whether or not the defence would raise it. That of course does not apply if the defence raised is a special defence such as insanity or alibi which requires the defence to give due

notice thereof to the prosecution within 7 days of the accused's committal to the Supreme Court for trial, as provided in S.108 (2) of the Evidence Act.

Defence of self-defence

- [9] However it is incumbent upon the accused to put to witnesses of the prosecution in cross-examination any fact which he and his witnesses would seek to establish upon which his defence of self-defence would be based in this trial. This is so that the witnesses for the prosecution have an opportunity to speak about that fact before the accused's witnesses speak about it. That way, the Court is better able to see whether or not such fact is established by the evidence.

The evidence for the prosecution

- [10] The prosecution called 3 witnesses, namely, the complainant, Neiafutahi Bloomfield, his wife, Haitelenisia Bloomfield, and his niece's husband, Siope Tu'i'onetoa.

By the complainant, Neiafutahi Bloomfield

- [11] The complainant said that he and his wife had just got back home in their vehicle with a basketball team from their village, Fatai, which they had taken for a game at Sopu. He said one of his children who remained at home came and told him that the accused had sworn at them. The accused and the complainant both lived on the same town allotment at Fatai which was fenced and has only one gate and driveway which ran between 2 houses in which they each lived with his own family. The two houses were about 10 meters from each other.
- [12] He said that he went and stood between the 2 houses and asked the accused who was inside his own house why he had sworn at his children and the accused told him that he had not sworn at them and he said to the accused that the children said that he did. He said that he then told the accused to go and do something useful instead of doing that to his children. He said the accused then told him that he should not speak like that because the town allotment was not his, the complainant's. The complainant said that he then turned and walked back to his house. He said that as he was walking back, his wife Haitelenisia, called out to him to look out because the accused was running up behind him with a knife.
- [13] He said that he turned around just as the accused stabbed him with a knife on his left shoulder, then he pulled it out and stabbed it at him again and he fended it with his hand but the knife cut his left nostril and that the accused stabbed him again and he fended it but it stabbed him on his left chest. He said that they then struggled with each other and that he pushed him off from him and that another boy, Siope Tu'i'onetoa, came and attacked the

accused and the accused stabbed that boy on his shoulder. He said he did not know what happened after that because his wife was pulling him away to take him to hospital.

- [14] He said he drove the vehicle himself to go to hospital because there was no one there to drive and that on the way to hospital he met his son at Sia'atoutai and his son then drove him to hospital. He said that he was admitted and his stab wounds were stitched up the next day. He said he stayed in hospital for about 2 to 3 days.
- [15] He described the knife that the accused had used and was shown a small stainless steel blade knife with a black handle and he recognized it as the knife which the accused had used to stab him and it was exhibited no.1. He also described the Tshirt he wore and identified it. It was a red Tshirt and it had a hole on the neck band where he said the knife had gone into his left shoulder. The Tshirt was all covered in blood which made it all stiff after all these years since 2015 when this incident happened. The Tshirt was exhibited no.2.
- [16] He then showed me, and to both counsel, the scars left by the stab wounds that the accused had caused. One scar was on his left shoulder close to his neck which was longish and ran from the front to the back and there were scars of several stitch marks across the long scar where the stitches had been made. Another scar was on his left nostril which appeared that the nostril had been torn or cut through by the blade of the knife. The last scar was on his left chest about 3 inches above his left nipple which appeared to be the same length as the width of the blade of the knife exhibited.
- [17] When cross-examined by Mr Fili, he said that he and the accused had had may be two arguments with each other in the past about the town allotment and that the police had had to sort them out each time.
- [18] Mr Fili put to the accused that he had a bunch of keys with him and that he had thrown it at the accused deliberately and that it smashed the louvers of the accused's house and caused the accused to shield himself with his hands and turned his body to protect himself and his 2 young children who were standing beside him to fall backwards from the impact of the bunch of keys on the louver blades in the window through which they had been talking to each other. The complainant admitted that he had his bunch of keys with him and that it had come off his hands as he was waving his hands about while talking to him and that it hit the louver blade and broke it, but that the louver blade did not fall off its frame, and the bunch of keys just fell down outside onto the ground, and that he picked it up and then turned to leave.

[19] Mr Fili also put to the complainant that he had called to his wife to get the gun but the complainant said that he did not make such a call. Mr Fili also put to him that in his statement to the police (in 2015), he had said nothing about his wife calling out to him to look out that the accused was running up behind him with a knife and he said, after seeing his statement, that it was true that he had not told the police that.

By the complainant's wife, Haitelenisia Bloomfield

[20] The complainant's wife, Haitelenisia, gave evidence that she had gone with the complainant with the basketball team to Sopus and that when they returned, their daughter Litea told them that the accused had sworn at them. She said that they were just getting out of the vehicle then, and the complainant then went and stood between the two houses and called out to the accused inside his house why he had sworn at his children. She said the accused said that he had not sworn at them and the accused told him that he did because the children told him he did. She said that she then went inside their house to get the keys to another vehicle and she looked out the window and saw the accused inside his house pick up a knife and came with it to her husband and she called out to her husband to run because the accused was coming at him with a knife. She said she then ran out herself and that when she got there, she saw blood spurting out of her husband's chest and that the accused was already running away to the back of the property. She said she then had Siope's wife, Seilala, to go with her husband (the complainant) to hospital but that her husband would drive, and she stayed home with their children.

[21] In cross-examination by Mr Fili, she said that no one had called out to get the gun at any time and she said, when the knife exhibited was shown to her, that it was the same knife she had seen the accused pick up and came out of the house with. Mr Fili put to her that she had told the police (in 2015) that her husband had thrown the bunch of keys at the louvers of the accused's house, and she said that it was true that she had said so to the police but it was because she had heard it as it hit the louver although she did not see it.

[22] Mr Fili also put to her that she had heard her husband call out to her "Sia, bring the gun" while she was in the house, but she said no. It was put to her that the accused picked up the knife because her husband had called to her to bring the gun but she still said that her husband did not make any such call.

By the witness, Siope Tu'i'onetoa

[23] Siope Tu'i'onetoa said that he is married to Seilala who is a daughter of Fononga, who is an older brother of the complainant and that he and his wife

were living with the complainant and his wife in their house next door to the accused's house. He said he too had gone with the basketball team to Sopa and that when they returned he went into the house to have a drink and that he then heard the shouting of the complainant's wife, Sia, "Help, please, for Neiafutahi will die". He said he was in the kitchen and he then ran out and saw the accused stabbing the complainant with a knife at his face and that the complainant's face was bleeding and blood was flowing down his body. He said he grabbed a piece of timber and hit the accused's head with it but the accused ducked and he missed and then the accused ran off and he chased after him but he escaped. He said that when he came back the complainant had gone to hospital.

[24] In cross-examination, Mr Fili put to him that he had heard the complainant call out to get the gun and he said that he did not and that the only call that he heard was Sia's call for help or Neiafutahi would die. Mr Fili put to him that the reason why the accused had come out with the knife was because the complainant had called out to get the gun. He said that he never heard any such call.

[25] I asked the witness whether he himself was injured and he said he was but that he did not know he was until others told him and he put his hand up to his upper left shoulder and felt blood there, and that he then went to hospital and had the cut on his shoulder stitched up the same evening and he came home. He said he saw the complainant there at the hospital when he got there.

The evidence for the defence

By the accused, Sinela Fifita

[26] The accused, Sinela Fifita, said that he worked as security guard and that he came home when he finished work at 5pm that day. He said that he did the cooking of their food and that he noticed that 3 young persons were doing cleanup work at the complainant's place next door – loading the rubbish on a vehicle and taking it to dump at the sea side. He said that whilst he and his family were sitting down and eating their food, the vehicle used for taking the rubbish drove in to the driveway between the 2 houses quite fast and he thought dangerously. He said he went out to the back where the vehicle stopped and spoke to the driver, Toutai, not to drive like that or he'd injure someone.

[27] He said that Seilala, niece of the complainant, called out swear words to him from the back door of the complainant's house for him to leave the 3 persons alone. The accused said he did not swear back at her except to say "The

same to you too". He said he went back and continued eating and he finished just as the vehicle with the basketball team arrived.

- [28] He said that after about 5 minutes, he heard the complainant call out his name loudly 3 times and he went over and stood by the louver window facing the complainant's house and asked the complainant what. The complainant was standing between the 2 houses where that louver window was. He said that the complainant said to him, "What do you get from swearing at my children?" He said he replied that he had not sworn at the children and that they should ring the police if they maintain that he had sworn at them. He said the complainant said to him that he, the accused, should ring the police himself instead of swearing at the children. He said that he said to the complainant that he was not going to do that.
- [29] He said that the complainant then said to him, "You people have come and disputed my title to my allotment" and he replied to him, "It is you who has come and disputed the allotment of Loumaile". He said that that made the complainant angry and he threw his bunch of keys with all his might (tataha) at his face but it hit the louver blade in the window and broke 2 louver blades, with pieces falling inside as well as outside of the house and that the bunch of keys fell outside (where the complainant was). He said that there was a piece of chain about a foot long attached to the bunch of keys as well.
- [30] The accused demonstrated how the complainant had stood sort of sideway with his left foot forward and with his right hand holding the bunch of keys winding back and then snapping it forward quickly and forcefully as he had thrown the bunch of keys at him.
- [31] He said that the complainant threw the bunch of keys so deliberately and forcefully at him that he had to put up his hands to cover his face and he also turned his side on to the complainant defensively as well. He said that as a result of the impact of the bunch of keys on the louver blades, his 2 young children who were standing beside him at the time both fell over backwards.
- [32] He said that the complainant then called out "Bring the gun" may be 2 or 3 times.
- [33] He said he felt afraid for himself and for his wife and children and he decided to run out to the complainant and hit him before he would get the gun. He said that as he ran by their refrigerator, he noticed the knife he had used in his cooking on top of it and he grabbed it and ran out with it to the complainant. He said that he grabbed and ran with the knife because of the call of the complainant to get the gun. He said that as he was running down the back doorsteps he slipped and fell and he heard the complainant call out

to him, "Come, come". He said he got up and ran to him and punched him and then stabbed him with the knife 3 times – first on the chest, second on his nose and third on his shoulder.

- [34] He said he then noticed Siope grab and swing a piece of 6x2 timber at his head but he ducked and stabbed Siope's shoulder as he was over – balanced by the swing of the timber. He said that the complainant called out to bring the gun and so he decided to run and so he ran away and he said that he was walking on the road when the police came and took him with them.
- [35] When cross-examined by Mr Fifita, Mr Fifita put to the accused that if the complainant had thrown the bunch of keys with such force as he had demonstrated, the bunch of keys would have reached and hit him even after breaking the louver blade. The accused said that it would not but could not say why it would not. He was then asked whether any louver piece hit him and he said he did not feel if anything had hit him.
- [36] When asked again about the call to get the gun, he said that the complainant called out two or three times to get the gun, and that his wife was still at the table and he became afraid for his family. He said he took the knife with him and went out to the complainant because of his call to get the gun.
- [37] When asked why he had not stabbed the complainant only once, he said that he wanted to cause him injury because of his call to get the gun. It was put to him that he had stabbed him repeatedly because he was angry with him, and he said that at that time, he was hot and he could not think properly. He said that the liberty of his family was lost and that was why he stabbed the complainant on the chest, nose and shoulder. He said that since 2012, these things had been happening and he had asked the police for help but the complainant always paid them off with bottles of liquor, and when this happened, he had had enough and that was why he did it. At this time, the accused became emotional (started to cry) and I adjourned for the afternoon break so that he could compose himself.
- [38] After the afternoon break, and cross-examination resumed, the accused maintained that he had stabbed the complainant 3 times because of his call to get the gun and he was only stabbing the complainant to protect his family.
- [39] He said that he thought to stab him a fourth time but he saw Siope and Toutai come to attack him. He said that if they had not come, he would have continued to stab the complainant until he did not move anymore, and that that was what he thought to do in order to protect his family. He said that he stabbed Siope and that when Toutai saw that, he stood back with the

baseball bat that he was carrying, and he the accused then decided to run away.

- [40] Mr Fifita put to the accused that if he had stabbed the complainant repeatedly to protect his family, he would not have run off and left them in the house. In reply, the accused said that he had thought that the complainant had meant to shoot him only (with the gun) and not to shoot his family. He said that when he ran away that day, he did not see his family again until after 9 days because he was held in police custody.
- [41] When re-examined by Mr Fili, the accused said that the reason why no piece of louver blade hit him was because the blade was well fixed on the frame and that was why no piece hit him. He also said that when the gun was called for, he thought that it meant death for him and he therefore decided to stop the problem there and then to stop it spreading and getting bigger.
- [42] I asked the accused how he had held the knife in his hand and he said that he held it with the handle in the palm of his hand and the blade was protruding downwards from where his little finger was.

By the accused's partner, Petulisa Pome'e

- [43] Petulisa said that she has lived with the accused for 8 years and that they had 3 children. She said that on the day this happened, the complainant had come and called out to the accused and asked why he had sworn at his children. She said that the accused told him that he had not sworn at them and the complainant told him that he had and carried on telling the accused off, and the accused told him to go to the police. He said the complainant then said that the land that they were on was his father's land that the accused should go to Hoi where the accused's own father's land was. She said that the accused then said that the land he was on was Loumaile's land and that it was him, the complainant, who had committed fraud and had had the land registered in his name wrongfully instead. She said that that made the complainant angry and he threw the keys and broke the louver. She said she jumped up and yelled at the complainant because her two children were crying, saying, "I'll take my children or they'd be injured".
- [44] She said that the complainant then called to the accused to come out and that he then called to the people in his house to get the gun. She said that the accused then ran out the backdoor and ran to the complainant and they exchanged punches with each other. She said that she then went with the children to the bedroom. She said that when she came out of the bedroom, she saw the accused running away with the complainant Siope and Toutai, and another woman, Sia, running after him.

- [45] When cross-examined by Mr Fifita, she said that she did not see the keys being thrown and that she only heard it hit the louver. She said that a piece of louver that broke fell on to the floor of the lounge just below the window where it broke, that there were no other piece of the louver blade any further into the lounge, and that no one was injured as a result. She said she saw the complainant call out, "come, come. Bring the gun", and that his face was angry. She said that the accused ran out after the complainant made those calls.
- [46] When she was re-examined by Mr Fili, she said that if the complainant had not thrown the bunch of keys at the louvers, the complainant and the accused would have just argued as before and nothing would have happened.
- [47] I asked her whether anything would have happened had the accused not run outside at all, and she replied, after thinking about it for a little while, that nothing would have happened.

The submissions

By Mr Fili

- [48] Mr Fili submitted that the accused did cause the injuries which the complainant sustained but that he did it for the purpose of protecting himself and his family from the threat of death which he thought was going to happen to him and his family when the complainant called to persons in his house to bring the .22 rifle which he and Siope admitted was in the house and which Siope said he owned and which everyone, including the accused and his family, knew was in the house.
- [49] He submitted that the accused took defensive action to prevent death to him and to his family because of unlawful actions which the complainant had committed, namely,
- (a) that the complainant had committed trespass on the home of the accused;
 - (b) that the complainant had repeatedly shouted and that he committed assault when he threw the bunch of keys at the accused and his two young children; and
 - (c) that the complainant challenged the accused to fight him and shouted for the gun to be brought to him.
- [50] He referred to the evidence of the accused and of his partner, Petulisa, that the complainant had thrown the bunch of keys at the accused and that the complainant had called to persons in his house to bring the gun which was there to him. He submitted that the act of throwing of the keys at the

accused, although it did not hit him, was an assault, and that when he called to him to come and fight and also that the gun be brought to him, justified the accused in repeatedly stabbing him in order to stop him from shooting them and causing their deaths. He argued that the actions of the complainant were offences under the law, namely, that of trespass, assault of throwing, willful damage to property when he broke the louvers, the challenge to fight when he called out "come, come" and by his threat by calling to bring the gun to him.

By Mr Fifita

- [51] Mr Fifita for the prosecution responded to Mr Fili's submissions and pointed out that only the accused and his partner claim in their evidence that the complainant had called to bring him the gun. He says that all three witnesses, that is, the complainant, his wife and Siope had stated that no such call was made. He says that if such call was made everyone in the place would have heard it but none did, except the accused and his partner. He also says that if such a call was made and it was made twice and loudly like the accused and his partner said, why was it not heeded by anyone. He says no one saw any gun being brought out, no one saw any gun.
- [52] He says that if such a call was made to bring the gun, Siope would have heard it, but he did not bring the gun, he instead ran out and got a 6x2 timber. He says that what happened was more consistent with what the complainant and the witnesses for the prosecution said than what the accused and his partner said in their evidence.
- [53] He also says that the evidence was more consistent with the bunch of keys having come off the complainant's hand (either accidentally or negligently) such as he says happened, than with it having being thrown deliberately and forcefully by the complainant at the accused. He says that this is because the bunch of keys only hit the louver and broke it and then fell back on the ground outside and the broken piece of louver just fell down on the floor inside just below the window. He pointed out that the bunch of keys had a piece of chain attached to it and together with some 6 keys on the ring, it was heavy enough, that if thrown with such force as the accused says that the complainant used, it would have broken the louver and had travelled on and hit the accused in the face, such as the accused said the complainant had aimed to throw it.
- [54] He also pointed out that the accused had not stated in his statement to the police that the complainant had called out to him "Come, come", thereby challenging him to come out and fight him. And he also says that the accused counsel had not cross-examined the complainant that he had so challenged the accused to come out the fight him, and that the accused had only said

that the complainant said those words when he the complainant came to give his evidence.

[55] Finally, Mr Fifita submitted that the accused did not stab the complainant because he was trying to protect himself and his family, but because he was angry and "hot" because he himself said so when he cross-examined him. He points out that the accused said that at this time he was hot with anger that he wanted to stab him and to keep stabbing until the complainant did not move anymore.

[56] He therefore submitted that the prosecution has proved beyond reasonable doubt that the accused willfully and unlawfully and seriously caused the bodily injuries to the complainant as charged against him.

Consideration

The law

[57] The law with regard to self defence is straight forward. The prosecution must eliminate any reasonable possibility that the accused acted in self defence. It must disprove self-defence and must do so beyond all reasonable doubt: *Azuelo v R* [2009] Tonga L.R. 149, at p.154. In that case, the Court of Appeal stated that the content of what must be disproved must be related to the facts proved.

The facts proved

[58] It is not disputed, and I find it proved beyond reasonable doubt, that the accused did seriously cause bodily harm to the complainant. The use of a knife in a violent manner by stabbing the complainant 3 times thereby causing stab wounds on his shoulder, his nose and his chest and which bled profusely, soaking his Tshirt in blood, and wounds which required sutures to be applied to close them up, must be accepted as evidence of serious causing of bodily harm.

[59] The crucial fact to be decided is whether or not those wounds were inflicted in self defence, and the prosecution must eliminate, by evidence as facts, *any reasonable possibility* that the accused acted in self defence when he seriously caused those wounds to the complainant.

[60] The prosecution had known that the accused might raise the defence of self-defence before this trial commenced, because the accused had stated in his statement to the police, which was taken the day after the injuries were inflicted, that he had picked up the knife which he used, after he heard the complainant repeatedly call to the persons in his house to bring him the gun.

[61] The 3 witnesses (including the complainant) whom the prosecution called all said that the complainant had not made any such call, that is, to bring the gun to him. Against that evidence, the accused and his partner both said that the complainant did make such a call, or rather, shouted to bring him the gun. Both sides cannot be right, one must be wrong – but which one?

No call for the gun was made

[62] I have considered the evidence of all the witnesses and that of the complainant and of the accused, and I have found that there was no call made by the complainant to the persons in his house to bring the gun to him by calling out or shouting "Bring the gun". He never made or shout any such call. I find that as a fact, and I have come to that finding for the reasons which I now proceed to give.

Admission of anger and loss of temper

[63] When cross-examined by Mr Fifita, the accused said that he took the knife with him and went out to the complainant because of his call to bring him the gun. He was asked why he had not stabbed him only once, and he said that he wanted to cause the complainant injury because of his call to bring him the gun. But when it was put to him that he had stabbed the complainant repeatedly because he was angry with him, he admitted that he was "hot" and he could not think properly because the liberty of his family was lost and that was why he stabbed the complainant on the chest, nose and shoulder. He said that since 2012, these things, which I take to be "abuse" by the complainant, had been happening, and he had asked the police for help but the complainant always paid them off with bottles of liquor, and that when this, that is the complainant throwing the keys and breaking the louvers happened, he had enough and he did what he did. He said he would have continued stabbing the complainant with the knife until the complainant would not move anymore. He took and used the knife because he was angry and not for the purpose of defending himself or of his family.

Change of aim of self-defence

[64] At first the accused maintained that he went out with the knife and that he stabbed the complainant with it repeatedly to protect himself and his family because of the calls of the complainant to bring him the gun. But when asked by Mr Fifita why he ran away and left his family, he said that he had thought that the complainant had meant to shoot only him with the gun, and not his family. I find that answer most telling against the credibility of the accused, in particular, as to his evidence and claim that the complainant had called to

bring him the gun. If he had honestly thought that the gun had been intended by the complainant to shoot only him, the accused, why had he given his evidence in chief that he had gone out with the knife to the complainant to protect himself and his family? But more importantly, if he had honestly thought that (that the complainant had only meant to shoot him alone) why did he not run away himself, instead of running out to the complainant instead? To me, it destroys the basis of his claim of the defence of self-defence because he had all the time in the world to run away out to the main road at the front of the house or to the back of the property or to the east side of the property. But he did not. I find that he went with the knife instead to stab the complainant because he was overcome with anger and loss of temper following the breaking of the louver blades caused by the throwing of the bunch of keys by the complainant.

Throwing of the bunch of keys

[65] I find that the complainant did intentionally throw the bunch of keys at the louvers but that he only did that with sufficient force to hit and not break the louvers but to convey his anger with the accused for saying that the allotment was not his allotment. I do not accept that it was thrown with such force as the accused demonstrated in giving his evidence, because the complainant would not have wanted his keys to go throw the louvers into the accused's house, if he had thrown the keys at the accused that forcefully. But I do not think that the complainant had expected that the louvers would break.

[66] In the complainant's statement to the police which was referred to by Mr. Fili in his cross-examination of the complainant, the complainant stated:

"He then told me to leave my allotment because it was not my allotment. I was holding the bunch of keys of my van, I chucked the bunch of keys at the louver and broke one lover blade."

I believe that that statement is the truth of the matter. The keys did not come lose from his hands accidentally like he has said in his evidence. The complainant intentionally chucked it at the louvers, with what he thought was sufficient force to hit the blade and fall back down on the ground outside, and not fall down inside the house.

No apology

[67] Consistent with his aim to convey his anger to the accused by chucking the bunch of keys at the louvers, the complainant offered no apology at all to the accused for having broken the louver of his house. He just picked his keys up and turned to leave as if he had done nothing wrong. That was insensitive and inconsiderate of the complainant.

The cause of the stabbings

- [68] I can only imagine the anger and frustration which the accused felt at the time that the bunch of keys hit the louvers and the louver blade broke and fell on the floor inside his house, and to top it off for him, his partner, Petulisa, cried out to the complainant, "I'll take my children or they would be injured". It would upset and infuriate any man to have his wife or partner subjected to such fear or anger by such an act of another man.
- [69] I believe and I accept the answer which Petulisa gave to Mr. Fili when he asked her whether anything would have happened if the complainant had not thrown the keys at the louvers. She said that if the complainant had not thrown the keys at the louvers, the complainant and the accused would have just argued as before and nothing would have happened.
- [70] By that answer, I consider that Petulisa meant that the breaking of the louver was what triggered the accused to act as he did. That was because I followed up that question of Mr. Fili with my question to her: whether anything would have happened had the accused not run outside at all? She replied, and I think quite truthfully, after she thought about it, that nothing would have happened.
- [71] That answer is important. It meant that there was no danger to the accused or to her and to their children. The complainant had conveyed his anger and had got his keys off the ground and had turned to leave.
- [72] And that is consistent with the fact that the complainant had *only chucked* the bunch of keys at the louvers. That showed that he had not meant to break the louvers. It is true that he may have been angry, when reminded by the accused that the allotment the accused occupied was not his but Loumaile's, but he still had enough sense not to throw his bunch of keys to break the louvers and thereby "lose" his keys into the house and into the possession of the accused, because he knew that that would be what would happen if he was to throw the bunch of keys forcefully at the louvers.
- [73] To me, the breaking of the louvers upon the impact of the bunch of keys, would have come as a surprise to the complainant, because he had not intended that the louvers would break by his simple chucking of the keys. Realising the error he had made in his calculation of the force with which he had chucked the bunch of keys, he walked over and picked up his keys and turned and walked away.
- [74] I therefore do not believe that he would have then shouted to the people in his house to bring the gun to him, such as the accused and his partner have said that he did. I believe that the accused only made it up when he had cooled down at the police station and realised what he had done and that he

then told the police, when he was interviewed the next day, that that was what the complainant had shouted out after he picked up his bunch of keys. I believe he made it up to justify what he had done to the complainant and had persuaded his partner Petulisa to support that evidence by saying that she also heard the complainant call to bring him the gun.

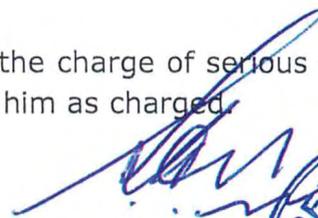
No reasonable possibility

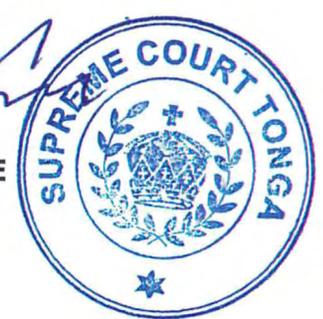
[75] Accordingly, I find, on the facts which I have stated above, that there is no possibility, let alone a reasonable possibility, that the accused acted in self-defence when he attacked and repeatedly stabbed the complainant.

Verdict

[76] I therefore find that the accused is guilty of the charge of serious causing of bodily harm to the complainant and I convict him as charged.

NUKU'ALOFA: 16 April 2020.


Niu J
J U D G E



The seal of the Supreme Court of Tonga is circular, featuring a central emblem with a crown and a cross, surrounded by a wreath. The words "SUPREME COURT TONGA" are inscribed around the perimeter of the seal, with a small star at the bottom.