

**IN THE SUPREME COURT  
REPUBLIC OF NAURU**

Criminal Case No. 141 of 2012

**Republic**  
DPP

v

**Brnton Namaduk**  
Defendant

---

<u>JUDGE:</u>	John von Doussa
<u>DATE OF HEARING:</u>	10th June 2013
<u>DATE OF SENTENCING:</u>	10th June 2013
<u>CASE MAY BE CITED AS:</u>	Republic v Brnton Namaduk
<u>MEDIUM NEUTRAL</u>	[2013] NRSC 5
<u>CITATION:</u>	

---

CATCHWORDS:

Criminal Law – wounding – bush knife used as a weapon in self-defence – drunken fight –  
extenuating circumstances – community services order and probation order – s323 Criminal Code.

---

APPEARANCES:

For the Republic Wilisoni Kurisaqila, Director Public Prosecutions

For the Defendant Steven Bliim, Acting Public Defender

HIS HONOUR:

1 Mr Brnton Namaduk you have been found guilty on your own plea of a charge of wounding contrary to section 323 of the Criminal Code. That is an offence which exposes you to a maximum penalty of imprisonment with hard labour for three years. That should indicate to you that crimes of violence, assaults that finish up with people being wounded are treated seriously. Normally where someone of your age and background comes before the court with previous convictions for assault on a charge like this they will go to jail and quite often for 6 months to 12 months.

2 However as you have heard discussed here today, the circumstances of your offending are very unusual and for that reason I propose to take an extremely lenient course, particularly having regard to the fact that you have some previous convictions which I will mention in a moment.

3 First let me say something about the circumstances of the offence. You are presently 26 years of age, and to your disadvantage you have taken to drink and marijuana which at times seems to

disturb your common sense and good judgement. On the day of the offence you and others had been drinking for a long time. Earlier in the morning, after a night's drinking a friend of yours, Kurt Aliklik came to your house accompanied by one of his friends Reggae Halstead. Mr Aliklik asked if he could come in and join the drinking and asked if he could bring his friend Mr Halstead with him. You were a good friend of Mr Aliklik and invited him in but asked Mr Halstead not to enter because he was a man with whom you had had conflict in the past. Indeed as I understand it, Mr Halstead had been challenging you to a fight for a couple of days. Notwithstanding that Mr Halstead did not receive an invitation, he entered your house. Drinking continued with those in the house, which included people besides the three of you.

4 At some point later in the morning Mr Halstead challenged you to a fight you ignored the challenge.

5 Later again he made a comment to you and Mr Aliklik that you should not think you are tough just because you two had spent time in prison and that he could beat you both up. At that point Mr Aliklik left for some business of his own. Shortly afterwards Mr Halstead pushed you and a fight initiated by him, so it seems, started. I am told that Mr Halstead is a bigger man than you and I note that you are not particularly tall. In effort to defend yourself or better protect yourself in the fight that you saw developing you reached for something as a weapon. The photographs certainly show your house at the time was a mess and there were various objects lying about that could be used as a weapon. Regrettably the one you seized was a bush knife.

6 It must be recognized that bush knives are, by their nature, very dangerous weapons that must be treated with care and not used in fights. Having picked the weapon up, the victim Mr Halstead then grabbed hold of the blade. I think it is of a critical importance in sentencing you that you did not actually strike a blow towards him with the weapon. He sustained an injury because he tried to pull the weapon out of your hand. In doing so, you inflicted a flesh wound to his hand at the base of his thumb, some six centimetres (6cm) in length that required stitching at the hospital. Fortunately it cut no tendon and it broke no bone. As far as I'm aware from the documents, Mr Halstead has recovered without any long term disability.

7 Those are the circumstances of the offence. The way in which you are dealt with must take into account previous offences. It must also take into account not just the fact you are charged with wounding, but both aggravating and mitigating circumstances going to the offence itself. In this case the aggravating fact is that you used the bush knife. As I have said bush knives are dangerous weapons. Generally speaking, if someone uses one in fight they can expect to go to jail. And it's necessary that generally that they do so as a deterrent to the rest of the community. On the hand, there are mitigating circumstances that lessen the seriousness of your offending. The altercation was initiated by another person, who was being aggressive. It was the other person that struck the first blow and commenced the physical activity of the fight. As your Counsel said, the trouble came to you. It was not a case of you going out looking for it, and really there was not much you could do to avoid it except leaving your home which the law generally does not require you to do. So you have found yourself placed in this situation which was not of your choosing and in a fight that which was not of your making.

8 Other facts that I have to take into account are previous convictions. Some 6 years ago when you were still a fairly young man you were convicted of drunk and disorderly behaviour. You got a suspended sentence. For an assault at the same time, you were given a concurrent 6 months sentence also suspended on a 12 months good behaviour bond. About the same time you are convicted and sentenced to 3 weeks imprisonment for contempt of Court, I regret to say I have no details of that.

9 On the 5th of March 2009, you were again before the Court on a common assault and offensive behaviour charge. You got six (6) months imprisonment at that stage which should have

been a big lesson to you. Unfortunately no sooner were you out of jail than you again were charged with and convicted of assault occasioning actual bodily harm. This time you got 9 months. That was some 4 years ago and apart from one further offence I will mention in a moment, it does seem you have kept out street violence trouble. That is to your credit.

10 On the 13th of March last year, you were convicted of indecent treatment of a girl under the age of 17. I have read the sentencing remarks of the Chief Justice. It was not an offence of such seriousness that you required a sentence of imprisonment. You were sentenced then to 150 hours of community service followed by 12 months probation order. Since the last offence you have continued to reside with your de-facto wife, you continue to look after and help her look after a 4 year old daughter, and very recently you had another child. I gather you are keen to improve your life to look after both children. Again that is creditable.

11. You are presently unemployed. You are fishing to support the family. Your neighbour Mr Denuga has come to court to give evidence as to your good character and as to the assistance that you have been giving him. It is his impression that you are willing to learn and you are helpful. Indeed it was impressive evidence, but unfortunately it appears that at times you allow yourself to become too much under the influence of alcohol and drugs, and your otherwise good behaviour fails you have got to do something about that. You were ordered by the Chief Justice to carry out 150 hours of community service.

12. The report on that service indicates that you attended regularly and appropriately to it, performed well, and indeed you came through the whole exercise with a compliment from the officer who supervised you. That too is very much to your credit and I think it is a sign that given enough chances, there is hope for you, and for you to rehabilitate yourself and become a useful member of the community. If I were to sentence you to imprisonment now, I think that would undo what good work has been done. Through the probation system and the community service order over the last 12 – 14 months.

13. I propose therefore to give you a second chance, you must consider yourself extremely lucky that you are not going to prison for the reasons I gave before about the use of the bush knife. If you are prepared to undertake it, I will order that you serve a further 150 hours of community service. This means you will have to go through the process that you have been through before. It seems to have been useful to you. Because it is not a full time penalty it will allow you plenty of time to assist Mr Denuga and generally to go on with your fishing and other useful activities.

14. It is our necessary to recall the community service order previously given as you have already completed it. In a sense fortunately for you, you completed it after the offence with which you are now charged so the probation order imposed by the Chief Justice had not actually started to run, and you are not charged for a breach of it.

15. The 150 hours community service order will be followed by a 12 month probation order, a term of which will be that you are under the supervision of a probation officer. That will run from the completion of your 150 hours of community service. My anticipation is that you will be subject during the 150 hours of community service to the probation order that is already running under the previous sentence and you will have another one for 12 months commencing at the end of your next period of community service.

**Justice John von Doussa**  
**10th June 2013**