

**PUBLIC PROSECUTOR**

**Vs.**

**WILLIE BOE**

Coram: Mr Justice Oliver A. Saksak  
Mrs Anita Vinabit - Clerk

Ms Kayleen Tavoia, Public Prosecutor, Prosecuting  
Mr Hillary Toa, Public Solicitor, Defending

23<sup>RD</sup> - 24<sup>TH</sup> March 2006 at Saratamata, East Ambae.

**VERDICT**

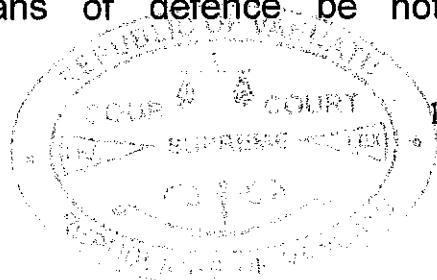
The trial of this matter commenced on 23<sup>rd</sup> March and the Court handed down its verdict of "not-guilty" on 24<sup>th</sup> March 2006.

The accused was charged with intentional assault causing death contrary to section 107 (d) of the Penal Code Act CAP 135. The accused had raised self-defence under section 23 of the Act as his defence. Evidence was adduced on that narrow point.

The Prosecutions called evidence from Jackson Tarililiu and Aaron Aga. The defence called evidence from Primrose Boe, the wife of the accused.

The burden of proof shifted from the prosecution to the defendant upon him relying on section 23 (1) of the Act. It reads as follows:-

"No criminal responsibility shall attach to an act by the immediate necessity of defence of the person acting or of another, or of any right of himself or another, against unlawful action, provided that the means of defence be not



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disproportionate to the seriousness of the unlawful action threatened.”

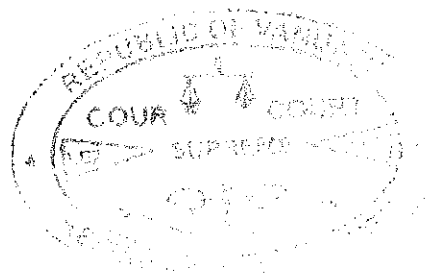
The elements that the defence had to prove beyond reasonable doubt are:-

- (1) Action taken must be immediate
- (2) Action was necessary for defence
- (3) Defence of himself (accused) or another
- (4) Defence of any right of himself (accused) or another
- (5) Action threatened must be unlawful
- (6) Action taken must not be disproportionate to the unlawful action threatened.

The evidence of Jackson Tarililiu was unimpressive. He is the youngest brother of the accused and the deceased. He was very shy and had to speak through Sgt. John Tari as interpreter and translator. He said he saw all that happened when the accused hit his brother with an axe. But Primrose Boe and Aaron Aga said in evidence they did not see this boy at the scene. He arrived later when the assault had already taken place. His evidence is therefore doubtful.

The evidence of Aaron Aga is relevant only to the extent of what he saw when he arrived at the scene. He saw the deceased already down on the ground and the accused holding up the axe. He got in between them and held back the accused's hands and removed the axe. Then he called for water and they washed the wounds of the deceased and took him to Lolowai Hospital.

The accused evidence was impressive. He explained in clear terms where he was and what happened when he arrived home. He was at his kitchen with his wife and two children. The deceased approached him with a bush knife in his hand. He did not speak a word but wailed his knife the first time at the accused, he jumped off. The second time the deceased swung his knife, the accused avoided. The third time the deceased swung his knife the accused grabbed an axe which was on the ground and with eyes closed swung the axe blindly with specific intent to kill off the knife. When he opened his eyes, he saw the deceased on the ground. He thought he was not injured. For fear that the deceased would recover



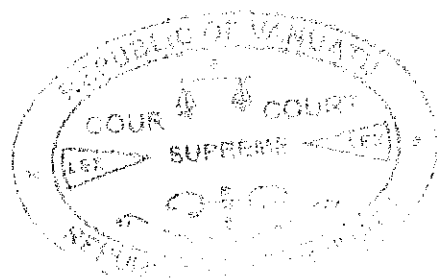
and go for the knife, he lifted up the axe in a ready stance position. Then Aaron arrived and removed the axe. He demonstrated clearly how it all happened.

His wife, Primrose was five months pregnant at that time. She was in the kitchen with her two boys. She saw clearly what happened when the deceased approached. Her evidence was consistent with what her husband said. At the third strike she feared for her husband's life and had to close her eyes. She explained that in her circumstances at the time she could not bear to see her husband injured by the knife and to fall down wounded. She also demonstrated what she saw happened. This incident took place in the accused's private yard or compound. And it all happened over some pineapples being stolen and destroyed by the deceased in his anger.

Ms Tavoia submitted that the defence had not proven all the essential elements of self defence as required by Section 23. She further submitted the case of Public Prosecutor vs. Jimmy Massing Criminal Case No. 4 of 1997 for consideration by the Court.

I have considered all the evidence in the light of Section 23 (1) of the Act. I am satisfied that -

- (1) The defendant's action was immediate.
- (2) That it was necessary for his defence and the defence of his five months old pregnant wife and two little children.
- (3) That it was necessary for the defence of his right to his property being his land and house, and his wife and children who were on the scene at the time.
- (4) The action by his deceased brother approaching with a knife was unlawful.
- (5) The action was not disproportionate to the unlawful action being threatened. A knife and an axe are capable of inflicting the same wounds on a human body. They are made of metal and both have sharp and blunt edges. Weight therefore is irrelevant. It would have been clearly disproportionate if the deceased had hit the accused with a piece of wood and in return the accused hit back with the axe. This is not the case and therefore the accused's action was not disproportionate.

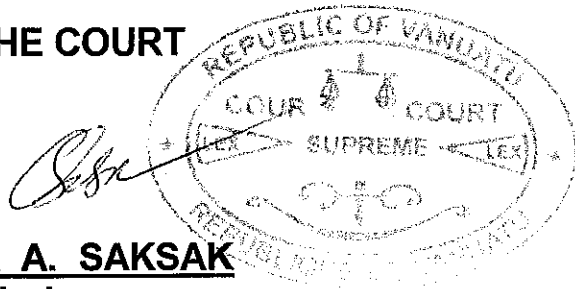


The case of Jimmy Massing is clearly different from the present case. There, clearly there was no threat by the deceased. Here, there clearly was an imminent threat which involved an unlawful action. Had the accused not acted as he did, either he would have been the one deceased, or if he had escaped, his wife and/or the children would have been the victims.

I am therefore satisfied that the defence has proven all elements required under Section 23 of the Act. Accordingly I find that the accused's action amounted to self-defence and no criminal responsibility can lie against him. Accordingly I reach a verdict of not-guilty. I therefore dismiss this case and acquit the accused of the charge.

**PUBLISHED in Luganville this 4<sup>th</sup> day of April 2006.**

**BY THE COURT**



**OLIVER A. SAKSAK**  
**Judge.**