

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

Criminal Case
No.18/1061 SC/CRML

PUBLIC PROSECUTOR
V
EPHRAIM KALORIB
SABY NATONGA

Coram: Justice D. V. Fatiaki

In Attendance: Counsel – Ms L. Lunabek for the State
Counsel – Mr B. Livo for Defendant Kalorib
Counsel – Mr A. Bal for Defendant Natonga

Delivered: 20 November 2018

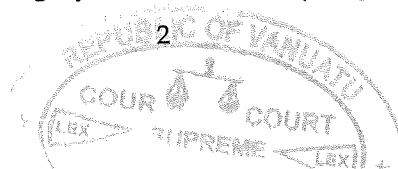
RULING

1. At the close of the prosecution's case yesterday and after the court refused an application by the prosecution to read as evidence, the complainant's police statement in terms of Section 162(3) of the Criminal Procedure Code, defence counsel for **Ephraim Kalorib** made a "no-case" submission invoking the provisions of Section 164(1) of the Criminal Procedure Code.
2. **Ephraim Kalorib** is charged on two counts. **Count 1** – Criminal Trespass and **Count 2** – Aid and Abet Assault. On the Criminal Trespass charge Ephraim Kalorib is jointly charged with **Saby Natonga** with entering the complainant's property at Bladinière Estate "... with an intent to intimidate and annoy him". On the Assault charge **Ephraim Kalorib** is charged with trying to stop the complainant from running away from **Saby Natonga** who was assaulting him.
3. As to the Trespass charge defence counsel submits that there is no evidence that **Ephraim Kalorib** had the required criminal intent when he entered the complainant's compound uninvited and without permission on the morning of 8 January 2018. At the time **Ephraim Kalorib** was the passenger in the vehicle which was driven by **Saby Natonga** into the complainant's compound at Bladinière Estate.
4. To establish this mental element of the offence which can only be inferred from established facts, the prosecution relies on the evidence of the complainant's wife **Cherol Ala Ianna** and her rent-house tenants, the Adams sisters **Yvette** and **Kathrine**.
5. **Cherol's** evidence is that she did not see the assault on her husband but when she came out of the shop she saw blood on his face and both defendants



pursuing her husband who quickly went and locked himself in their little shop. She said even after her injured husband had escaped, **Ephraim Kalorib** was still trying to get him to come out of the shop. She described the defendant's pursuit of her husband as "*walking quickly towards him*". Other than that she does **not** describe in any way the defendant's attitude and behavior – whether it was aggressive, belligerent, angry, or threatening. She gave **no** evidence at all about what the defendants were saying to her or her husband while pursuing him and outside their shop. **Ephraim Kalorib** went and sat in the car when she said to him: "*I know you*". She chased them out of her compound but they did not leave immediately.

6. The **Adams** sisters evidence was more helpful as to what had happened that morning. They both heard and saw the complainant's car speed into the yard and stop outside their rent room windows and the defendant's truck also arrived and stopped behind the complainant's car. They heard the complainant shouting at the occupants of the truck and from a distance of 4 -5 metres they saw the driver **Saby Natonga** get out of the truck, approached the complainant and argued with him and then they both saw **Saby Natonga** punched the complainant in the face/mouth area. Neither was able to recall the hand that threw the punch. They next saw the complainant escape into the shop. Neither recalled seeing **Ephraim Kalorib** come out of the truck or doing anything to the complainant when **Saby Natonga** punched him.
7. **Kathrine** the elder of the Adams sisters said she heard the complainant yelled "*get out of my yard*" to the defendants after they had stopped behind his car. She also heard the complainant say: "*I am a sick man*" after **Saby Natonga** punched him and she heard **Ephraim Kalorib** calling to the complainant to come out of the shop. She said **Ephraim Kalorib** had said to them that the complainant had sworn at them and that's why they came into his yard to remonstrate with him. **Kathrine** was firm in her evidence that Cherol had slipped as she approached Saby and fell on the gravel area and scratched her knees and Saby did nothing to cause her to fall.
8. The final prosecution witness **Albert Kaiapam** arrived after the assault had occurred and just before the complainant had escaped to the safety of the shop. He only saw **Cherol** shouting at **Saby Natonga** in anger and frustration as she approached him and Saby "*accidentally pushed*" her and she slipped and scratched her knee ("*DG i glis*").
9. Counsel for **Saby Natonga** did not wish to make a submission on his client's behalf.
10. Prosecuting counsel in seeking to sustain the Trespass charge alluded to **Cherol's** evidence that she had seen **Ephraim Kalorib** get out of the car and follow her husband also she had told the defendants to leave her property and they did not do so immediately but had remained and approached her husband. Counsel submits this shows an intent to annoy or intimidate. I disagree.
11. There was no evidence as to **Ephraim Kalorib's** behavior while following her husband and what words (if any) were uttered by him and what actions (if any) he performed when he followed the complainant to the shop. Was he threatening? or shouting angrily at him? Attempting to block his way or holding




him back? All these details are necessary to explain and contextualize **Ephraim Kalorib**'s observed action of following the complainant to the shop. Unfortunately none was adduced.

12. **Cherol**'s evidence may be contrasted with the observations of the Adams sisters who saw the whole incident from start to finish. Both sisters say the defendants told them that the complainant had sworn at them and that's why they had followed him into his compound. In this regard **Cherol** confirms in her evidence that her husband had told her he had overtaken the defendant's truck while heading home after collecting their bread from Inomakas bakery at Nambatri. In other words the complainant and the defendant had met sometime earlier while they were both driving on the road. They were not complete strangers.
13. As for the charge of Aiding and Abetting Assault prosecuting counsel concedes that there is **no** evidence that **Ephraim Kalorib** whilst seated in the truck did or said anything to aid and abet Saby Natonga assault the complainant on the face outside the complainant's car.
14. After careful consideration of the evidence and counsel's submissions, I rule as a matter of law that there is **no** evidence on which **Ephraim Kalorib** could be convicted of the charge of Trespass and I enter a verdict of not guilty on Count 1 the charge.
15. On Count 2 of Aid and Abet Assault, on the basis of prosecuting counsel's concession and after considering the evidence of the **Adams** sisters I uphold the concession and enter a verdict of not guilty on that charge also.
16. **Ephraim Kalorib** the court having entered not guilty verdicts against you on both Counts 1 and 2 which are the only charges against you in the Amended Information, you are directed to leave the dock now, a free man.

DATED at Port Vila, this 20th day of November, 2018.

BY THE COURT


D. V. FATIAKI
Judge.

