

**PUBLIC PROSECUTOR**

- v -

**JOHNSON NAMRI**

**Coram:** Vincent LunabeK - CJ

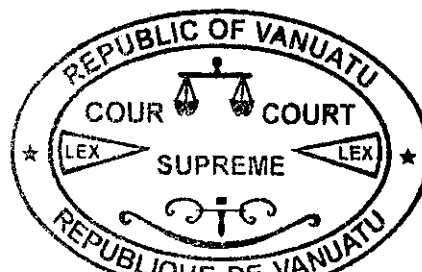
**Counsel:** Mr Philip Toaliu for Public Prosecutor  
Mr Bryan Livo for the Defendant

Date of Verdict: 29<sup>th</sup> May 2018

**JUDGMENT ON VERDICT**

**I. Introduction**

1. This is the judgment of the Court in this case. The Accused Johnson Namri is charged with three counts in information dated 27 July 2017.
2. In Count 1, the Accused was charged with premeditated attempted intentional homicide, contrary to sections 106 (1) (b) and 28 of the Penal Code Act. This is the principle offence as intended in the information.
3. In Count 2, the Accused was charged with Intentional assault, contrary to section 107 (b) of the Penal Code (Amendment) Act No.15 of 2016 and in Count 3 of threats to kill a person, contrary to section 115 of the penal Code. Counts 2 and 3 are alternative charges to Count 1.
4. On 12 September, Accused Johnson Namri entered the following pleas in respect to those charges:
  - Not guilty on premeditated attempted intentional homicide (Count 1);
  - Guilty on intentional assault; (in Count 2); and
  - Guilty on threats to kill a person (Count 3).



5. The prosecution intended to proceed with a trial of the Accused in respect to Charge 1 of Premeditated attempted intentional homicide.
6. It is then understood that sentences in Counts 2 and 3 are adjourned pending the outcome of the trial of the accused in the principle charge of premeditated attempted intentional homicide (Count 1).
7. Section 81 of the Criminal Procedure Code [Cap 136] was read and explained to the Accused. He understood his rights there under. He stood trial on that basis.
8. The trial lasted for more than two days as initially planned.

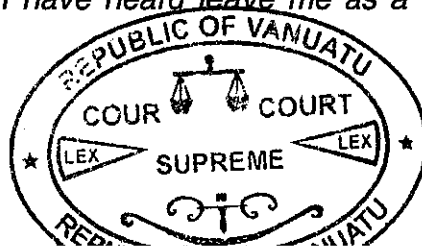
## II. Burden of Proof

9. In **Public Prosecutor –v- Nalau VUSC 181; Criminal Case 143 of 2009 (18 October 2010)**, I state what I think is the burden of proof and the requirements in the criminal trials and I repeat them here:

*“This is a criminal trial. As in every criminal trial, the law is that the prosecution has the duty to prove each and all essential elements of the offence beyond a reasonable doubt against the Accused. The Accused is not required to prove his innocence. If the Accused has to give evidence himself or call other person to give evidence on his behalf, I must consider his evidence and the evidence of his witnesses on equal basis as any evidence of the prosecution.*

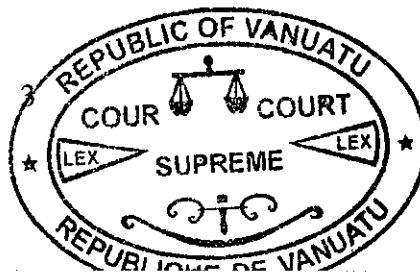
*The onus or burden of proving guilt of the accused person beyond a reasonable doubt rests upon the prosecution and it never shifts. The prosecution must prove beyond reasonable doubt that the accused person is guilty of the offence which he is charged before he can be convicted. If I have a reasonable doubt as to whether the accused committed the offence charged against him, it is my duty to give the accused the benefit of the doubt and to find him not guilty on one or all counts of the charge.*

*Proof beyond a reasonable doubt has been achieved when I as a judge of fact feel sure of the guilt of the accused. It is that degree of proof which convinces the mind and satisfies the conscience so that I as a conscientious judge of fact feel bound or impelled to act upon it. Conversely, when the evidence I have heard leave me as a responsible*



*judge of fact with some lingering or nagging doubt with respect to the proof of some essential elements of the offence with which the accused is charged so that I am unable to say to myself that the prosecution has proven the guilt of the accused beyond a reasonable doubt as I have defined these words, then, it is my duty to acquit the accused. If I believe the accused and he did not commit the offence or what he did lacks some essential elements of the offence or if the evidence of the accused either standing alone or taking together with all of the other evidence leave me in a state of reasonable doubt I must acquit him. But if upon consideration of all of the evidence taken together at the end of the trial, the arguments of counsel and the charge I am satisfied that the accused has been proven guilty beyond a reasonable doubt as I have defined these words above, it is my duty to convict the accused. I must say that it is rarely possible to prove anything with absolute certainty. So the proof or the burden of proof on the prosecution is only to prove guilt beyond a reasonable doubt. When I speak of reasonable doubt I use the words in their ordinary natural meaning, not as a legal term having some special connotation. A reasonable doubt is an honest and fair doubt based on reason and common sense. It is a real doubt, not an imaginary or fanciful doubt which might be conceived by an irresponsible judge of fact to avoid his or her plain duty. This is emphasized by Section 8 of the Penal Code Act [CAP.135] in these terms:-*

- "8.(1) No person shall be convicted of any criminal offence unless the prosecution shall prove his guilt according to the law beyond reasonable doubt by means of evidence properly admitted; the determination of proof of guilt beyond reasonable doubt shall exclude consideration of any possibility which is merely fanciful or frivolous.*
- (2) In determining whether a person has committed a criminal offence, the Court shall consider the particular circumstances of the case and shall not be legally bound to infer that he intended or foresaw the natural or probable consequences of his action.*
- (3) If the prosecution has not proved the guilt of the accused, he shall be deemed to be innocent of the charge and shall be acquitted forthwith."*



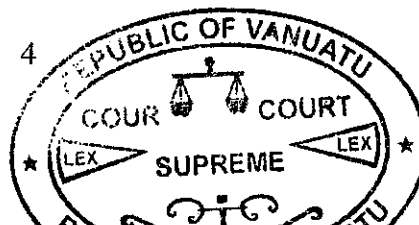
### **III. Elements of offence of Premeditated Attempted Homicide.**

10. To prove the crime of Premeditated Attempted Intentional Homicide, the prosecution must prove the following three elements beyond a reasonable doubt:
1. Accused did some act intended to cause the death of the victim (complainant) that went beyond just thinking or talking about it.
  2. Accused acted with a premeditated design to kill (the victim).
  3. The act would have resulted in the death of the victim except that someone prevented him (Accused) from killing the victim or Accused failed to do so.
11. If the prosecution should fail to prove any one of the elements in 1, 2 or 3 beyond reasonable doubt, then the accused would be entitled to be acquitted of this charge altogether. If they prove elements 1 and 3 but fail to prove the 2<sup>nd</sup> element, namely premeditation as defined, then the Accused could be convicted of the lesser offence of Attempted intentional homicide pursuant to section 106 (1) (a) and section 28 of the Penal Code. But if the prosecution prove also the 2<sup>nd</sup> element as defined above, then the accused could be convicted of premeditated Attempted intentional homicide under section 106 (1) (b) and section 28 of the Penal Code as charged in Count 1 of the information charge.

I now deal with the prosecution case and evidence.

### **IV. The Prosecution Case**

12. It is the prosecution case that on Sunday 26<sup>th</sup> March 2017, at about 1.30pm in the afternoon, the complainant, Mrs Roselyn Iato (Accused's wife) along with two other women, was in a prayer room of the New Covenant Church (NCC) at Naburu area, Port Vila.
13. Accused J. Namri entered that particular prayer room with a backpack. He sat on a chair and asked the complainant and the two other women twice whether

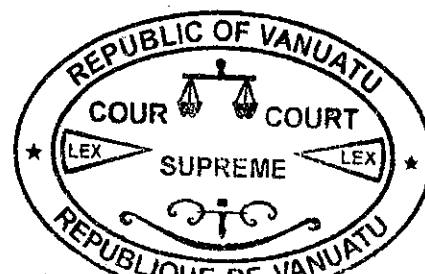


they know him. They responded to him that they know him and they told him that he was prophet Philimon. After they responded the second time, Accused Namri unzipped his backpack, pulled out a hammer and walked toward the complainant who sat down. And he told her: "*Mi kam ia blo endem life blo you.*"

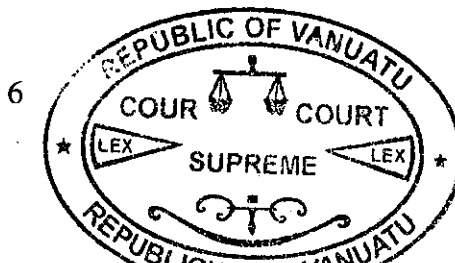
14. He proceeded to hit the complainant on her head with the claw hammer. There was lots of bleeding happening as a result.
15. Accused hit the complainant a few more times on her head, hand and shoulder with that same claw hammer.
16. The complainant struggled with the Accused and managed to resist the Accused and the Accused left.
17. The prosecution called three witnesses to prove the crime of attempted premeditated homicide against the Accused.

#### **V. Prosecution Evidence**

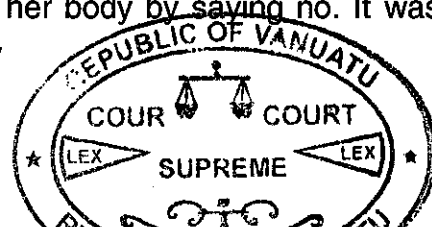
18. The first prosecution witness is Roselyn Iato. She is the complainant in this case. She is the wife of the Accused. They were married in 2010. She has six (6) children with the Accused from 2010 to the year 2017.
19. She used to live with the Accused and their children at Black sands, Efate until 2017 when she moved to Erakor Half Road. They lived together from 2010 until 2017. She remembered the date of 26<sup>th</sup> March 2017. She was at the New Covenant Church at the Healing Room. Johnson Namri came in that room with a handbag. It was a place of prayer at the Covenant Church (every 24 hours). The healing place is a room in the Covenant Church.
20. On 26<sup>th</sup> March 2017, she was in the Healing Prayer Room with big mother Meriam, Norah, Evelyn and Naomi. They stayed in that room. They were surprised Accused Johnson Namri came in and out by pushing his head. But then came inside the Healing Prayer Room, sat down on a chair and said they were going to talk. The room is a small one. It is just enough for a bed and



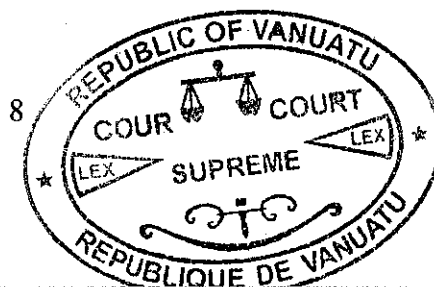
- three (3) chairs. There is a main door in the big house but the small room they were in has only one door.
21. Johnson Namri came in and sat down at a chair at the door. He sat and said "ufala I save mi or no." He repeated this twice. She said mummy Meriam answered him: "Yes brother Philemon mifala I save yu nomo olsem Prophet Philemon." The second time Evelyn and Naomi touched him and said "Yes brother mifala I save yu nomo."
  22. She said that after he unzipped his backpack, they were surprised he took out from the bag a hammer. They looked at each other. Then Johnson Mari told the witness "*tede bai mi finisim life blo yu.*"
  23. He took the hammer, moved a stepped and hit her on her forehead three time (3) or four (4) times. She tried to protect herself with her hands. He hit her hands. Her hands were weak. She tried to protect herself with her right shoulder. He hit her on her right shoulder three (3) times. He assaulted her also on the back of her head.
  24. From her forehead, there was heavy bleeding. He hit her on her forehead, on the side of her head. She fell on the ground. He used the hammer and hit her with the hammer. She said he also assaulted her on her shoulder. She showed the black mark of the hammer on her shoulder. It was Picture 5 in the photograph album (injury on his shoulder). Picture 6 showed the injury on her head.
  25. She testified when Johnson Namri hit her with the hammer, she tried to push him outside. The bleeding never stopped. Meriam told them to go and fight outside. She said he heard him saying: "*You save road now...*" Then she fell on the floor. She thought she died but only god helped her to be still alive because of her children.
  26. The hammer was of blue colour and made of steel. She recognised the hammer of being one of her house.
  27. Her house was at Black sands and the New Covenant Church was at Naburu.



28. At the time of incident, and after the incident, and after incident, her women sisters at the church and the Pastors stood up. One Deborah Nase (of Tanna Island) assisted her to go to hospital.
29. At the hospital, she has the heart to phone her daughter. She told her she was still alive. She said Johnson Namri phoned her children and told them that he had killed their mother at the church. So she said when her daughter replied to her call, her daughter told her: *"True mamy you are alive."*
30. Witness Roselyn Iato was cross-examined. She confirmed her evidence in Chief that for a period of one (1) year of 2017 she did not live with the Accused and the children at Black sands. She lived at Erakor Half Road and from time to time she stayed at the New Covenant Church at Naburu, Port Vila. The Accused was with the children at their home at Black sands.
31. During that year, she focused on praying. She was asked she denied seeing Johnson Namri at the New Covenant Church on 24<sup>th</sup> March 2017. She accepted that on 26<sup>th</sup> March 2017, in the morning, Accused attended the church with Monique (their daughter). After the church service, Monique came to see her in a room which was "the Mamas Changing Room." She gave her 1,000 Vatu. She and other women slept in that room. She was asked if the clothes of Pastor Moses were also in the room. She answered no. She answered the clothes of Pastor Moses was in the room reserved for Big Mama (Meriam). She confirmed her evidence that Accused J. Namri came in the prayer healing room at about 1.30pm on Sunday 26<sup>th</sup> March 2017. He came and hit her with hammer.
32. It was put to her and she denied that Accused did not hit her forcefully with the hammer. She was asked that her skull was not fractured. She answered the injuries on her head were stitched. The skin was not broken but she mentioned four (4) bottled of "rubbish" blood as she went through a custom treatment.
33. It was put to her that Accused J. Namri came close to her when he hit her with the hammer. She suffered pains and tried to push him outside. Accused used hammer on her body. It was put to her and she denied that because they were struggling, the hammer just caught her body by saying no. It was put to her

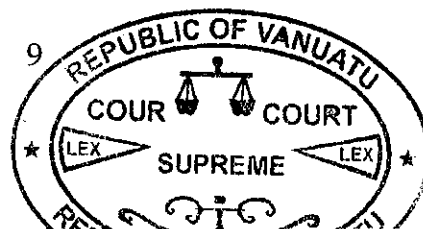


- that her skull was not broken. She answered yes but the Accused used hammer to kill her. After they struggled inside the room, she pushed him outside. And when she pushed him outside, she ran with lots of bleeding on her head, she applied some custom leaves, she could not look properly. She banged herself on the wall of the house. Her sisters (mamas) came to help stopping the blood.
34. She was asked when accused J. Namri went outside she also came outside. She answered she came outside to take some custom leaves. She did not know that Accused J. Namri was also still outside. She did not see her outside. It was put to her that if Accused J. Namri wanted to kill her he would continue to hit her until she died. She replied she did not know.
35. She was asked she said she was taken to the hospital and she got treatments and medical observed until 10.30pm in the night when she was released from hospital. She did not spend the night at the hospital. She was asked she accepted if the hammer damaged her brain, she would have spent a lengthy time at the hospital. She was asked the only treatments she was given were taking of Panadol. She confirmed and she added medications against pain and loss of blood. It was put to her the doctor did not stitch her injuries on the shoulder. She confirmed there were no stitches on her shoulders but the doctor stitched the injuries on her forehead and at the back of her head. It was suggested she did not tell the truth. She denied and said there were stiches on her head and the doctor gave her little red medication for the loss of blood. It was put to her that there was no medical report confirming her injuries was of permanent nature. She did not know.
36. She was asked again about the hammer, she said she saw the hammer. She did not know about the size. The Accused came in with the hammer and he went out with it again.
37. About the hammer, she said she saw a steel hammer of yellow and blue colour. She was asked about the Accused's bush knife. She responded he has a place to put his tools in the house. She was asked whether the Accused has a belt knife and he did not use it at the time. She answered she did not know.



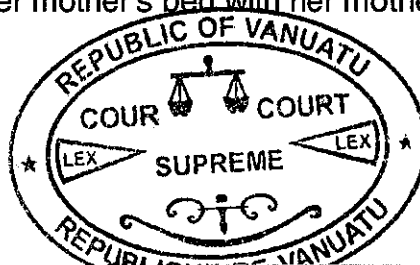


38. It was suggested to her that when Accused. J. Namri told her: "*Tede mi come blo finisim life blo you,*" it was made to threaten her. She answered she did not know.
39. She was asked and she confirmed she called her daughter on her mobile phone when she was at the hospital. She said her daughter responded to her. Her heart was heavy when her daughter told her: "*you ia you ring.*" She answered her: "*yes*" Her daughter told her "*you are alive.*"
40. She was challenged and questioned that her daughter had no mobile telephone. She insisted her daughter has a mobile telephone and she gave the number of her daughter's mobile phone (xxxx).
41. She was asked and confirmed she made a statement to the police of the incident on 27<sup>th</sup> March 2017. At the time of taking her statement, she was laid down at the Kaiviti Motel. It was put to her that she did not mention in her statement that her daughter told her that J. Namri said he killed her and she had just made it up. She responded: "No my Lord." She confirmed her evidence that she heard a small voice from Accused J. Namri just after the assaults on her outside: "*You save road now.*" She confirmed she did not mention that in her statement to the police but she heard that from the Accused.
42. In re-examination, she confirmed that the Accused assaulted her with the hammer but she said she could accept the suggestion made to her that the injuries on her body was caused just by the contact she had with the Accused when she was struggling. If she was just in contact with the hammer, there would be no stiches on the injuries.
43. She confirmed her evidence that she sat on a chair. He assaulted her with the hammer on her shoulders, hand and head. She did not know she forced herself out of him. Her mind was not clear. She was "drunk" when she pushed her out of him.
44. Norah Shem was the second prosecution witness (PW2). She is 34 years old. She lives at Prima area. On 26<sup>th</sup> March 2017, she attended church service on that Sunday at the New Covenant Church at Naburu area. The church service



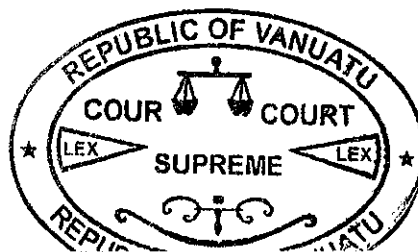
started at 7.30am and finished at 11.30am. After the church service, she went to see her mother inside her room. Her mother was sleeping inside a healing prayer room of the church. Her mother lives there. When she went to see her mother, there were her mother (Meriam), Roselyn, Evelyn and Naomie. They just talked until the next service. At that time, a man walked in. He pushed his head in and withdrew it again. When he came inside the room he had with him a backpack. It was the Accused J. Namri. He came in and told them to talk. The Accuses asked them "Youfla I save mi or no." Her mother told the Accused "Yes you are Prophet Johnson Philemon." He asked that question twice.

45. She said the Accused Namri said he came to end the life of his wife (Roselyn lato). They watched him opened his backpack and took a hammer. The Accused came to the church in the morning and attended the church service e. The Accused pulled out the hammer from his bag, made a step forward and assaulted his wife. His wife sat down on a chair. She saw the Accused assaulted his wife on her head with the hammer. There were bleeding coming out from the head. They were struggling and went outside.
46. She said he assaulted his wife first time while his wife was sitting, then the second time, his wife stood and held the Accused and struggled with him. He used the hammer to assault his wife.
47. She saw he held on Roselyn and assaulted her with the hammer. She saw the Accused lifted the hammer high and assaulted Roselyn with it. There was lots of bleeding running out. The room of her mother is a small room. When he assaulted her, bleeding was running on the floor inside her mother's room. She said there were three (3) buildings: Healing Hall, Conference Room, and Church office. The buildings were close, near each other. Her mother's room was inside the healing hall. There were four (4) rooms inside the healing hall. Her mother used one room. The three others were used for pray on sick persons. The room occupied by her mother is 2x2 meters with a door.
48. When J. Namri came inside her mother's room, he sat on a chair at the door. Roselyn sat on a chair at the right side. One meter separate Roselyn from her husband (the Accused). She sat on her mother's bed with her mother. When J.

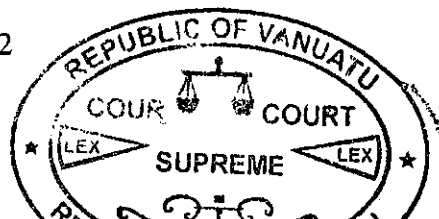


Namri assaulted Roselyn with the hammer, she held on him, struggled with him and pushed him outside. Her mother told them to go fight outside. She saw blood running on the head of Roselyn. "Blood I bigwan, I bigwan tumas."

49. In cross-examination, she said her mother is not the wife of the pastor. Pastor's house is different. She was asked she said Pastor Moses lives at Beverly Hills. She said there was no room for Pastor Moses at the New Covenant Church. She was asked and she said sometimes Roselyn slept on the Mamas' room. It was different from her mother's room. Sometime Roselyn slept at the church. She was asked and she said when J. Namri came inside the room, he did not seem to be angry and especially when he asked the ladies to talk. She was asked she accepted Roselyn never slept on the floor when J.Namri assaulted her. But Roselyn slept at the veranda outside when bleeding came out from injuries she sustained and they washed her.
50. In re-examination, she confirmed that J.Namri assaulted Roselyn plenty times.
51. Hellen Meriam Vuti is the third prosecution witness (PW3). This witness is unavailable to attend as a witness being so ill that she could not be moved without professional medical assistance.
52. I heard an application by the prosecution for the evidence of PW3 to be admitted. The application was made pursuant to section 162 (3) of the Criminal Procedure Act [CAP 136]. Following grounds are advanced
1. That the maker of the statement is unavailable to attend as a witness, being so ill that she could not be moved without professional medical assistance;
  2. That there is no significant difference in her statement to that of Norah Shem and Roselyn lato that would seriously prejudice the defence; and
  3. That the circumstances relating to the statements provide reasonable assistance that the statement is reliable; and that is in the interest of Justice that it be admitted and received in evidence.



53. I heard the Defence response to the prosecution's application. I have perused medical evidence that the PW3 is unavailable to attend as a witness. She is so ill that she could not be moved without professional medical assistance. She suffered a dried sore on her left leg at her lower foot. It is measured at 10x10 centimetres. She could not walk or stand up alone .She could not apply any pressure on that sore. She has not moved from her bed at the New Covenant Church since 2015.
54. I am satisfied PW3 is unavailable to attend the trial and give evidence as a witness at the Supreme Court at Dumbea, Port Vila.
55. The next question is whether the statement of PW3 made to the police on 28 March 2017, could be admitted in the circumstance that PW3 could not physically attend the Court to give evidence.
56. That situation amount to hearsay situation and it should be excluded. The second reason for presumptive exclusion is the general instability to test reliability.
57. The law has advanced the scope of exception to hearsay to include reception of evidence of unavailable witnesses.
58. The relevant question by the Court when considering whether to admit the statement is:
- I. The fact that the person making the representation (statement) that it can be reasonably be supposed that the person intended to assert, had allegedly occurred at the same time or shortly before the representation was made; and
  - II. The representative was made in circumstances that make it unlikely that the representation was a fabrication.
59. In this case, PW3 made a statement to the police on 28<sup>th</sup> March 2017. It was two days after the event. This was shortly after the event. The event was clear in her memory. She made the statement in the circumstances required to tell the truth and with the knowledge other than to state the truth (**R v**



**Polkinghorne [1999] 108 A Crim CR 189 [34]). See also Walton v The Queen (1989) 166 CLR 283 at 293.**

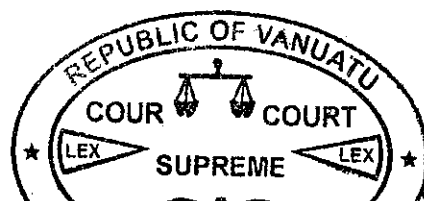
60. I consider the question of admissibility of the evidence; I consider the circumstances under which the representation (or the statement) was made. It was short and confined in nature. There was no personal factor that may affect the quality of the evidence in the statement. There were no circumstances that the making of the statement was a fabrication.
61. It was rational to suggest that the only question the defence would be able to put directly to the maker of the statement PW3 would be questions suggesting that the incident happened in another way and it is reasonable to expect that it would be met with a denial. Beyond that, there is little to be seen that the accused could gain from the cross-examination of the witness. I am satisfied that in the interest of Justice, the statement of PW3 is reliable and could be admitted. It so admitted.
62. That is the end of the Prosecution evidence and case.

**VI. At the end of Prosecution Case**

63. I ruled that there was a prima facie case made out against the Accused J. Namri. He was required to put forward his defence (Section 164 (1) Criminal Procedure Code [CAP 163]. I read and explained to him his rights under section 88 of the Criminal Procedure Code [Cap 136].

**VII. Defence Case**

64. The defence case is that the defence does not dispute that the Accused told the complainant that he came to put an end to her life.
65. The defence does not dispute that, the way the assault took place is not done as the way as the way the prosecution and the witnesses have testified.
66. The defence case is that the incident was not an intention or attempt to kill the complainant dead. The Accused came at the church area and wanted to demonstrate to his wife and church members that he was not happy because one full year (2017), he looked after the children and his wife had forgotten her

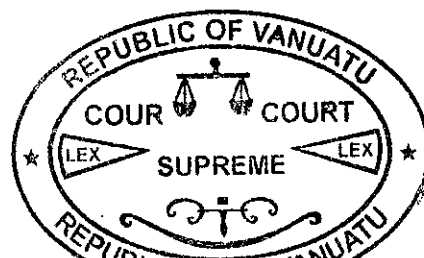


responsibilities to look after her children. The accused protested by carrying a small hammer. If the Accused attempted to kill the complainant he has more opportunity to do that. Instead he came peacefully and sat in the room where the complainant and other women were in the room.

67. The Accused J. Namri elects to give his evidence himself and not to call any other witnesses.

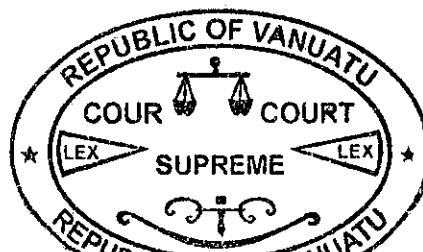
### **VIII. Evidence of Defence**

68. Accused J. Namri gave evidence to the following effect. He is from Tanna Island. He is 40 years of age. He resides at Black sands area since 2000. He has six children with his wife Roselyn lato who is the complainant in this case. They were married in 2010. They lived together for a total of 25 years but after marriage, they lived together for about 4 years.
69. After 4 years after the marriage their couple life started to have problem. His wife started to go to the church and came home late. He works at DPSA Security Company of one Jean Pierre Bourdet. He worked in the morning until 6.00pm. When he was at work no one looks after his children. He and his wife were separated in 2016 toward the end of that year. His wife went to stay at Erakor Half Road and at the New Covenant Church at Shepherds Studio. The children stayed with him at Black sands. He prepared for food. He did that for one year.
70. On Sunday 26<sup>th</sup> March 2017, he attended church service at the New Covenant Church at Namburu with his daughter Monica. His other children stayed at home. In that morning he saw one Pastor Moses whispered at the door Roseyn lato slept in. He attended church service but his wife Roselyn lato did not want to attend she was afraid. She was just sitting in that room where he saw Pastor Moses whispered in.
71. After the church service, he returned to his house. He prepared food for the children. There, her daughter mentioned to him of an amount of 1,000 Vatu she took from her mother in her room. She went inside the room her mother was sleeping in. She told him she saw it was different because of the clothes



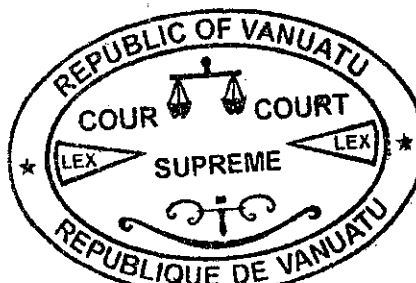
of her mother were with the clothes of the Pastor inside that room. He said he tried his best to ask Roselyn why she went and stayed at the church.

72. Then he took his backpack and took a hammer put it inside the backpack. He took the bus to the church. He went there to protest. He said did it because of his hard work. It was too heavy on him. He came to the church and went inside the room occupied by Hollen Vuti Meriam. He went inside. He sat on a chair at the door of that room. He talked to them and asked: "*youfala isave me?*". Their leader Merijam responded: "*yes mifala isave you – you Prophet Philemon*". Then he said he asked them again: "*youfala save mi who ia?*". Then he said he told them: "*Tade bae youfala isave se who ia nao Prophet Philemon*". He opened his packbag and carried out the hammar and told his wife Roselyn lato: "*Tede bae mi finishim life blo you*".
73. He said he hold the hammer on his right hand. He made the action to hit Roselyn. Roselyn was too afraid of him. He did not throw the hammer on Roselyn. They all called out in the room. Roselyn stood up and pushed him. Her hand was in contact with the claw of the hammer. Her head touched the hammer 3 times. Roselyn put her hands on his chest and pushed him out of the room. She pushed him forcefully and his hand came back touched her shoulder.
74. When Roselyn pushed him, the leader of the women Meriam told them to go fight outside. They both went outside. Pastors were at the room outside. He went back inside the room and took his backpack. He took a bus and went to the police station. He left Roselyn where she was.
75. The hammer he brought with him was a small hammer. He had bigger hammer at his house. The came just to protest and if he came with intent to end the life of his wife he could do that with his belt knife.
76. In cross-examination, he said on 26 March 2017, he went to the church in the morning. He said he saw Pastor Moses worshiped at the door Roselyn was sleeping in. He knew of the room Roselyn slept in. He was asked he said Roselyn and Pastor Moses slept in that room. He said he knew he saw them. He was then asked he agreed he never saw Pastor Moses and Roselyn slept together in that room.



*[Handwritten mark]*

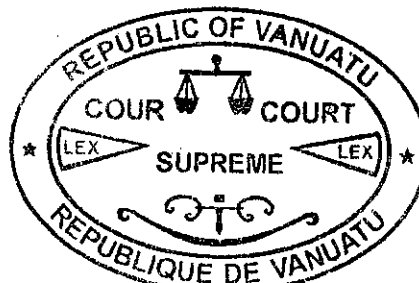
77. He confirmed his evidence after the church, he returned to his house at Black sands. He prepared food for the children. His daughter told him she took Vatu1,000 from his mother inside the room she was sleeping in. She also said she saw the clothes of Pastor Moses were in that room. He accepted her daughter did not tell him that she saw Pastor Moses in her mother's room.
78. He said when her daughter told him of this he felt bad. He worked hard for the children. Roselyn and others spent time praying. What sort of prayers they were doing? He was asked he said he was not angry. He went back to the church to show them that he protested of what he was doing.
79. He took a hammer put it in his backpack and went back to the church. He took the hammer to the police station. The hammer was a steel hammer blue handle and about 25 centimetres.
80. He took a bus from Black sands to Covenant church at Naburu. He went back to the church to protest to his wife about his hard work toward the children.
81. He was asked and he accepted that to protest he took the hammer with him. He took the hammer to threaten them with it. He was asked he said when he lived with his wife, she never assaulted him. He was asked; he said no one at church wanted to assault him.
82. He was asked whether the proper way for him to protest was to have a meeting. He replied the members of the New Covenant church did not call a meeting for the issue with his wife.
83. He said Roselyn lato is his wife. He was asked why he did not approach the church to ask for a meeting about him and his wife. He went and urged the Pastors Johnny, the Senior Pastor. There was no decision made that they met and sorted their issues.
84. It was put to him and he denied he was cross when he took the bus at Black sands to the New Covenant church on 26 March 2017 in the afternoon. He said he went to protest. He said "*mi toktok nomo yes. But mi no kilim hem. Hemi fas nomo lo hammer*".



*[Handwritten signature]*



85. He confirmed he went to the room occupied by Hellen Vuti Meriam. Roselyn, Meriam and Norah were in that room. He accepted he asked them whether they knew him. He was asked why he asked them that question and he replied he was saying that to ensure that they saw he was protesting. He was also asked and he accepted he told Roselyn that "*tede mi come blo finishim life blo you*".
86. He accepted after he said these words towards Roselyn, he stood with the hammer and went forward toward Roselyn. He accepted Roselyn sat tow (2) meters from him in that room. He was asked again and he said he pulled out the hammer and threatened to end Roselyn's life to make her afraid and he threw the hammer he would catch other as well as they sat close to each other in the room.
87. He confirmed walking toward Roselyn with the hammer was part of his protest. It was put to him and he said if he had walked toward Roselyn with the hammer and acted to hit Roselyn with the hammer and if she did not woke, he would not do anything to her. It was put to her that on 26 March 2017, when he departed from Black sands to the New Covenant church at Naburu with the hammer he intended to end the life of his wife. He answered: "*No gaf*". He said Roselyn stood up in the room and by struggling, she banged herself on the hammer three (3) times and she pushed him strongly and his hand sprang back and the hammer hit Roselyn's shoulder. He heard the evidence of Roselyn but he denied the injuries needed stitching.
88. He accepted he saw blood coming out after the first contact with the hammer and he was asked why he did not let the hammer. He answered he had just held on the hammer. It was in a hurry. Blood just come out after. He denied he assaulted Roselyn with the hammer three times. It was put to him and he accepted his protest was taking the hammer from Black sands to the New Covenant church, stood up and walked toward Roselyn and lifted up the hammer to hit Roselyn where she was sitting in the room.
89. He was asked and he denied that if Roselyn did not struggle with him he would kill her. He said that he told the court in evidence was true.



90. In re-examination, he was asked to clarify that if Roselyn did not struggle with him, he would have killed her. He answered she pushed him out. He confirmed the hammer was with the police. He maintained the injuries happened at the time struggling when she pushed him out.

**IX. Discussion: Finding of Facts and Credibility**

91. The following matters are agreed to by both counsel through a Memorandum they both signed on 5<sup>th</sup> April 2018 before the trial:

92. On Sunday 26<sup>th</sup> March 2017, at around 1.30pm, the complainant and her friends (Meriam, Norah and Naomie) were in the prayer room at the New Covenant Church telling stories after church service.

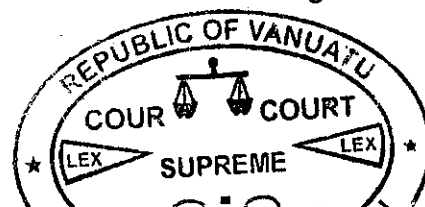
93. They then heard someone walking outside the room. J. Namri came inside the room and sat on a chair near the door. He then asked whether they knew him which one of the ladies saying yes he is Prophet Philemon (Johnson Namri).

94. The Accused then said that the reason why he came was to end his wife's life. The Accused then opened his pack bag and pulled out a hammer. He stepped towards his wife and hit her on her head with the hammer. Blood gushed out of the complainant's head as this happened. The complainant then grabbed the Accused as they struggled with each other. She was taken to the hospital after the Accused left.

95. I assess the evidence, the following are the findings of the facts:-

(a) On 26 March 2017, Accused J. Namri attended the church service at the New Covenant Church at Anaburu area, Port Vila. He is a member of that local church. He was called Prophet Philemon by the members of his church.

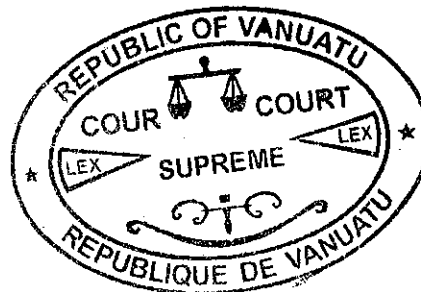
(b) In 2017, he lived with his children at Black sands outside of Port Vila. His wife was separated from him. He works as a security officer in a private company (of Jean Bourdet). After his wife separated from him, he looked after his children alone. He felt it was difficult for him. On 26 March, he attended the church service with his daughter Monique. But



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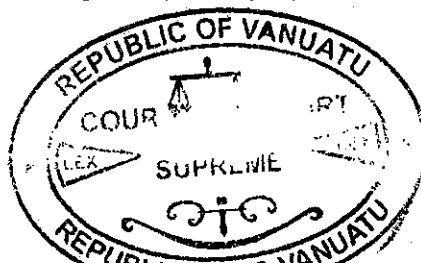
before the church service, he went to a room to change. That was when he said he saw one Pastor Moses whispered at the door of the room his wife (Accused's) was using at the premises of the church (prayer room).

- (c) After the church service, he took the bus back to Black sands with her daughter Monique. He prepared food for the children. He said her daughter Monique told him she went to the room her mother slept in. She told him: "hemi no stret." Her mother gave her VT1, 000. But Monique saw that the clothes of Pastor Moses were in the same room where her mother was.
- (d) J. Namri obviously was seriously disturbed and motivated to do something as he testified before me. He said he was looking after the children and his wife spent her time praying. What kind of prayer she was doing! He exclaimed himself!
- (e) In the afternoon he took a steel hammer of 25 centimetres and put it in his pack bag.
- (f) He took the bus from Black sands to the New Covenant Church premises at Anaburu. He went straight to Meriam Hellen Vuti's room (one of the prayer and healing room). Roselyn Iato, Meriam Hellen Vuti, Norah and Naomie were in that room. It was a small room of 2x4. He sat on a chair at the door in the room.
- (g) He asked the women including his wife whether they know who he is. One of the women responded to him that they know him and he is Prophet Philemon. He asked the women this question twice the women gave him the same answer to his question twice.
- (h) The Accused then unzipped his pack bag and took out from it the steel hammer of 25cm. He told his wife Roselyn Iato (Complainant) "*Me come blo endem life blo you tede.*"



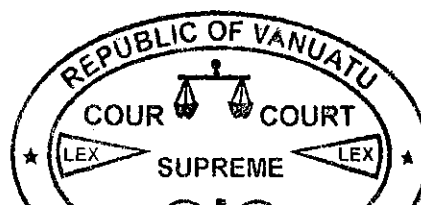
*d*

- (i) At the same time, he held the hammer and lifted his hand to attack his wife (Roselyn lato) and hit her on her head. Roselyn was sitting on a chair about two meters from him.
  - (j) At the same time lots of blood gushed out and spread in the room.
  - (k) Roselyn struggled with the Accused. He hit her again twice on her head and shoulder while she was struggling with him to save her life.
  - (l) Meriam told them to go fight outside. Roselyn struggled with the Accused and pushed him outside the room. She said "*eyes blo hem no lukluk gud*" as she banged the wall of the house.
  - (m) Pastors of the church were standing outside the room watching what was going on.
  - (n) The Accused stopped hitting his wife with the hammer once he was outside.
  - (o) Outside some custom leaves were applied on her injuries to stop the bleeding but as Roselyn said she was almost unconscious, she laid down outside when other women watched the blood on her head. She was taken to the hospital.
  - (p) Accused realised the seriousness of his wrongdoing went straight away to the police station with the hammer.
96. The facts are that on Sunday 26<sup>th</sup> March 2017 in the afternoon, Accused J.Namri did some act intended to cause the death of the complainant that went beyond just thinking or talking about it.
97. Here J. Namri had motives for his acts to cause death of the complainant. J.Namri testified he saw one Pastor Moses whispered at the door of the room Roselyn lato was sleeping in. J. Namri said he knew pastor Moses was sleeping with his wife (Accused's) in that room at the church premises. Although when cross examined he said he did not see Pastor Moses and Roselyn slept in that room, He said his daughter (Monique) went into the room



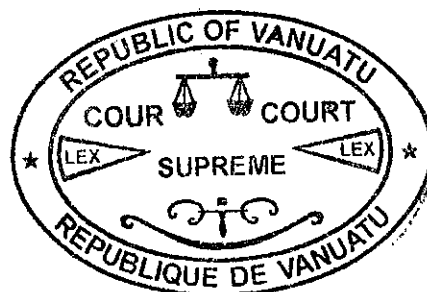
his wife was sleeping in and said "*hemi no stret.*" because Pastor Moses' clothes were also in the same room Roselyn Iato was sleeping in.

98. He took a hammer. He said he was not cross or angry. J. Namri was not blinded by any sort of provocation. He took a steel hammer and put it in his pack bag. He took the bus from Black sands to New Covenant Church premises at Anaburu. He sat down with the women. He asked them twice whether they knew who he was. The women responded to him. There was nothing, no act made in the heat of the moment or in the heat of passion based on some kind of provocation.
99. He told the women who were together with Roselyn that he came to put an end to his wife's life. That was his design to kill his wife. He thought about it. He took the steel hammer for it. He put the hammer inside his pack bag. He took a bus to the place his wife was. He repeated to the women including his wife, he came to end the life of his wife. He proceeded to assault his wife with the steel hammer on her head and shoulder. Bleeding gushed out from the serious injuries. There were deep cuts on the complainant's head. The injuries on her head were stitched as she said "*Doctor oli saumapem hed blo hem*" on two different parts of her head.
100. The first element of the offence is satisfied beyond reasonable doubt.
101. The second element is whether or not the Defendant acted with a premeditated design to kill the victim (complaint).
102. A premeditated design to kill means that there was a conscious decision to kill. The decision must be present in the mind at the time the act was committed.
103. In this case, the Accused attended the church service in the morning of Sunday 26 March 2017 with this daughter. Before the church service started he saw Pastor Moses whispered at the door of the room Accused's wife was sleeping. He said he saw and knew Pastor Moses Slept with his wife in that room. The cloths of Pastor Moses were seen also in that room (Defendant giving evidence of what his daughter saw when she went to see her mother in that room). The Accused said Roselyn did not attend the church service on that day. She was staying back in that room. She must have been afraid.



*[Handwritten signature]*

104. That was in the morning that the Accused said these things happened and or he saw these things. Accused did not do any act intended to cause the death because he acted in the heat of passion based on some provocation when he saw these things that morning.
105. After the church service, he returned back home with his daughter at Black Sands. He prepared food for lunch for his children and himself. He had lunch. After lunch, he took a steel hammer and hidden it in his pack bag. He took a bus and returned to the church premises where his wife stayed. He arrived at the church. He pushed his head in the room and he went inside the room He sat on a chair inside that room near the door. He talked to the women inside. He asked them if they knew who he was. They responded to him.
106. He told his wife that he came to end her life. He took out the steel hammer from his pack bag and assaulted his wife on her head 2 or 3 times with it.
107. The decision to kill must be present in his mind at the time the act was committed. The law does not fix the exact period of time that must pass between the formations of the premeditated intent to kill and the act. The period of time must be long enough to allow reflection by the Defendant. The premeditated intent to kill must be formed before the act was committed.
108. In this case, the premeditated intent to kill must be formed at lunch time before the act was committed in the afternoon. The question of premeditation is a question of fact to be determined by me as a judge of fact from the evidence. The facts of this case are sufficient proof of premeditation. There, the circumstances of the attempted killing and the conduct of the accused convince me beyond a reasonable doubt of the existence of premeditation at the time of the attempted killing. The second element is proved beyond a reasonable doubt.
109. As to the third element of the offence, whether there is sufficient material proof that the act would have resulted in the death of the victim except that someone prevented him (Accused) from killing the victim or Accused failed to do so.

*gl*

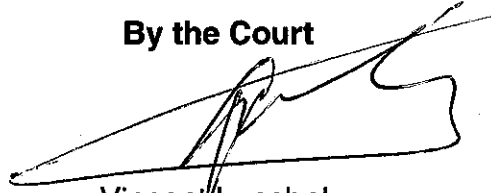
110. The evidence established that after the first hit on the head of the complainant, blood gushed out of the complainant's head as this happened. The Accused continued to hit the complainant on her head but at the same time, the victim (complainant) struggled and grabbed the Accused inside the small sized room and pushed him outside the room. The Accused was prevented by the victim from killing her. The facts also show that outside that room, the pastors of the church and others were also standing there watching what was going on in the premises of the churches.
111. It is rational to infer from the facts that that was the factual basis of the Accused failing to do so.
112. I am satisfied beyond a reasonable doubt that the third element of the offence is satisfied on the criminal standard.
113. I reject the Defendant's versions of facts that he did not have the intention to kill his wife. He wanted to protest because while he was looking after his children, his wife spent her time praying and do things with pastors. I do not accept that the Accused's actions or acts on 26 March 2017 amounted to simple protest.
114. The totality of evidence establishes that the acts of the Accused on 26 March 2017 amounted to attempted killing and the conduct of the accused convince me beyond a reasonable doubt of the existence of premeditation at the time of the attempted killing.

### **Verdict**

115. Defendant Johnson Namri is guilty of attempted homicide with premeditation contrary to section 106(1) (b) and section 28 of the Penal Code Act [Cap 135].

**Dated at Port Vila, this 29th May 2018.**

**By the Court**



Vincent Lunabek

Chief Justice

