

outside. Gregory Alekevu was holding a bush knife. The victim invited the brothers into his house to discuss the matter.

3 As the victim walked towards the kitchen of his house, Gregory Alekevu came up behind the victim very quickly. The victim turned back, saw Gregory Alekevu begin to swing the bush knife, and quickly raised both arms to protect himself. The blow from the bush knife completely severed the left forearm of the victim.

4 When the appellant saw this he ran away, but then came back and pulled the knife away from his brother Gregory Alekevu. Gregory Alekevu was subsequently charged with causing grievous harm to the victim, a charge to which he pleaded guilty and was sentenced to 4 years' imprisonment.

5 The Crown concedes that the evidence which it adduced at the trial of the appellant was insufficient to support the charge of causing grievous harm. In short, the evidence was insufficient for the Court to safely draw the inference that the appellant knew or suspected that his brother Gregory was going to commit violence, or that there was some kind of understanding between the brothers that bodily harm was going to be caused to the victim. I agree with the Crown submission that:

"In criminal trials the tribunal of fact must be satisfied of the guilt of the accused beyond reasonable doubt. Amongst other things, that means that you should be extremely careful about drawing any inference. You should examine any possible inference to ensure that it is a justifiable inference. In the context of a criminal trial, where proof is required beyond reasonable doubt, you should not draw any inference from the direct evidence unless it is the only rational inference in the circumstances".

6 In this case, notwithstanding the fact that Gregory Alekevu was holding a bush knife, the court cannot exclude the inference that the intention of the appellant was that he and his brother have only a verbal confrontation with Kenneth Robert, without physical violence. The fact that the appellant disarmed his brother following the attack supports such an inference.

7 For these reasons I consider the conviction to be unsafe. I now quash the conviction entered against the appellant on the charge of causing grievous harm to the defendant and Redison Alekevu is now acquitted of that charge and discharged.

BY THE COURT

**Justice IDR Cameron
Puisne Judge**