

IN THE CENTRAL MAGISTRATES COURT  
OF THE SOLOMON ISLANDS

Case No. 60/2014

R

-V-

NICHOLAS HEMU

Before Principal Magistrate Shepherd Lapo

20 February 2015

PC Teula P for the Police Prosecution

Kwaiga L for the Defendant

**JUDGEMENT**

**Introduction**

The accused is charged with one count of Malicious Damage after he took his Pleadings Not Guilty on 17<sup>th</sup> March 2014.

**The Law**

Section 326 (1) of the Penal Codes (Ch.26) states:

*“Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanour, and, he shall be liable, if no other punishment is provided, to imprisonment for two years”*

The prosecution *must* prove “*beyond reasonable doubt*” that the defendant had wilfully destroys or damages any property of another person.

In Osborne’s Concise Law Dictionary Eighth Edition define criminal damage as “A *person who without lawful excuse destroys or damages any property belongs to another, intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged*”

**The facts in dispute:**

The prosecution called one witness namely Sam Igeni who is the security officer of the National Referral Hospital and complainant of the incident. The following witnesses have been tendered in court by consent by the Prosecution and Defence.

- |                       |                  |
|-----------------------|------------------|
| 1. Michael Veets Bole | Marked Exhibit 1 |
| 2. Jimmy Douglas      | Marked Exhibit 2 |
| 3. Witney Niva        | Marked Exhibit 3 |
| 4. Photographs        | Marked Exhibit 4 |

The defendant decided not to give evidence on oath but remain silent.

The account of the incident given by the Defence in his submission in various ways is at odds with the account given by the prosecution witness. Evidence given by the witness that time he was standing at the Pharmacy wing opposite the morgue 10 meters in between at the National Referral Hospital facing the car park, he saw the accused walked from the car park, shouting and aggressive saying “*Me cross lo oloketa killim brother blo me*” (I got angry to the people who killed my brother) went straight to the Morgue. In his evidence the accused went inside by himself and the same time he heard the big bang from inside the morgue. That big bang alerted him that the autopsy table was damaged. He confirmed that no one was inside the morgue but only the accused. After he has done this, he saw one of his relative went inside the morgue and escorted the accused from inside the morgue. The autopsy table is used to operate the dead body. The big bang resulted to the full damage of the autopsy table inside the morgue. Photograph was produced in court as exhibit No 4.

In cross-examination, he was never moved and firmed and confidence in his appearance. Notwithstanding he never went in to see the damages because he attended to other duties but his statement was forthright and convincing and his evidence was not shaken in cross-examination. He was clear and unambiguous as to what he said.

This piece of evidence from the witness has connected at the timing when the accused walked from the car park to the morgue when the big bang was heard by the witness. Secondly, it was only the accused was seen inside the morgue. Therefore this circumstantial evidence is sufficient enough to support that it was the accused that went inside and wilfully damaged the autopsy table at the morgue belongs to the state.

**Application of facts to the Law.**

The standard of proof to be applied in this matter is conveniently summarised as follows:-

In *R v Wilson Iroi* (Unrep. Criminal Case No. 17 of 199) Muria J stated at page 3:

**“I remind myself that the burden is on the prosecution throughout to satisfy the Court beyond reasonable doubt of the guilty of the accused. If there is a doubt, slight though it might be, the accused must be given the benefit of that doubt. The overriding guiding principal in all criminal trials must be that a person charged with a criminal offence must be presumed to be innocent until proved guilty or has pleaded guilty. That principal is enshrined in section 10 (2) (a) of the Constitution.”**

As I consider the evidence I have this standard at the forefront of my mind. I have the advantage of hearing and seeing the witness give his evidence. Having had the opportunity of hearing all of the evidence and submission made by the Defence, I found the complaint to be reliable who had courage to come to Court and tell the truth.

### **Conclusion**

I am satisfied that the prosecution has proven beyond reasonable doubts on the circumstantial evidence to the degree that the defendant wilfully and unlawfully damage the autopsy table inside the morgue belongs to the National Referral Hospital. Therefore the accused in convicted as charged.

  
**Shepherd Lapo**  
**Principal Magistrate.**