

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 284 OF 2012S

STATE

VS

1. ISIKELI NAKATO

2. ATONIO MATAIRATU

Counsels : Ms. M. Fong and Ms. M. Khan for State
Mr. M. Fesaitu for Accused No. 1
Mr. A. Vakaloloma for Accused No. 2

Hearings : 3 to 7 and 10 to 13 March, 2014

Summing Up : 14 March, 2014

Judgment : 14 March, 2014

Sentence : 11 June, 2014

SENTENCE

1. In a judgment delivered on 14 March 2014, the three assessors and the court found you guilty, and convicted both of you, on the following information:

Statement of Offence

ARSON: *Contrary to section 362 (a) of the Crimes Decree No. 44 of 2009.*

Particulars of Offence

ISIKELI NAKATO and ATONIO MATAIRATU on the 25th day of June 2012, at Suva in the Central Division, willfully and unlawfully set fire to a building namely government buildings the property belonging to the Government of Fiji at Suva.

2. The facts of the case were briefly as follows. On 25 June 2012, Accused No. 1 had lunch with a third party. The third party asked him to burn Magistrate Court No. 6 down for \$5,000. Accused No. 1 later enlisted Accused No. 2 to assist him do the above. Both accuseds were employed as security guards by Matrix Risk Company, at Walu Bay. After having lunch, Accused No. 1 returned to his work place at Walu Bay, and arranged a gallon of diesel and matches to be used, in burning the Court House. Late in the evening, on the same day, both accuseds walked from Walu Bay to the Magistrate Court House at Government Building. Accused No. 1 was carrying the gallon of diesel in a bag. Near the Government Building, Accused No. 1 gave the gallon of diesel to Accused No. 2, who took the same to the Court House.
3. Accused No. 2 poured the gallon of diesel on a structure of the Court House, and set the same on fire. The two accuseds later fled the crime scene, when the Court House structure caught fire. The wooden structure was burning. Luckily, the security guards at the Government Building saw the fire, gathered some bottles of water, and manage to put out the same. If it wasn't for the guards' quick action, Magistrate Court No. 6 would have burn down to the ground.
4. The Legislature viewed the offence of "arson" very seriously, and had prescribed it a maximum sentence of life imprisonment (section 362 of Crimes Decree 2009). Her Ladyship Madam Justice Shameem had set the tariff for the offence a sentence between 2 to 4 years imprisonment: see **Kelemedi Lagi and Others v State**, Criminal Appeal No. HAA 004 of 2004S, High Court, Suva (12 March 2004) and **Aporosa Tuitokova v State**, Criminal Appeal No. HAA 67, 70 and 73 Of 2005S, High Court, Suva (25 October 2005). In **State v Kitione Bagasau Malugu**, Criminal Case No. HAC 048 of 2009S (5 March 2010), I followed the above tariff when sentencing a government employee to 2 years imprisonment for burning to the ground a PWD work shed. In **State v**

Raicebe and Others, Criminal Case No. HAC 208 of 2011, High Court, Lautoka (17 November, 2011), His Lordship Justice Madigan sentenced the accused to 4 ½ years imprisonment for burning Police bures.

5 In **State v Ravinesh Deo and A. Kamal**, Criminal Case No. HAC 005 of 2013, High Court, Labasa (13 March 2014), His Lordship Justice Bandara sentenced Accused No. 1 to 4 years 10 months and Accused No. 2 to 5 years imprisonment for setting fire to the Westpac Bank in Labasa. In **Public Prosecutor v Keneth Atuary and Awen George**, Criminal Case No. 59 of 2007, Supreme Court of the Republic of Vanuatu (10 December 2008), the Supreme Court sentenced Accused No. 1 to 6 ½ years imprisonment, and Accused No. 2 to 7 years imprisonment for burning down to the ground the Vanuatu Supreme Court Building. Looking at the above authorities, in my view, it would be appropriate to re-visit the tariff for arson in Fiji and set the same between 2 years to 6 years imprisonment. Of course, the final sentence will depend on the mitigating and aggravating factors.

6 The aggravating factors in this case, were as follows:

(i) The two accuseds deliberately set out to challenge the judicial arm of government by burning the Magistrate Court No. 6. The judiciary is an important institution for society. It oversees and supervises the practical implementation of the rule of law. It is essential to the orderly function and welfare of society. It is the public's insurance against anarchy and chaos. To attack it by burning a court house is an affront to society's wellbeing and it's sense of dignity and justice. To allow this behaviour to continue will surely lead to chaos. A deterrent sentence is obviously called for.

(ii) The court house is public property. It was paid for and maintained by the taxpayers of this country. To burn it, is an affront to the public purse.

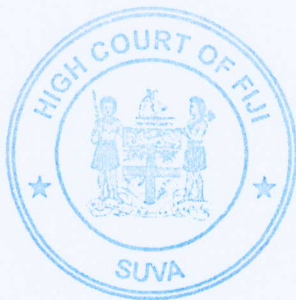
7 The mitigating factors were as follows:

(i) Accused No. 1, you are 38 years old, married with 2 young children, aged 5 and 1 year old, and you were the sole bread winner;

- (ii) Accused No. 2, you are 48 years old, married with 5 children aged between 23 and 17 years old, and you were the sole bread winner;
- (iii) Both of you had been remanded in custody since 20 August 2012, that is, approximately 1 year 9 months 21 days ago;
- (iv) The Magistrate Court No. 6 was not burnt down to the ground, although this was not due to your actions, but the actions of the government building security guards, who saw the fire and quickly put the same out, by pouring water on the same.

8 I start with a sentence of 6 years imprisonment. For the aggravating factors, I add 4 years imprisonment, making a total of 10 years imprisonment. I deduct 2 years for the mitigating factors, leaving a balance of 8 years imprisonment.

9 Isikeli Nakato and Atonio Matairatu, for setting fire to the structure of Suva Magistrate Court No. 6 on 25 June 2012, I sentence each of you to 8 years imprisonment, with a non-parole period of 7 years imprisonment each, effective forthwith.



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JUDGE

Solicitor for State	:	Office of the Director of Public Prosecutions, Suva.
Solicitor for Accused No.1	:	Legal Aid Commission, Suva.
Solicitor for Accused No. 2	:	Vakaloloma & Associates, Suva.