

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 061 OF 2014LAB

STATE

VS

AME BAVORO TABUCALA

**Counsels : Ms. P. Low for State
Mr. R. Tagivakatini for Accused**

Hearing : 8 December, 2014

Sentence : 10 December, 2014

SENTENCE

1. On 8 December 2014, the accused, in the presence of his counsel, appeared on the following information:

Statement of Offence

ARSON: Contrary to section 362 (a) of the Crimes Decree 44 of 2009.

Particular of Offence

AME BAVORO TABUCALA on the 20th day of July 2014, at Savusavu in the Northern Division, wilfully and unlawfully set fire to the Yaroi Village Bure, the property of Yaroi Village.

2. The information was read and explained to the accused. Through his counsel, he said he understood the same. He pleaded guilty to the charge. Through his counsel, the accused said he was pleading guilty voluntarily and out of his own free will, and no-one forced him to do so.
3. The prosecution then presented the summary of facts in court. Briefly, they were as follows:
“...On 20th July 2014 at about 10pm, the Yaroi Village Bure Meeting House was burnt. Civilian witnesses told the Police that they were drinking grog with the Accused on the night of the incident and later had beer with the Accused. Two of the civilian witnesses Meli Namasi and Tamasi Bisi saw the Accused lit the Bure and set it on fire with match stick and they saw the bure lit up and the fire which burnt down the village bure. Other witnesses saw the accused near the scene of the fire on the night before the fire and heard the accused talking about his wishes to burn the Bure as it is used for witch craft.

The Accused was arrested, interviewed under caution at the Savusavu Police Station on 21/07/14 and he admitted he was drinking beer with a group of man from his village on the night of the incident and at about 10pm set fire to the village bure as it was his intentions. He used matches to set the bure on fire and he saw flames coming out. The reason he set fire on the bure was that he was having a dream the whole weekend beginning Monday up until Sunday 20/07/14 that he was sleeping inside the bure and was surrounded by dead people.

The Accused was charged on 23./07/14 at the Savusavu Police Station.

The NFA report states 90% burn to the Bure...”

4. The court then checked with the accused and his counsel to find out whether or not the accused had admitted all the elements of the offence of arson. Through his counsel, the accused admitted he willfully and unlawfully set fire to the Yaroi Village Bure meeting house on 20 July 2014. As a result of the above admission, the court found the accused guilty as charged, and convicted him accordingly.

5. In **State v Isikeli Nakato and Atonio Matairatu**, Criminal Case No. HAC 284 of 2012S, I said the following:

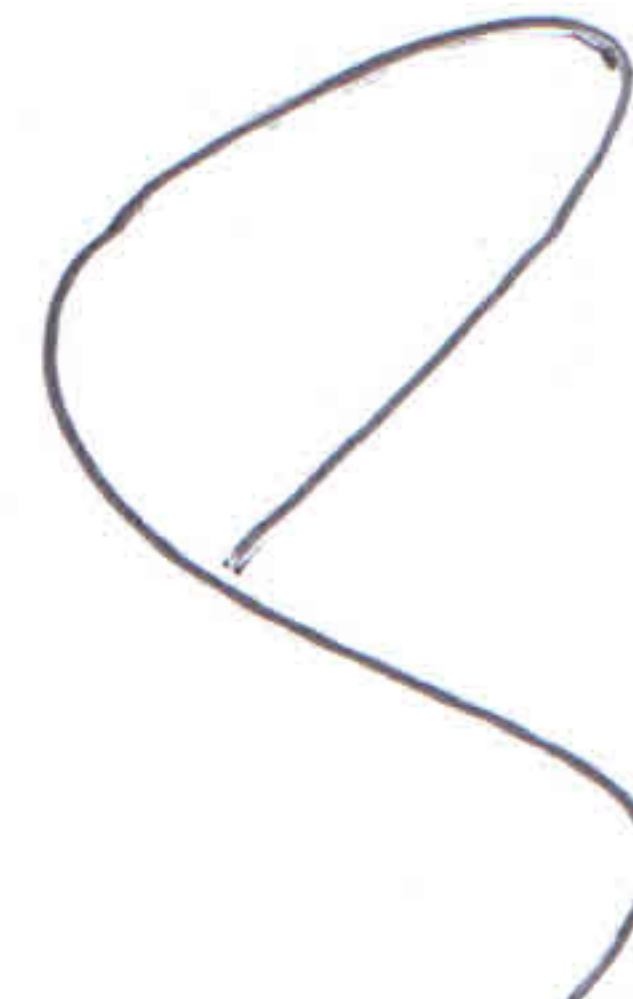
“...The Legislature viewed the offence of “arson” very seriously, and had prescribed it a maximum sentence of life imprisonment (section 362 of Crimes Decree 2009). Her Ladyship Madam Justice Shameem had set the tariff for the offence a sentence between 2 to 4 years imprisonment: see **Kelemedi Lagi 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.

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

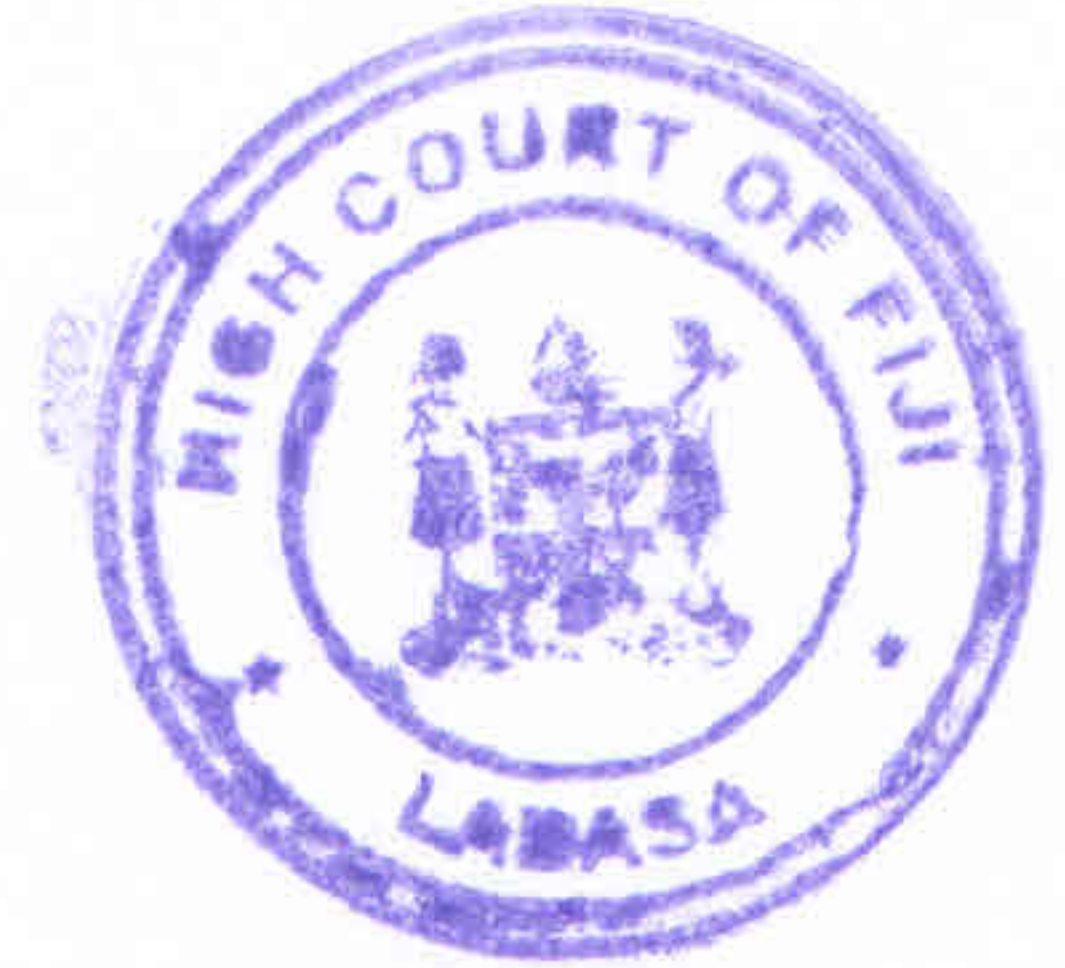
burning down to the ground the Vanuatu Supreme Court Building. Looking at the above authorities, in my view, it would be appropriate to re-visit the tariff for arson in Fiji and set the same between 2 years to 6 years imprisonment. Of course, the final sentence will depend on the mitigating and aggravating factors..."

6. In this case, the aggravating factors were as follows:
 - (i) The village Bure is the property of the Village. They used it for various social gatherings. By burning the bure down, the accused had shown utter disregard to the village property rights.
 - (ii) The village bure was reasonably huge and it would take a lot of resources, energy and patience to rebuild the same.
 - (iii) The accused was utterly selfish in burning the bure down, and he doesn't have the resources and money to rebuild the same.
7. The mitigating factors were as follows:
 - (i) At the age of 35 years, this is your first offence;
 - (ii) Although you pleaded guilty to the offence 3 months 19 days after the first call, you nevertheless saved the court's time;
 - (iii) You are married, with 1 child, and worked as a Field Officer for the Ministry of Fisheries;
 - (iv) You have apologize to your village people;
 - ((v) You had been remanded in custody for 2 days.
8. I start with a sentence of 3 years imprisonment. I add 3 years for the aggravating factors, making a total of 6 years imprisonment. I deduct 4 years for the mitigating factors, leaving a balance of 2 years imprisonment.
9. Ame Bavoro Tabucala, for willfully and unlawfully setting fire to the Yaroi Village Bure on 20 July 2014, I sentence you to 2 years imprisonment, with a non-parole period of 18 months imprisonment, effective forthwith.

10. I refuse to suspend the prison sentence because you have to learn that you can't go around burning village properties at your own whim. You have to learn to respect other people's properties. If you don't do so, you will forfeit your liberties by going to prison.



Salesi Temo
JUDGE



Solicitor for the State : **Office of the Director of Public Prosecution, Labasa.**
Solicitor for the Accused : **Legal Aid Commission, Labasa**