

PAKOA LOKIN  
DICK THOMAS KALTABESA  
WILLIE AINE  
SILAS PAKOA DAVID  
EDDIE DICK NAUT  
PAKOA NALU  
SANDY KALO

-v-

THE PUBLIC PROSECUTOR

JUDGEMENT

During 1989, Port Vila was subjected to an unprecedented series of attacks on property, particularly private homes. Police action resulted in a considerable number of people being charged and dealt with by the courts. As things progressed, it became apparent that not only were these people frequently working in gangs but the membership of those gangs varied. The result was that co-offenders were sometimes dealt with by different courts at different times, and, inevitably, sentences varied.

Eventually, as the offences continued, a number were sent to the Supreme Court for sentence or trial in order to reassess the appropriate level of sentence and these two cases were included. They were separately dealt with in the Supreme Court and therefore were listed as separate appeals but, having heard counsel, we feel it is appropriate to deal with them together as they overlap to a small extent. We have also been aware of the appeals of Nipiko and Kalfau against sentences passed for similar offences.

One of the almost inevitable results of the haphazard pattern of cases at the time is that the records of the hearings are sometimes confusing and incomplete. Whilst we state that in no sense of criticism of the court below, it has left us, in this case, with little or no information about the offences themselves.

In the case of Pakoa Lokin and others, the Court was not given any of the facts and, inadvertently, passed sentence

before mitigation. Following counsel's protests, the Court heard mitigation and passed reduced sentences.

In all the circumstances we have allowed all appeals and have directed the prosecution to reopen the facts of all the offences and requested counsel for the appellants to mitigate on any matters he feels appropriate. In all cases the appellants had pleaded guilty and so we are hearing the cases afresh.

It is not necessary to repeat the facts in detail but we summarise the main matters to set the chronology.

On 21st August 1989, Pakoa Lokin and Sandy Kalo were involved in breaking into Matarisu store and stealing a number of items. They were with another man, Willie Kaloris, who has been imprisoned for numerous similar offences and they were driven there by Silas Pakoa David in his taxi although charges against him were not proceeded with.

On 1st September Sandy Kalo was sentenced by the Senior Magistrate to 18 months imprisonment for a number of similar offences. They were contemporaneous with the offence on 21st August but it was not included.

On 8th September Pakoa Lokin was sentenced to a total of 13 months imprisonment by the Senior Magistrate and, similarly, the Matarisu offence was not included.

On 28th September, Sandy Kalo joined in a prison escape led by Kaloris and they all took a vehicle to facilitate the escape. The next day Sandy Kalo alone gave himself up and thus disassociated himself from his companions, who remained at large and committed further offences.

On 15th October, Pakoa Lokin, Dick Thomas Kaltabesa, Willie Aine and Silas Pakoa David broke into the premises of Vate Timbers and stole items of equipment to enable them to go straight to the USP Centre to take and open a safe on those premises. They were joined for this by Eddie Dick Naut and Pakoa Nalu and the safe was successfully removed. However, they were surprised by the police and all fled leaving their booty.

In addition to these offences, Pakoa Lokin admitted three separate offences during 1989 of receiving property stolen by Kaloris.

Of the appellants, only Pakoa Lokin and Sandy Kalo had previous convictions. Pakoa Lokin had a number, including those for which he had been sentenced to 13 months imprisonment. It is, of course, an important consideration that the offences on 15th October were committed whilst he was waiting for his appeal to be heard on the earlier sentences. In mitigation it has been pointed out that, in the year since he started his prison sentence, he has been a model prisoner and gives every indication of having changed his ways.

Sandy Kalo also had the previous conviction for which he received 18 months imprisonment.

We deal first with the five appellants who are first offenders.

Three are convicted of both the Vate Timber and the USP offences and two only with the latter but we see very little difference between them. This was clearly a carefully planned and relatively sophisticated plan in which the second offence depended on the success of the first. It appears that Thomas Dick Kaltabesa had worked at Vate Timbers and his involvement not only breached his employers' trust but no doubt supplied important information on the equipment and its whereabouts. The transport of the equipment to the USP was effected by the use, again, of Silas Pakoa David's taxi.

Participation in such a planned offence using special equipment and committed by a number of people merits an immediate sentence of imprisonment. Taking into account their previous good character and their pleas of guilty we feel the proper sentence for Dick Thomas Kaltabesa, Willie Aine and Silas Pakoa David is one of 2½ years imprisonment concurrent for each of the four offences.

As we have said, the fact Eddie Dick Naut and Pakoa Nalu only helped in the second offence saves them very little. They are each sentenced to 2 years imprisonment concurrent on each offence.

Pakoa Lokin falls into an entirely different category. As has been seen already, his reaction to being allowed to retain his freedom whilst awaiting his appeal was to take part in the Vate Timber and USP offences. In that offence he was the only man with previous convictions. He was already a practised criminal and we have no doubt he was one of the leading figures in that offence. During the whole period he was also receiving property stolen by others.

The way these offences were committed suggests an almost total disregard, even disdain, for the law and the rights of law abiding people. Whilst we accept the apparent change in his attitude and allow for it, the sentence must still mark the seriousness of his conduct overall.

He is sentenced as follows:

Matarisu Store - 21-8-89:

- 1. Unlawful entry - 6 months imprisonment
- 2. Theft - 6 months imprisonment concurrent

Vate Timber - 15-10-89:

- 3. Unlawful entry - 3 years imprisonment
- 4. Theft - 3 years imprisonment concurrent but consecutive to 1 & 2.

U.S.P. - 15-10-89:

- 5. Unlawful entry - 3 years imprisonment
- 6. Theft - 3 years imprisonment  
concurrent but  
consecutive to 3 & 4.

Receiving:

- 7. 5-10-89 - 6 months consecutive
- 8. Federation Co-operative: - 6 months consecutive
- 9. French teacher: - 6 months consecutive

This gives a total sentence of 8 years imprisonment.

In the case of Sandy Kalo, both counsel suggest that, had the Senior Magistrate known of the Matarisu store offence when sentencing on 1st September, the total sentence of 18 months would not have been changed. We cannot agree. The learned Magistrate sentenced for a series of three breakings, giving 6 months for each. We feel a similar sentence is appropriate in this case.

The offence of escape and taking a vehicle pose different questions. Escape must be punished in a way that will deter the offender and others and offences committed by escaped prisoners are particularly serious. It is only in a most exceptional case that sentences for escapes and related offences should be concurrent to other offences. This is not such an exceptional case but the Court must recognise the mitigating effect of the prisoners voluntary surrender.

In Sandy Kalo's case, having run, as it were, with the crowd, he showed sufficient good sense and courage to break from his co-escapers and return to serve his sentence. Such conduct reduces the penalty considerably.

We feel justice is met in his case by the following sentences:

Matarisu store:

- 1. Unlawful entry - 6 months imprisonment
- 2. Theft - 6 months imprisonment  
concurrent.
- 3. Escape: - 3 months imprisonment  
consecutive.
- 4. Taking vehicle: - 9 months imprisonment  
consecutive.

This gives a total sentence of 18 months imprisonment. The sentences of Pakoa Lokin and Sandy Kalo are also consecutive to the sentences they are currently serving and commence at the completion of the 13 months sentence in the case of Pakoa Lokin and the 18 months sentence in the case of Sandy Kalo.

As this is in effect a rehearing of the case, any time already spent in custody for those offences after the earlier sentences have expired (as we calculate may have happened in both cases) is to be deducted from the sentences passed today.

Dated at Port Vila, this 26<sup>th</sup> day of October, 1990.

*G. Ward*

MR JUSTICE G. WARD  
COURT OF APPEAL JUDGE

*E. Goldsbrough*

MR JUSTICE E. GOLDSBROUGH  
COURT OF APPEAL JUDGE