

Vanuatu - Public Prosecutor v Chief Henry Cyrel Manlawia; Public  
Prosecutor v Chief Kalorong Maripopongi - Pacific Law Materials

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
HELD AT PORT VILA**

CRIMINAL JURISDICTION

CRIMINAL CASE No. 24 OF 1997 AND  
CRIMINAL CASE No. 25 OF 1997  
Two (2) Criminal Cases arising out of the same incident.  
They were dealt with together.

Coram: Vincent Lunabek J., Acting Chief Justice

Counsel: Mrs Kayleen Tavoia for the Public Prosecutor  
Mrs Susan B. Barlow for the group of Defendants in Criminal Case No. 24 of  
1997 in *P.P. v. Chief Henry Cyrel and Others*  
Mr John Malcolm for the group of Defendants in Criminal Case No. 25 of 1997  
in *P.P. v. Chief Kalorong Moripopongi and Others.*

**I. Criminal Case No. 24 of 1997**

**PUBLIC PROSECUTOR**

-v-

- 1- CHIEF HENRY CYREL MANLAWIA**
- 2- WILLIE KALO**
- 3- DANIEL AUGUST**
- 4- SILAS WALES MANAVILALU**
- 5- ABAB WILLIE**
- 6- NOEL WILLIE**
- 7- PIERRE EDWARD**
- 8- KENSY SHEM**
- 9- AMOS WILLIE**

- 10- RISA FRED
- 11- JOEL WILLIE
- 12- TREVOR CYREL
- 13- HARRY SIMON
- 14- JOSEPH ROBERT
- 15- HERKUL KALSEI
- 16- BRUCE KALFAU
- 17- WILLIE BENWEL
- 18- ABBIE THOMAS
- 19- WILLIE PAUL
- 20- JOHN ABEL
- 21- PAKOA DAVID
- 22- KALROS ARCHIE
- 23- SETHY PHILIP
- 24- MARFAT KALMAR
- 25- KALSA KALSEI
- 26- MARAK BULE
- 27- TAURA TARIPU
- 28- ERIC TOM
- 29- JACK KALANGIS
- 30- JOHN ESSY
- 31- PHILIP CYREL
- 32- JACK ROBERT
- 33- MANSEREI FRANK

All from Paunangisu Village, North Efate

In Count 1:

Unlawful Assembly, contrary to section 69 of the Penal Code Act CAP 135.

PLEAS: GUILTY.

All the Defendants charged with Unlawful Assembly in Count 1 pleaded guilty, except the following Defendants:

- 1- Daniel August}
- 2- Abbie Thomas} all 3 Defendants were sick -
- 3- Taura Taripu} not present in Court.
- 4- Pierre Edward } They are from Tongoa Island.
- 5- Kensy Shem} They were not present in Court
- 6- Amos Willie} because of the incident which was
- 7- John Abel} happening (a boat was drowning).
- 8- Pakoa David} Some of their relatives were

9- Risa Fred} missing as a result of the incident.

In Count 2:

Arson, contrary to section 134 of the Penal Code Act CAP 135.

The following Defendants were charged with the offence of Arson in Count 2:

- 1- Chief Henry Cyrel
- 2- Silas Wales
- 3- Amos Willie
- 4- Willie Paul
- 5- Sethy Plilip
- 6- Marak Bule

PLEAS: NOT GUILTY.

**II - Criminal Case No. 25 of 1997**

**PUBLIC PROSECUTOR**

-v-

- 1- CHIEF KALORONG MARIPOPONGI**
- 2- SIMON MANUWIA**
- 3- ALICK DESNY**
- 4- KALSAMA DESNY**
- 5- KALSAU BETHERL**
- 6- WATSON MARCEL**
- 7- TOM MESEK**
- 8- WHINNEY BETHEL**
- 9- WILLIAM MALAS**
- 10- KAKAE MANSES**
- 11- MORRIS MARCEL**
- 12- CHRISTOPHER WILLIAM**
- 13- LEO JOHN**
- 14- ROBBIE HARRY**
- 15- JOHN BEN**
- 16- TIMO MANSES**
- 17- JAMES TOM**
- 18- JOHN NORMAN**

All from Paunangisu Village, North Efate.

**Charges:**

In Count 1:

Unlawful Assembly, contrary to section 69 of the Penal Code Act CAP 135.

PLEAS: GUILTY.

In Count 2:

Malicious damage to property, contrary to section 133 of the Penal Code Act CAP 135.

The following defendants are charged with the offence of Malicious damage to property as charged in Count 2:

- 1- Kalrong Maripopongi
- 2- Tom Messak
- 3- Whinney Bethel
- 4- Kalsa Desny
- 5- Morsen Marcel
- 6- James Tom
- 7- Morris Marcel
- 8- John Norman
- 9- Christopher William
- 10- Marcel Watson

PLEAS: NOT GUILTY.

The offence as charged in Count 2 was withdrawn against the following Defendants:

- 1- Andrew Sepa
- 2- Simon Manuia
- 3- Alick Desny
- 4- Kaloama Desny

5- Manassa Noland.

In Count 3:

Intentional Assault, contrary to section 107(b) of the Penal Code Act CAP 135.

The following two (2) Defendants are charged as in Count 3 above:

1- Kalsa Desny

2- William Malas

PLEAS: GUILTY.

Mr Malcolm applies to adjourn the sentence in respect to Count 3 to be dealt with together with the hearing of Count 2.

Mrs Bothmann Barlow agrees to the same effect.

**Suggestions of Mr Malcolm and Mrs Susan B. Barlow which were accepted by the Prosecution:**

1. Dispose of Counts 1 (x2) in respect to the 2 Criminal Cases No. 24 and 25 of 1997.
2. No immediate imprisonment sentence be imposed on Count 1.
3. Suspended sentence of imprisonment are proposed so that each Defendant in respect to each case knows that each of them and everyone is subject to the Court's Order to keep the peace. Any failure to keep the peace will end up in jail.
4. If the court is minded to deal with the Defendant in respect to Counts 1 in the two cases as suggested, then Bail be maintained under the current conditions in respect to Defendants who pleaded not guilty to both cases and in relation to each count in the two respective criminal cases Nos. 24 & 25 of 1997.

**SENTENCE**

[In respect to Count 1(x2) in Re. Criminal Cases Nos. 24 and 25 of 1997].

In the case of *Public Prosecutor versus Chief Henry Cyrel & Others* (Criminal Case No. 24 of 1997), all Defendants were charged with one Count of Unlawful Assembly contrary to section 69 of the Penal Code Act CAP 135. All the Defendants pleaded guilty to that Count except 9 of them who were not present in Court. Six (6) Defendants are charged with Arson in breach of section 134 of the Penal Code Act CAP 135 and these Defendants intended to plead not guilty.

In *Public Prosecutor versus Chief Kalorong Maripongi & Others* (Criminal Case No. 25 of 1997), the Defendants were charged with 3 Counts. They pleaded guilty to one Count of Unlawful Assembly contrary to section 69 of the Penal Code Act CAP 135. Some of these Defendants were charged with the offence of Malicious damage to Property contrary to section 133 of the Penal Code Act CAP 135, and pleaded not guilty to that charge. 2 Defendants were charged with the offence of Intentional Assault in breach of section 107(b) of the Penal Code Act CAP 135 and they pleaded guilty to that Count 3. The sentence of the 2 Defendants in breach of s.107(b) of the Penal Code Act be reserved pending the hearing of Count 2 - Malicious Damage to Property.

Because these offences arise out of same incident, it is practically convenient to deal with the guilty pleas in regard to the Counts of Unlawful Assembly taken from criminal cases No. 24 of 1997 and criminal case No. 25 of 1997 together.

As for other pleas taken in relation to other Counts in respect to the 2 criminal cases referred to, they are adjourned and be dealt with in due course.

In respect to the Count of Unlawful Assembly in breach of s. 69 of the Penal Code Act CAP 135, the Court is informed that the Defendants in Criminal case No. 25 of 1997 committed the offence of Unlawful Assembly in the course of an incident occurring on 18 September 1996. As Counsels explain to Court, this dispute arises out of differences of opinion about Rules of custom and who is entitled to rule in the area as paramount chief and as other chief.

It is very sad to see that this customary concern brought all of you, the two chiefs and your respective people to this Court, instead of having the matter resolved before your traditional Courts (Nakamal or Nasara) as custom chiefs and custom leaders.

I can understand that this custom feeling is deeply rooted in all of you. But instead of resolving your disputes in responsible way, you decide to act, to behave in the manner not justified by the laws of the Republic. Your actions amounted to criminal offences. You thus committed criminal offences.

The customary motive you have to act in the way all of you did, cannot justify your actions. Your actions are contrary to the laws of the Republic of Vanuatu.

Chiefs, leaders of community, President of the Republic, Prime Minister and Ministers, Judges and all people are subject to the laws of the Republic.

Unlawful Assembly is defined in s.68 of the Penal Code Act CAP 135.

Today before this Court you plead guilty to unlawful assembly as charged in counts 1 (x2) because you know that your action or behaviour is contrary to the laws of this Republic.

The maximum penalty imposed by law (see section 69 - Penal Code) is 3 years imprisonment.

You are chiefs and responsible leaders of your respective communities - you intentionally lead your people to breach the laws of Vanuatu by committing criminal offences.

The customary motives which are the bases of your actions do not constitute an excuse.

It is therefore my incumbent duty to sentence you according to law.

The Court is informed that Vaturisu and Malvatumauri were trying to find a solution. One of the two (2) chiefs undertook to respect that.

This case is one of the cases which justify immediate imprisonment sentence.

In the type of cases as this one, the appropriate sentence is 12 months imprisonment.

However, bearing in mind of the special circumstances of this case, the fact that chiefs are living with their people in the village/rural communities and in order to have peace, order within the local communities, immediate imprisonment sentence is not appropriate in the circumstances of this case.

1. The sentence this Court can impose upon all the respective Defendants as charged in Count 1 (x2) in Criminal Case Nos. 24 of 1997 and Criminal Case No. 25 of 1997, is one of 12 months imprisonment suspended for 3 years. [see attached list of names of Defendants concerned in the 2 criminal cases nos. 24 and 25 of 1997 marked "A"].

2. I further order that Defendants of the two group who have nothing to do with the 2 criminal cases which are subject of these proceedings, may return in the village of Paunangisu.

3. That -

(a) Bail be maintained in the current form for Defendants who pleaded not guilty to the offence of Arson contrary to s. 154 of the Penal Code Act as charged in count 2 in Re criminal case No. 24 of 1997.

(b) Bail be also maintained in the current form for Defendants who pleaded not guilty to the offence of Malicious Damage to Property contrary to s.133 of the Penal Code Act in criminal case No. 25 of 1997.

(c) Bail be finally maintained in the current form for the 2 Defendants who pleaded guilty to the offence of Intentional Assault as charged in Count 3 in the Criminal Case No. 25 of 1997.

4. That the sentence of the Defendants in respect to Count 3 in *Re PP v. Chief Kalorong Maripopongi & Others*. (Criminal Case No. 25 of 1997) be dealt with on the date of the hearing of Count 2. Damage to Property - contrary to section 133 of the Penal Code Act CAP 135 in the same case (criminal case No. 25 of 1997) as agreed by counsels.

Next hearing date is fixed on 4th April 1997 at 9.00 am.

**DATED AT PORT-VILA, this 25th February 1997**

**BY THE COURT**

**VINCENT LUNABEK J.  
ACTING CHIEF JUSTICE**



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