

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
(Criminal Jurisdiction)

Criminal Case No.46 of 2007

**PUBLIC PROSECUTOR**

**-v-**

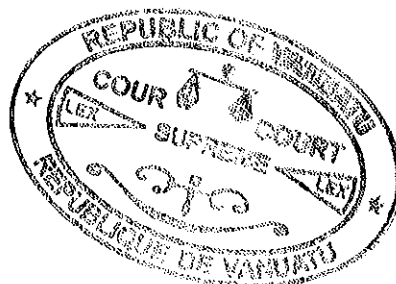
**DANIEL OBED  
KAKAE ERIC  
JIMMY CARLO  
MORTEN PAKOA  
DANIEL WILLIE  
NOEL WILLIE  
ESAU MARAKITATANO  
TIMATUA WILLIE KALO  
DANIEL SAM  
WILLIE ALICK  
KARIE KALO  
KALIA ROBERT  
ABEL MORRISON  
RUBEN WILLIE**

PP:  
Defence:

Mr. S. Blessing  
Mr. B. Livo

**RULING/SENTENCE**

The events that gave rise to the charges in this case occurred on **26 January 2006** at **Pele Village on Tongoa**. For one reason or another since the committal on **26 June 2007** the case has not been tried and has been dealt with by four (4) judges of the Supreme Court including, at the early stages, the **Hon. Chief Justice** and **Justice Hamlison Bulu** and, more recently, by **Justices Nevin Dawson** and **Robert Spear**.



I have read all the relevant notes and minutes of the judges in the court file and one theme seems clear and that is the Court's concern to promote every effort to achieve a customary reconciliation between the parties to this incident.

These efforts are entirely consistent with the provisions of **Section 38** of the **Penal Code [CAP. 135]** which urges the Court to "*promote reconciliation and encourage and facilitate the settlement according to custom ... of an offence on terms of payment of compensation or other terms approved by the Court...*" and **Section 39** which requires the Court "*When sentencing an offender ... (to) take account of any compensation or reparation made by the offender*".

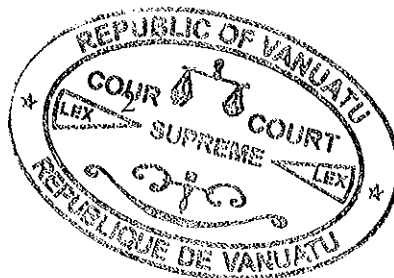
In this regard **Dawson J.** said in adjourning the case on **7 May 2009** "*... this Court requires that the parties are to make every effort to resolve their differences through the Tongoa Council of Chiefs. If a favourable report is received by the Court ... from the Council of Chiefs then these charges may be disposed off at that time*". Furthermore in identifying the underlying dispute as being one over a land issue that was subsequently resolved by the Tongoa Council of Chiefs his honour expressed his concern and wish "*... (that) there should be no further reason for the parties to be in dispute ... (and) the parties should be living together in a state of harmony with each others support and not in a state of mutual bickering. The parties have this last change to resolve matters between them ...*".

Similarly on **18 April 2011 Spear J.** in adjourning the case again, observed: "*There is a common commitment to see whether, in this relatively small community, there can be reconciliation so that people can move on with their lives. Accordingly, the case will be adjourned through to the next sitting of this Court during the Shefa tour ...*". His Honour also reiterated the Court's commitment to resolving the charges "*... in the hope that this will encourage those involved in this dispute in this community, to resolve their differences so that these criminal charges can be laid to rest*".

Finally and most recently at a review conference on **6 July 2011** attended by the prosecutor and defence counsel, this court indicated that if the parties to the charges were reconciled under custom then there was every likelihood that the Court would treat the defendants with some leniency in the event that there was a change of plea.

Since that indication this Court has received two (2) reports confirming that a substantial customary reconciliation ceremony took place on **7 July 2011** at the high chiefs' nakamal at Pele Village attended by the complainant's family members and the defendants, the Court Clerk, **Police Inspector Paul Thompson**, and **Pastor Sala**.

The ceremony was also witnesses by the chairman and members of the **Tongoa Council of Chiefs** and officials of the **Shefa Provincial Council**. Also in attendance were 10 of the 13 village chiefs in Tongoa as well as members of the community of Pele Village.



The custom reconciliation ceremony which lasted in excess of 3 hours commenced with a short devotion conducted by Pastor Sala followed by a speech from the defendants' side and speech from the complainant's in response. Then there was a speech from the Chief of Pele Village followed by a pig killing ceremony and the exchanging of gifts and kava between the parties. Amongst the gifts given to the complainants were **3 louvre blades; a new door; VT5,000** and a large quantity of produce. The days program ended with a kava ceremony in which all assembled took part including the 10 village chiefs.

Defence counsel also advised the Court that relationships have normalized since the custom reconciliation ceremony and peace once more reigns in Pele Village and in the cordial relations now established between the complainants and defendants.

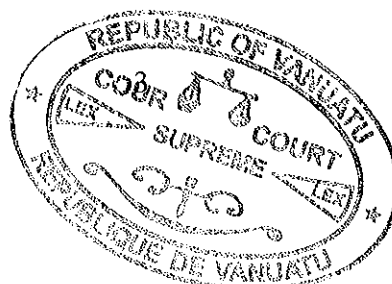
I wish to record the Court's appreciation for the efforts of the chiefs and villagers of **Pele Village** in restoring peace and calm to Pele Village and in utilizing the traditional ways of your Chiefs and ancestors in resolving disputes in your community. The law and this Court has not greater desire or purpose than to maintain law and order in society and, in this case, although the charges are aggravated by the presence of a large number of participants, no serious damage to property or permanent injury was caused to anyone.

The fact however that the offences were instigated by a Chief is a matter of grave concern to this Court. Chiefs must lead by good example and sound advice and counsel, and, not by taking the law into their own hands and misleading their people and youths into acts of violence and destruction against people that they have disagreements with.

Likewise the fact that the chief was able to influence two (2) teachers and an officer of the law, to break the law demonstrates the enormous responsibility that Chiefs bear in exercising their traditional authority and powers. Such authority should be used for good, to maintain the peace and uphold obedience to the law, not to break it.

All defendants have changed their pleas and pleaded "*guilty*" and I take that into account as a sign of remorse and recognition of the error of your ways as well as an acceptance of responsibility for your actions. I also accept that your chiefs and elders bear a greater responsibility for the commission of the offences even though they may not have physically participated in it.

All defendants have hitherto maintained a clean record and that is a factor to their credit which this Court should not lightly ignore. The fact that the parties are now traditionally reconciled is also an important mitigating factor which the Court is obliged to take into account in determining what sentence to impose. This Court is concerned to do its part in promoting the peace that has returned to the community of Pele Village, and not to re-ignite hostilities by the sentence it imposes.




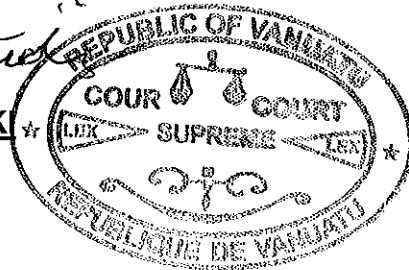
Accordingly, and in all the circumstances, this Court has decided to extend a degree of leniency towards the defendants in the hope that they will have learnt a valuable lesson from this experience and will not re-offend but will become law-abiding members of the community in Pele village.

The sentence of the Court is that of the defendants are discharged without conviction under **Section 55** of the **Penal Code** and each is free to leave the Court.

**DATED at Morua, Tongoa, this 25<sup>th</sup> day of October, 2011.**

**BY THE COURT**

  
**D. V. FATIAKI** ★  
Judge.



The seal is circular with the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. In the center, it says "COUR SUPREME" and "COURT SUPREME" with a scale of justice above the text. There are two small stars on either side of the central text.