

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

Criminal Case No. 10 of 2011

PUBLIC PROSECUTOR
-v-
MOSES KEREFU
SAM NAPITAKIARI
NAMAL NELSON JIMMY
JOHNSON IASSI
NANGIA IASSI
PETER ENAWANG

Coram: Justice D. V. Fatiaki
Counsel: Mr. T. Karae for the State
Mr. V. Henzler for the Defendants
Date of Sentencing: 16 December 2011

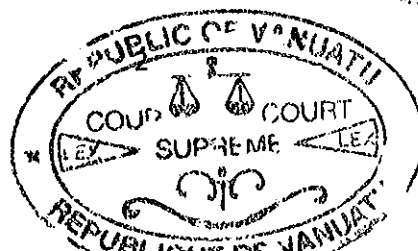
SENTENCE

1. The defendants in this case were jointly charged with the following offences:-
Count 1: Unlawful Assembly contrary to Section 69 of the Penal Code;
Count 2: Arson contrary to Section 134 of the Penal Code; and
Count 3: Theft contrary to Section 125 (a) of the Penal Code.
2. At the arraignment only the first four (4) defendants attended, namely, Moses Kerefu, Sam Napitakiari, Namal Nelson Jimmy and Johnson Iassi. All pleaded "not guilty" to counts 1 and 3 and "guilty" to count 2: **Arson**. The State entered *nolle prosequis* on Counts 1 and 3 and the defendants including Nangia Iassi



and Peter Enawang who did not appear in Court, were discharged on those two charges and the case proceeded on Count 2 alone.

3. The brief facts of the case admitted by the defendants, is that on 30 June 2011 the four defendants who are from **Zulu village** in North East Tanna together entered **Leketam village** at about 10.00 a.m. in the day time and set fire to four (4) traditional houses comprised of three (3) used for sleeping and a kitchen. The houses and contents were, completely destroyed and included gardening tools, kitchen utensils, clothing and beddings. All the houses were unoccupied at the time.
4. It is common ground that the setting fire to the complainants houses was a revenge attack or "*payback*" for an earlier more serious attack by the complainants who had entered the **North Gate Christian Centre School** compound and threatened the students and teachers. The complainants also damaged school buildings and set fire to several sleeping houses and a kitchen in the school compound. The father of the first defendant, namely **John Kerefu** was also abducted and assaulted with a knife and sustained an open head wound which required sutures. Charges were laid against the complainants in this case but could not be dealt with during this sitting of the Court owing to the illness of the principal instigator and leader, Chief Willie Laupas.
5. Having said that, experience teaches that revenge attacks that are not swiftly and resolutely quelled or are inadequately addressed, tends to escalate into physical confrontations that can have fatal consequences.
6. Be that as it may during the ensuing police investigations in the present case, the defendants were questioned about the incident and all frankly admitted taking part in burning the houses in question.
7. Subsequently an elaborate kastom reconciliation ceremony was performed at the **Launalang Nakamal** involving both sides to the dispute. The ceremony was witnessed by members of the Police Force, pastors, **12 nakamal** chief representatives and other community leaders.
8. The defendants party presented the complainants with a cow, six bundles of kava and six pigs. In exchange the complainants presented the defendants party with a cow, a pig and four bundles of kava. By all accounts relations

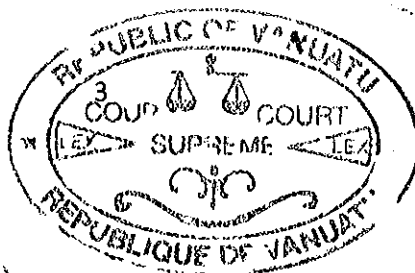


have been restored between the complainants and the defendants and peace has once again been re-established in the community.

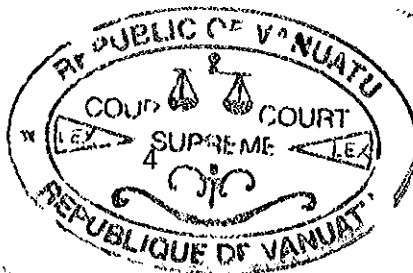
9. Prosecuting counsel in his sentencing submissions refers to two decisions: **PP v. Livo Worahese** [2010] VUCA 11 and **PP v. Michael Tabi** Criminal Case No. 21 of 2006 and submits:

"...the present case involved a land dispute between the defendants and the complainants. The defendant in their action solving this disagreement by burning of houses, this is not accepted under the law and the community at large. It is submitted that the Court should impose a sentence to discourage such behaviour and offending and encourage the public to seek other avenues to resolve such disagreements instead of the use of violence ... in looking at the whole circumstances leading to the offending the State submits that this is a one-off offending and that a suspended sentence should be the appropriate sentence considering the circumstances of this case."

10. Those "*circumstances*" includes, the fact that the defendant's actions were not entirely unprovoked even if such provocation does not constitute a defence to the charge, and furthermore, the setting fire to the complainants' houses occurred in the day time and at an hour (10am) when there would have been no risk of endangering human life.
11. Having said that this Court would be failing in its duty if it did not mark the community's disapproval of the defendants' actions in taking the law into their own hands in metting out summary punishment on the complainants houses however justified that may feel. The law exists for the protection of **both** the wronged as well as the wrong-doer. It is for the Courts to punish the wrongdoer upon an objective assessment of the facts detached from any desire to seek revenge or an excess of sympathy for the victim.
12. In my considered view having regard to the specific actions of the defendants and the consequences to the victims who lost their houses and possessions and mindful of the maximum punishment of 10 years imprisonment which the law imposes for an offence of arson, this was serious offending calling for a deterrent sentence. The starting point for the sentencing of the defendants is therefore fixed at 4 years imprisonment.



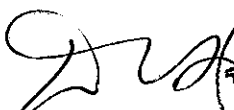
13. From that starting point I deduct 2 years in recognition of the mitigating factors in the case including the defendants' early guilty pleas, their relative youth and remorse and the custom reconciliation ceremony that, in part, recognises that the complainants are not completely blameless in what occurred. The end sentence is therefore one of 2 years imprisonment.
14. Having reached that end sentence I turn next to consider whether or not as the prosecution suggests, the sentence should be suspended. In this regard Section 57 of the Penal Code directs the Court's attention to the following matters:
- “(i) The circumstances of the case;
(ii) The particular nature of the crime; and
(iii) The character of the offender.”
15. As to (i) and (ii) above this was a crime committed within the broader context of a simmering land dispute between the parties which erupted when the complainants first attacked the defendants burning their houses and seriously assaulting the father of the first defendant. The defendants' crime was committed in retaliation and was limited to the burning down of the complainants houses that were erected on the disputed land.
16. As for (iii) the character of the offenders, they were or are related to the victims of the complainants' earlier attack and given their relative youth and their limited education no higher than grade 7 and, for two of the defendants, they had no formal schooling at all. Such persons are more likely to be guided by their emotions and less able to consider other options of resolving conflicts or of recognizing and resisting any manipulation that might have prompted their actions. The defendants are also first offenders who struck me as naïve impressionable individuals rather than hardened criminals who represent a danger to the community.
17. In all the circumstances and mindful of the provisions of Section 37 of the Penal Code and the meaningful reconciliation that has been achieved in accordance with traditional customary practices, I am satisfied that *“it is not appropriate to make (the defendants) suffer an immediate imprisonment”*.



18. Accordingly the 2 year sentence of imprisonment imposed on each defendant is ordered to be suspended for a period of 3 years as a deterrent against any future repetition of this unacceptable behaviour on the part of the defendants.
19. You are each warned that what this sentence means is that you will not go to prison today, but, if you are convicted of another offence in the next 3 years then you will be immediately sent to prison to serve this sentence of 2 years imprisonment in addition to any other sentence that may be imposed for your re-offending.
20. In addition I impose on each of you a sentence of 12 months supervision with the following special conditions:
- (a) That you do not enter Leketam village except at the invitation of the complainants;
 - (b) That you undertake any counselling program that may be required by the Probation Officer.
21. Finally, I urge each of you to stay out of trouble for the next 3 years and allow the law to resolve any land dispute that may still exist between you. If you stay out of trouble for 3 years you will not have to serve this sentence of 2 years imprisonment, and, I am confident that you will become the law-abiding members that your community and this Court expects from each of you.
22. You each have 14 days to appeal this sentence if you do not agree with it.

DATED at Isangel, Tanna, this 16th day of December, 2011.

BY THE COURT


D. FATIAKI
Judge.

