

PUBLIC PROSECUTOR

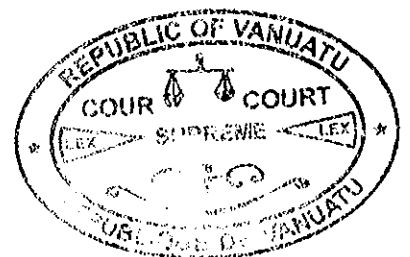
V

TOM ALICK
SAM KOUH

Hearing: 4 May 2011
Before: Justice Robert Spear
Appearances: Simcha Blessing for State
Eric Molbaleh for Accused

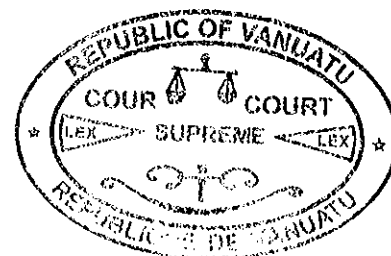
SENTENCE

1. Yesterday these two accused pleaded guilty to one charge of Unlawful Assembly being count 1 in the indictment. The State offered no evidence on count 2, 3 and 4 and on those charges the two accused were discharged.
2. Both Mr Molbaleh and Mr Blessing asked that I pass sentence without further delay. There is no need for a pre-sentence report to be obtained. That is because, in the main, those involved in the unlawful assembly have been dealt with except for these accused.
3. Unless there were exceptional personal circumstances here, and I am informed that there are not, the sentencing approach taken in respect of the other accused should be a clear pointer as to the sentence that should be imposed here.
4. The genesis of this prosecution is found in events that occurred way back on 9 April 2005 at Eratap. These two prisoners, along with 7 others, in all about 9 men, went to a house at Eratap at about 11:30 am. The male occupant of the



house was assaulted in front of his wife, his 10 year old son and a 15 year old boy who was visiting.

5. The purpose of the home invasion became clear when the male occupant of the house (the man who was assaulted) was told he was required to sign a certain legal document. This demand was placed on him while members of the group assaulted him. The terrifying presence in the home found effect on the man's wife who suffered a heart attack and had to be taken (as it happened by one of the group of nine) to the hospital for urgent medical treatment.
6. I have had particular regard to the sentencing submission of Dawson J of 29 May 2009. I am, however, unable to understand why it has taken so long for these two prisoners to be found and brought into Court so that this case can be brought to an end. Be that as it may, they are now here having being arrested either on Sunday last or yesterday. They have been in custody since that time.
7. Mr Blessing confirms that they can be sentenced on the basis that they were present and were generally away of the purpose of the home invasion, but that they did not take a active part in the assault or the making of demands on the male occupant of the house. That is the basis on which the State proffered only count 1 unlawful assembly yesterday and offered no evidence in respect of the other more serious charges.
8. Mr Blessing and Mr Molbaleh agreed that the offending by the two prisoners here today can be appropriately dealt with in line with the sentences imposed on the others with a sentence of 6 months suspended for 1 year with 75 hours community work.
9. I am prepared to accept the final determination of the case against them on that basis.
10. Before imposing the sentence, I pick up on a point made by Dawson J at the time that he passed sentence on the others on 29 May 2009. It was said that the group received instruction from their Chiefs to carry out this demand. Dawson J said that *the Chiefs should know better* and I want to emphasize that point. If, indeed, the Chiefs did indeed instruct or encourage those nine men to go to that house that day for that purpose then they have to been charged as well as parties to that offence.
11. Neither of the prisoners has a good understanding of English. Mr Molbaleh has kindly undertaken to explain the sentence imposed upon Tom Alick and Sam Kouh to them at the conclusion of this hearing.
12. You are each sentenced to a term of 6 months imprisonment. I suspend for 1 year to recognise the limited degree of involvement that you had in this matter. You need to be informed that if you commit and are convicted of a criminal offence within the next year then this term of 6 months



imprisonment will be activated and you will serve it. You will also carry out 75 hours community work.

13. *NB – I omitted to specify that the prisoners had 14 days to appeal their sentence. It will accordingly be necessary for them to be brought back to court for that pronouncement unless I receive an acknowledgement from Mr Molbaleh that this has been explained to them and that they do not want to appeal. I ask that Mr Molbaleh advise my secretary as soon as possible if a further appearance is required.*

BY THE COURT

