

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

Criminal Case No. 152 of 2011

PUBLIC PROSECUTOR

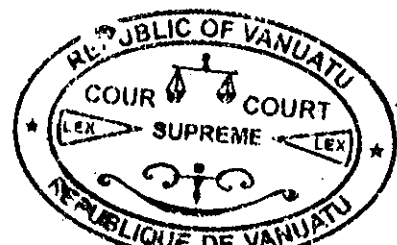
-v-

JIMMY ABRAHAM

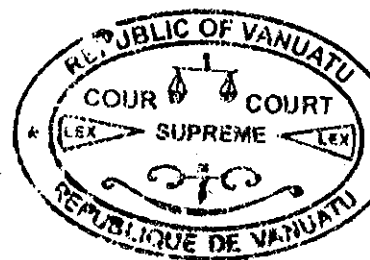
HELEN TOM

Hearing: 14 February 2012
Before: Justice R. L. B. SPEAR
Counsel: Tabisa Harrison for the Public Prosecutor
Lent Tevi for Accused

SENTENCE

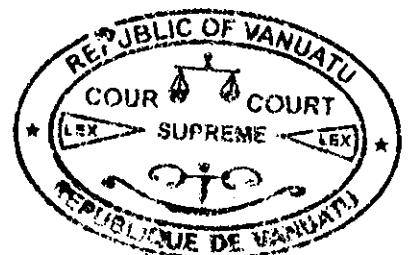


1. Jimmy Abraham and Helen Tom, you are for sentence today having pleaded guilty and been convicted of the burglary and theft of property from a farm on Snake Hill out of Port Vila. Jimmy Abraham, you also are for sentence on a further charge of Arson in relation to the destruction of a container and a house on the complainant's farm property.
2. A summary of facts is been presented by the prosecution and no real dispute is taken by you with it. It explains that on 19 September 2011, one of the complainant's farm worker discovered that both the house in which he was living on the complainant's farm and a storage container had been destroyed by fire. The police investigation quickly became directed towards the two of you and a search of your home revealed property that had been stolen out of the house.
- 3.
4. The police interviewed the two of you. Jimmy Abraham, you admitted not only entering in to the house on the farm and stealing items from it but also setting fire to the house and the container. Helen Tom, you initially denied any involvement in this offending but eventually acknowledged that you had assisted your husband to remove items from the house on the property.
5. The total loss to the complainant is estimated by the prosecutor (in her submissions) as being just under Vt 8 million in value. The container and its contents are estimated to have been worth approximately Vt 5 million, the house at Vt 887,000 and its remaining contents about Vt 2 million. Some of the stolen property has been recovered.
6. Mr Tevi takes issue on your behalf and suggests that the loss appears to have been overstated however the actual value of the loss is really of academic interest for sentencing purposes. It is notoriously difficult to be particularly accurate in respect of an estimate at loss when property is destroyed. Certainly, the prosecution has not provided a schedule of the property destroyed and the values assigned to those items, nor produced any photos of the scene all as the court might expect if the actual cost

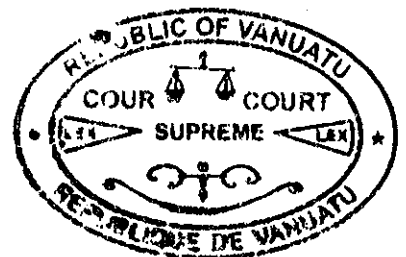


was of material significance. Mr Tevi also conveyed to the court his understanding that the house concerned was little more than a converted shed of relatively modest worth and certainly much less than the Vt 887.000 estimated by the prosecution. However, it is clear that there has been a substantial loss sustained by the complainant and, given your circumstances, where neither of you is in a position to make any sensible offer of reparation, sentencing should proceed just on that general basis.

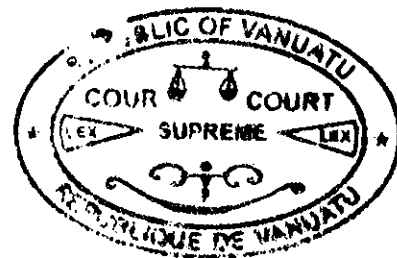
7. You have indicated that you are prepared to undertake a custom reconciliation ceremony but it is clear that the complainant is somewhat indifferent to that proposal.
8. This, of course, is serious offending particularly because deliberate destruction by fire often presents a risk to human life as well as cause needless loss. There is often the possibility of someone trying to save the property while the fire is blazing and there is also the possibility that someone might have been in the house at that time; perhaps sleeping and undetected. However, I accept here that there was no discernible risk to human life and that you well appreciated that to be so.
9. I accept Mrs Harrison's submission that this is serious offending particularly relating to you, Jimmy Abraham. Of course Burglary and Theft are also considered seriously by the Courts, particularly when it relates to a residential dwelling because there is often the risk of a confrontation with the property owner or the occupant of the house and that is when matters can escalate and people can get hurt. Again, it is clear here that this was never a possibility and that you well appreciated that you were unlikely to be disturbed.
10. There are further background matters that I want to address here. First, it is necessary to mention that the two of you are effectively husband and wife and that you have been so for some years. You have two children out of this relationship, a son 3 years of age and another son 8 years of age living on your home island of Tanna with other members of your family. You were also supporting another child that you had adopted and a further young girl, a relative, who was at Tebakor Junior Secondary School.



11. Jimmy Abraham, you have a serious disability in that you are profoundly deaf and you are mute. Mrs Harrison disputes that you should be considered disabled just because (as she put it) you cannot hear and speak. She contends that you are able to communicate by lip reading. I do not understand what Mrs Harrison is about with that submission as clearly you are disabled. I accept that this disability has presented real challenges to you during the course of your life.
12. I want to pause here and pay tribute now to the prison officer in Court today who grew up with you and who has assisted you during the Court sessions. He has helped you follow what has been happening in court because you not only have a difficulty with hearing what the lawyers and I have been saying but also that it has all been in English. So, I am grateful Mr Prison Officer for your assistance.
13. Despite your disability, you have been able to find good work over the years. You moved from Tanna to Port Vila and you were able to obtain skills' training and then employment. You found work with a local contractor and then ended up with work at the Stadium as a security officer and as a cleaner. You were able to provide for your family because of that employment.
14. Just over 18 months ago, you were approached by the complainant who offered you a position on his farm at Snake Hill working particularly in his sandalwood plantation. The job offer was for Vt 10,000 per week which I understand was a significant improvement on the income that you were receiving at the time. Additionally, the job came with accommodation on the farm. This work for the complainant proceeded uneventfully for the first 12 months but difficulties arose over the 6 months leading up to the burglary and the fire. You claim that you were not paid the wages due to you of Vt 10,000 per week. You claim that some weeks you received amounts around Vt 1,000 but for most weeks you receive nothing at all over that 6 month period despite the fact that you kept working on the farm.

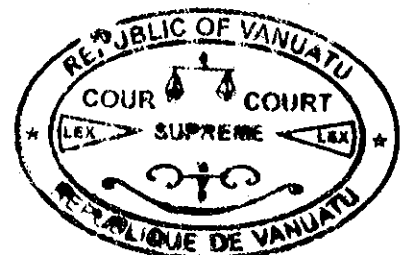


15. This claim that you were not paid by the complainant was raised by both the probation officer and Mr Tevi. I was informed by Mr Tevi that it is capable of confirmation by a person who was to be a witness in this case and who also worked for the complainant at the time.
16. As a matter of fairness, I put this to Mrs Harrison and inquired whether the prosecution accepted particularly Mr Tevi's assertion that there had been such substantial default on the part of the complainant as to the payment of wages over the last 6 months or so of the employment term. Mrs Harrison did not dispute that this was so and simply responded that the complainant was experiencing financial difficulties in his farming operation at the time.
17. Accordingly, for sentencing purposes, I accept that there was significant non-payment of wages over the last 6 months of the employment contract.
18. This clearly led, Jimmy Abraham, to your financial position become somewhat desperate as Mr Tevi has been at pains to point out. He argues that it diminished your ability to care and provide for your family. The complication, or the added frustration, was your inability to communicate your frustration to the complainant. In this respect, you had to rely upon your wife, Helen Tom to try and communicate with Mr Naupa – to pass on your requests for the wages due to you.
19. So there are a collection of unusual circumstances that exist here. They are particularly personal in nature and they relate to your disability, they relate to the state of despair that you were clearly in, Jimmy Abraham because you had not been paid the wages due to you, and you were clearly concerned as to what was to happen to your family.
20. I can accept that this quite unique combination of circumstances could have led a person, who had otherwise lived an unblemished life despite a severe disability, to reach the point of desperation and despair. Now, that is an explanation as to why you went to carry out the burglary but, of course, it is not an excuse. The property

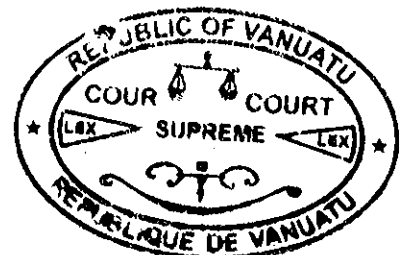


belonged to the complainant and you had no business stealing it or destroying it. However, I accept Mr Tevi's submission that you would not have committed these criminal acts if you had been paid your wages lawfully due to you. I am in no doubt that your decision to steal from the complainant and then destroy property belonging to him was out of character. There is nothing in your background that suggests that you had those criminal tenancies or these inclinations. So that places this case in something of a special category, as I see it.

21. There are differences in the summary of facts that need to be mentioned and, in particular, an assertion that you had been warned off the farm by the complainant because he was concerned that you were stealing from him. You dispute that. I do not consider that to be of sentencing significance such that I would have needed to have that particular issue resolved at a disputed facts hearing. However, clearly the account of events presented by the complainant to the police is limited in its explanation in respect of his relationship with the two of you and accordingly has to be treated with some caution..
22. I have received detailed sentencing submissions from counsel both for the prosecution and the defence. I am assisted also by pre-sentence reports that address in particular your respective personal background.
23. There is a letter from Correctional Services that has been provided to me. It is to the effect that it is difficult for Correctional Services to manage you, Jimmy Abraham, in prison because of your disability. I want to say now that I have not paid particular regard to that letter. It is a matter for Correctional Services to deal with those whom the Court sends to prison and, if necessary, what additional resources may be required to manage a prisoner with special characteristics simply have to be provided. The Court cannot be subjected to sentencing influence by Correctional Services.
24. I turn now to the sentence that must be imposed upon each of you.

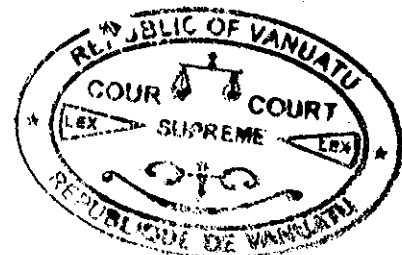


25. I want to deal first with you, Helen Tom. I acknowledge that you are the mother of two children, although it appears that one has had been sent away to Tanna. You also claim that you are 6 months pregnant. That is disputed by Mrs Harrison who understands that you are "*barren*" (as she rather bluntly put it) and that all your children are adopted. Whether or not that is so is of no particular concern to me. You have family responsibilities as a mother and you are also someone who has, to a large extent, provided a great deal of support to Jimmy Abraham, your de facto husband. There is nothing in your 30 year background that suggests that you are predisposed to dishonest activity such as burglary or theft. It is also clear from the summary of facts that you went with Jimmy Abraham that night to assist him.
26. Mr Tevi contends that you indeed endeavoured to discourage Jimmy Abraham in carrying out the burglary and the theft. However, it is difficult to understand why you then continued to assist him if you were so reluctant to become involved.
27. Be that as it may, particularly given the despair, the distress and the frustrations that occurred because of your financial position, caused (it would appear) directly by the complainant, I will impose a sentence in line with the recommendation of the probation – a sentence of community work. You are sentenced to 100 hours community work. You are not someone whom the court can expect to see back before it again.
28. Jimmy Abraham, you are in a more serious position because not only were you the person who (as it were) planned and undertook the burglary and the theft, with the assistance of your co-offender, but you also set fire to the container and the house causing substantial damage. In my view, the offending end point is 6 years imprisonment. That breaks down to 4 years for the arson with an uplift of 2 years for the burglary and theft. I then need to take account in particular of the circumstances that are personal to you and with which I have dealt with at length relating to your personal difficulties both with your disability and with the employment with the complainant. I consider that an allowance of 2 years is required to address those



circumstances and then of course you have pleaded guilty at the earliest reasonable opportunity. However, you were caught virtually red-handed with the stolen goods and so you cannot expect a full 1/3 discount. You made a full admission to the police when first approached about this.

29. You have also spent some time in custody on remand.
30. In all the circumstances, and because of the total sentence that I will impose here, I will sentence you to a suspended term of 18 months' imprisonment with community work.
31. It is appropriate to suspend the term of imprisonment in this case because of all the individual circumstances of the case that I have covered. It provides some insight in to why you became so desperate and frustrated as to commit these criminal acts.
32. It does not offend the general need for such serious crimes as Arson and Burglary to be dealt with seriously by the Court if you receive a sentence of imprisonment that is suspended. I consider that the sooner that you are able to return to the workforce and care for your family, the better. I do not expect that the court will see you again.
33. I need to tell you (and the prison officer who is assisting you will explain) that if you commit another offence over the next 2 years, you will go to prison for the 18 months I have imposed upon you along with any further term that you other offending may require. Mr Tevi will also explain that to you in due course.
34. So Jimmy Abraham, the sentence that I impose upon you is one of 18 months imprisonment suspended for 2 years together with 200 hours community work.
35. You each have 14 days to appeal the sentence imposed upon you if you do not accept it.



36. You need to go to the Court office today to be served with the Court order.

BY THE COURT

