

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

Criminal Case No. 126 / 2009

PUBLIC PROSECUTOR

V

GEORGE MICHEAL

Hearing: 25 April 2012
Before: Justice Robert Spear
Appearances: Leon. Malantugun for the Public Prosecutor
Eric Molbaleh for the Prisoner

SENTENCE

1. George Michael, you are for sentence on three charges of arson which charges each carry a maximum sentence of 10 years imprisonment.
2. You were found guilty of those charges at a trial conducted before Justice Macdonald in September 2010. Another man was also on trial at the same time - one Raymond Clay - but for a completely different charge and he has now been deal with by the Court. The sentencing imposed on Raymond Clay for threatening to kill can have no proper bearing on the sentence that I must impose upon you today.
3. The offending occurred in July and August of 2009 in the Maketea village on Emae. On 23 July 2009, you set fire to the home of Mr Jack Thomson. On 28 July 2009, you set fire to the home of Mr Atis Kelei. On 2 August 2009 you set fire to the home of Mr Sakiamata. All 3 homes were completely destroyed.
4. The estimate of total loss of the 3 homes contained in the compensation report exceeds Vt 11,000,000. That, of course, is the estimate of loss by

those victims relating particularly as to what it would cost to rebuild their homes.

5. What the compensation report does not address, however, is the harm that you have done you have done to those victims and to the community in which they live. They had their homes destroyed which is far more significant than the loss of a building in which they may have stored property in or such like. You attacked and destroyed the very centre of their family life that has clearly come at a significant emotional cost to them.
6. I have read again with care the detailed decision of Justice Macdonald.who is no longer able to sentence you as he is no longer in Vanuatu. He completed his time here and returned to New Zealand in late 2010. Accordingly, it is necessary that I attend to the sentencing on his behalf.
7. Justice Macdonald set out with great care in his decision the exact basis on which he found you guilty of those three counts of arson. You were, of course, found not guilty by Justice Macdonald of four further counts of arson that occurred at around the same time. The evidence was insufficient to establish guilt on your part.
8. You were for sentence before me on 9 September 2011 but you did not attend that although I note that your father attended. I was informed that you were on Santo. You have only recently been arrested (16 April 2012) on that warrant. So you were a fugitive from justice for a period of some 7 months.
9. In the background to this case is a dispute that has raged on Emae since about 1979. It relates to the issue as to who is the rightful holder of a certain chiefly title. This has caused feelings and tempers to become somewhat frayed. You belong to one side of the debate to who is the rightful claimant of the chiefly title. The three men whose homes you burn down belong to the other side. That chiefly title case has already been addressed by the Supreme Court but that has not quelled the tempers and the anger that surround the issue.

10. You decided you would act (either by yourself or with others) aggressively against Mr. Timakata's claim to the chiefly title. That has to be seen either as an attempt to intimidate those supporting Mr Timakata and instil fear in the hope that they might change their allegiance or to punish them for their view that they hold.
11. That you burned down their homes with such a deliberate purpose as this makes this case a serious case of its type. All too often, this Court sees disputes, particularly on the outer islands, escalating to pointless destruction of property. It is conduct which must be condemned in the most direct and emphatic way. It is serious offending of its type.
12. Arson is always serious because there is not only the needless destruction of property but also the risk of personal harm that a fire presents. People could have been asleep only to wake up find themselves trapped in the home. Additionally, there is a real risk to those who try to put out the fire. Those are not just possibilities as the experience of the courts is that they are real probabilities..
13. Have you achieved anything by this wanton act of destruction? Of course not. All you have done is to excuse the plan thrown further oil on the fire. You did make things even worse not only for those whom you support in this debate about the chiefly title but also those on the other side.
14. The circumstances of the offending are covered in considerable detail by Macdonald J and I did not proposed to repeat all that he has said. Over a period of just over a week, you burned down three homes in the same village and that was at the time when another four homes were also burned down. You are not for sentence in respect of those other four homes but you would have been aware that they had been burned down particularly when you set fire to the home of Mr Sakiamata. That would have been simply as the continuation of the reign of terror that was being exercise against those supporting Mr. Timakata.
15. You were 19 years of age when you committed this offending (whether by yourself or with others is not clear). It can be accepted that the poor

judgment that you exercised on those occasions can be explained by reason of your age. Indeed, if there had only been one charge that you faced, I would have been more inclined to make quite substantial allowance for your youth and the fact that you may have been caught up in greater matters over which you had little control and little real understanding. However, to be involved in three separate arsons over a period of about two weeks in the same small village require me to limit the credit that I can give you for your youth.

16. I am informed that you are now twenty three years of age and that you have found work. That is also explained in the pre- sentence report dated the 11 of October 2010 You have been in custody now for 9 days following the execution of the warrant for your arrest but up to then you were a source of income for your family and they relied upon you. However, rather than face up to this matter, as you should have last year, you ran away from it no doubt believing that if you ran away and went in to hiding for long enough, people might forget about this matter. That was another silly thing for you to do.
17. I have received written submissions from counsel, a pre- sentence report prepared back in 2010 and also a compensation report prepared in November 2010.
18. I am informed that you and your family were prepared to participate in a custom reconciliation ceremony but that has been repeatedly rejected by the victims and their families. Clearly, that is because of the dispute that has been raging for so many years now and which has seen such a significant division in your community. Who can blame the victims for not wanting to participate in a reconciliation ceremony? However, I need to take account of the fact that you were prepared to participate in such a ceremony and I will make allowance for that.
19. You were not however and never have been in a position where you could make a meaningful offer for compensation whether through the customary reconciliation process or by way of payment to the victims. You are out of work and you will be in prison for quite a period.

20. Having regard just to the offending and without taking account of your personal situation, I adopt an offending end point of five years imprisonment. Turning now to your personal circumstances, you have one previous conviction for possession of cannabis but that was in 2010 and after this offending and so I pay no regard to it. For the current purposes, I treat you as a first offender. I also treat you as someone who needs to be considered by the court as otherwise of good character.
21. So, for the fact that you have no previous convictions, you were only 19 years at the time and that you have been otherwise of good character, I am prepared to make a reduction 12 months against the sentence would otherwise have been imposed on you. I will then make a further 6 months reduction to recognise that you have been prepared to participate in a customary reconciliation ceremony.
22. That leaves me with a final sentence of 3 years and 6 months imprisonment which is the sentence now imposed on you in respect of each of these three charges. That sentence will be deemed to have started on the day that you are taken in to custody day being 16 April 2012.
23. You have 14 days to appeal this sentence if you do not accept it.

BY THE COURT

