

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

**CRC 77-14, 78-14, 79-14, 80-14, 81-14, 82-14, 83-14, 84-14, 85-14, 86-14, 87-14, 88-14,
89-14, 90-14 & 91-14**

PUBLIC PROSECUTOR

V

**JOHNNY KELEP JAPETH
SAKI SHADRAK SALEMUMU
SANDYSON SALEMUMU
CYRUS JOSHUA
SELWYIN FREDRICK
AMELTEN SALEMUMU
BENNY SALEMUMU
VIRA MANASA**

Sentence: Wednesday 19 November 2014 at 9 am at Lakatoro, Malekula
Before: Justice SM Harrop
Appearances: Tristan Karae for the Public Prosecutor
Andrew Bal and Stephen Carlo (PSO) for the Defendants

SENTENCE

1. This is the sentencing for eight defendants who were involved in a substantial number of arson incidents at Malwa Bay in Malekula on the 28th of January and the 2nd of February 2014. The main defendant is Johnny Kelep Japeth. He has pleaded guilty now to 15 separate arsons; he pleaded guilty at the first opportunity in August and this has been confirmed on Monday when the Public Prosecutor provided an amended information and this morning when a further count, count 23, was included, that having been inadvertently overlooked on Monday.
2. The other seven defendants are for sentence on seven counts of aiding and abetting seven of those 15 arsons that Mr Japeth committed; all of the fires that they helped with were on the 28th of January. Those seven pleaded guilty on Monday having initially pleaded not guilty in August but they did so immediately after the

information was amended to its current form and after I gave a sentence indication to them that if they pleaded guilty they would receive a suspended prison sentence of around 18 months suspended for about two years plus 300 hours community work. I also said I expected there would be a custom reconciliation ceremony in due course at Malwa Bay where all the fires occurred. Although that would occur after sentencing I would take into account the defendant's remorse and apology and willingness to take part in such a ceremony and I would request a report from the Probation Officer about that. Of course since all seven of you have pleaded guilty on that sentencing indication basis I will honour my side of the bargain and impose the kind of sentence in indicated.

3. The facts are helpfully summarised in Mr Garae's submissions. Before I talk about them I record my thanks to both Mr Garae and Mr Bal for the quality of their submissions produced at short notice and away from their home offices. In particular I want to thank Mr Bal for acting as de facto probation officer in that he has provided personal information about each of the defendants which is very important for me to know about. The Probation Officer here in Lakatoro has unfortunately been unwell so Mr Bal stepped in to help.
4. Turning now to the facts, all of the defendants are former residents and native of Malekula and grew up at Malwa Bay. Later, over the years, they all moved to Malo Island and settled there. In 2013, during the Christmas- New Year period, they returned to Malwa Bay and there were meetings with the complainants about the land issues. This land dispute has been going on since about 1970 and is still unresolved. The outcome was very frustrating for the defendants but when the festivities ended most of the defendants and their families returned to Malo Island except for Johnny Kelep Japeth and Sairas Joshua.
5. They told the complainants at Malwa Bay to vacate the land and move up the hill to Maltunge Village. Some of the Jonas family the complainants began moving their property and building houses up the hill from Malwa Bay. On about 25 January there was a fight between some members of Johnny Kelep Japeth's family and the Jonas Family where apparently Mr Japeth's brother-in-law was assaulted.

6. As result of this I infer that Mr Japeth arranged for the other defendants to come back from Malo to Malwa Bay on a ship. Mr Japeth was angry with the Jonas family and on 28 January he led the way while the other defendants followed. He was holding a bamboo covered with wet cloth and starting setting fire to the Jonas houses. At that time most of the properties had been vacated and the buildings had been left standing prior to relocation. The other defendants helped Mr Japeth primarily by following him and standing by when the houses were burning. This prevented any of the complainants stopping what was happening.
7. On 2 February, Mr Japeth again during the day time went back to the village and set fire to houses belonging to three other complainants. Arson or helping with arson is undoubtedly a very serious crime as the 10-year prison sentence attached to it indicates. It is very hurtful for the victims who have worked hard for and/or paid for the buildings and their contents. A person's home and where they sleep and their family lives is a special place for any family and being forced to move because somebody burns your house down deliberately is very upsetting. In this case I know there were personal items in the houses and no doubt some of them will not be able to be replaced.
8. So fires are not just about burning property but also about mentally hurting the people who live in the houses. No doubt Mr Japeth and the others intended that the victims be hurt in that way, otherwise they would not have bothered doing it. The fact that there is a land dispute behind this and the fact that somebody, a relative of Mr Japeth, may have been assaulted by one or more of the victims is no excuse. In a civilised society we cannot have people taking out their frustrations about a dispute in this way because in the end it helps nobody and it encourages the victims to respond in the same kind of way. So I ask the defendants how they would have felt is all of the victims had in retaliation assembled 50 people together and got on a boat to Malo to burn down all of your houses?
9. You see this conduct can go on and on and all that happens is that property is destroyed but the dispute behind remains. So you have to find a way when you have a dispute to resolve it peacefully by talking and not by violence to people or property.

10. Coming back to the details of this case it is undoubtedly a very serious one because Mr Japeth has pleaded guilty to 15 arsons involving 47 buildings and so the range and number of victims and the value of the property lost is very substantial. It will take a lot of work or vatu to replace and that is without trying to put a value on the mental consequences I have mentioned. Mr Japeth, you obviously did this in a planned and premeditated way. You deliberately travelled all the way from Malo to Malwa Bay and you arranged for others to come to help you and you committed these offences over two separate days, five days apart. So you had plenty of opportunity to think to yourself, I have made my point I have done enough now and I will stop, but instead you carried on and the serious and extensive damage resulted.
11. For the other seven who helped there is uncertainty as to exactly what each of you did in relation to each arson but there is no doubt you deliberately helped Mr Japeth with seven of the arsons and that without your help, he could not have succeeded so well. You, by your presence in such numbers, helped prevent the victims from limiting the damage. So you don't need to have been involved in any burning yourself to have been very helpful to Mr Japeth.
12. I now turn to consider the appropriate sentence for Mr Japeth. Mr Garae helpfully refers to a number of authorities and suggests a starting point before considering personal mitigating factors of four years' imprisonment for Mr Japeth. I will not go through the case authorities he mentioned because I accept his submission as the starting point and I understand Mr Bal does as well.
13. From that starting point Mr Garae accepts there must be significant deductions for particularly your early guilty plea Mr Japeth and in addition your apology to the victims and the fact you have no previous convictions of any kind. So Mr Garae suggests an end sentence of 16 to 18 months imprisonment. Mr Bal does not identify a starting point but having regard to his submissions I think he accepts Mr Garae's suggestion of four years. Mr Bal does suggest an end sentence of 24 months imprisonment or two years. Although it is unusual for the defence to suggest a longer sentence than the prosecutor, in this case I consider Mr Bal's submissions is correct.

14. I adopt the starting point of four years imprisonment taking into account all of the aggravating features but noting that life was not at risk in this case. There is no doubt that a strong deterrent sentence is needed and indeed I think more than four years could be justified. But taking the four years as a starting point, the one-third deduction for early guilty pleas is 16 months, so that takes it down to 32 months or 2 years and 8 months.
15. I accept further discount is required because you have no previous convictions. You were until this incident of good character and I note that you are the sole breadwinner for your family and you have three children and support your mother who is a widow. You are 29 so there is no discount for youth, you are old enough to know better than to behave like this.
16. I note that you say you are planning to build a tourist resort at Malwa Bay. You might like to think that for this to occur and succeed, a good relationship with all of the people who live at Malwa Bay will be needed. I consider the maximum further discount is another 8 months and that takes it down to two years imprisonment.
17. I should say that I have taken into account your willingness to take part in a custom reconciliation ceremony, my understanding is that the victims do not wish to do that until after the buildings have been rebuilt. That is their right but I do take into account your willingness to help with being part of a custom reconciliation ceremony even though being in prison is obviously going to cause difficulties with that [however, see the postscript to this judgment] but I recognise as should the victims that you have immediately pleaded guilty and expressed your regret and apology to them publicly.
18. I am required to consider whether I should suspend the two- year prison sentence. I am not prepared to do that because this case is far too serious and the leader of these attacks must be sent to prison to tell others they cannot behave in this way. Finally I am told that you spent one week in custody after you were arrested before getting bail. Under section 51 (4) of the Penal Code I must deduct that week from the calculation of the sentence. In fact, I will reduce it by two weeks because taking parole into account you have already effectively serve a two week prison sentence so

the end sentence I impose on you is that of **one year and 11 ½ months imprisonment.**

19. Turning to the other seven defendants I will treat you all the same for sentencing purposes. Your roles in the arsons are not distinguishable on the information I have before me, also you each have no previous relevant conviction so there is not much to distinguish your personal circumstances. I repeat I am grateful for the information about your personal circumstances which Mr Bal has put before me and I have read it carefully. Again I note that several of you wish to develop businesses at Malwa Bay. That makes your reconciliation with your fellow people from Malwa Bay including all the complainants essential. You were all until this incident of good character and responsible citizens. You range in age from 17 up to 55. The older ones among you, Saki and Sandyson Salemu, in my view by your age must morally at least accept more responsibility. You were in a position to tell Mr Japeth and the others that this was not the right way to behave. Instead you supported Mr Japeth in his actions and encouraged the others to be part of it. However I do not propose to impose a different sentence on you having made those comments.
20. I acknowledge your willingness to apologize and to take part in a custom reconciliation ceremony including rebuilding the buildings. Given the connection you all have with Malwa Bay and your relationship with the local people and the victims that is a very important factor in sentencing. I hope that something good comes out of this and that you can resolve not only this case but also the underlying land dispute which led to it because unless you can do that there will always be a risk of this kind of thing happening.
21. Mr Garae suggests a starting point of 12 months imprisonment with an end sentence of 6 to 8 months suspended for 12 months plus 300 hours community work. Mr Bal again suggests a somewhat greater sentence 14 months imprisonment suspended for two years. Again with due respect to Mr Garae I think Mr Bal's suggestion is more appropriate to the case and the case authorities. In the sentence indication I indicated a approximately 18 months imprisonment suspended for two years. Taking into account the fact there were seven separate arsons and that you all accept you helped with all of them I think a starting point of two years imprisonment is appropriate.

But like Mr Japeth you are entitled to a substantial discount for your guilty pleas which were made as early as possible in relation to the current form of the charges and of course for the other mitigating factors I have mentioned. I therefore conclude that you should have the same 50% overall discount as Mr Japeth received so the end sentence for each of you is one of imprisonment for 12 months but that will be suspended for two years. That means as long as you commit no offence of any kind in the next two years you will not serve any of the 12 months' prison sentence but if you do commit another offence you will be required to serve both that 12 month prison and whatever is the sentence for that other offence. In addition each of you will serve 300 hours community work.

22. In relation to all eight of you I am required under the law to consider making an order for compensation to the victims. I am told and I accept that you do not have any money to make such payments so I decline to make an order for that obvious reason. However, the suggested approach from this point is that you are able to provide work and labour and that you will over the next few months be involved in rebuilding the buildings that were burnt. After that has been done the victims as I understand it will be willing to have custom reconciliation ceremony. That as I have said several times is highly desirable from a number of perspectives. Ideally I would defer sentencing until all of that is done but because I may not be returning to Malekula next year it is sensible to do the sentencing now.
23. I do however order that by 10 March 2015, a Probation Officer is to provide a report to me, to Mr Garae and to Mr Bal about the process I have mentioned.
24. Finally, each of you has 14 days to appeal against the sentence imposed on you if you are dissatisfied with it.

BY THE COURT

Postscript. Since delivering this sentence I have been considering ways in which it may be possible for Mr Japeth to take part in the rebuilding of the buildings that were burnt down by him. It is entirely appropriate in my view that he takes part in that because he was the primary offender in relation to the burning of those various buildings. Clearly any custom

reconciliation which occurs subsequently will likely be much more effective if Mr Japeth has been involved in the rebuilding.

Obviously on the face of it the prison sentence I have imposed precludes his being involved because even with the earliest parole he would not be released until 19 November 2015. It is important that the rebuilding occur long before that.

In the recent Court of Appeal session the Court had occasion to criticise the purported use by the police of section 39 of the Corrections Act 2006 as a basis for removing a defendant held in custody on remand for the purposes of an interview by the victim – this was CAC 3/2014 *Public Prosecutor v Paul Tunat*.

In the course of considering the Corrections Act it was noted that it is possible under s39(3) for a prisoner to be removed for “*judicial purposes*”. It occurs to me that, assuming the Corrections authorities otherwise think it appropriate, there is the possibility of Mr Japeth being removed on a temporary basis from the correctional centre where he is serving his prison sentence to attend to rebuilding at Malwa Bay.

I impose no obligation whatsoever on Corrections officials to arrange this if they do not for pragmatic or logistical reasons consider it is appropriate. I merely point out the possibility to them and endorse the purpose as a “judicial purpose”.

Beyond saying that, I leave the matter entirely to the Corrections officials.