

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

Criminal Case No. 38 of 2014

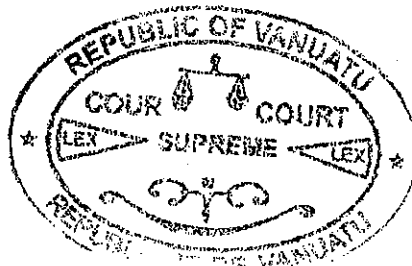
PUBLIC PROSECUTOR
V.
KALTO SITANGTANG

Coram: Justice D. V. Fatlaki
Counsels: Mr. K. Massing for the State
Mr. J. Garae for the Defendant
Date of Sentence: 20 November 2014

SENTENCE

1. The defendant was originally charged with 2 counts of Arson involving the same complainant. At his arraignment on 23 June 2014 the defendant pleaded guilty Count 1 of burning a sleeping house and kitchen belonging to the complainant. He pleaded not guilty to Count 2 and upon the prosecutor indicating that he wished to proceed with the second count, the defendant was released on strict bail conditions to await his trial on the second count of Arson.
2. On 18 August 2014 a trial was fixed for 17 to 21 November 2014. On 17 November 2014 prosecuting counsel entered a "*nolle prosequi*" on the second count but the trial on Count 1 could not proceed as the defendant was not present. A bench warrant was issued for the defendant's arrest.
3. On 18th November 2014 the defendant appeared under arrest and was discharged on the second count of Arson pursuant to Section 29 of the Criminal Procedure Code. The prosecutor then outlined brief facts of the first count which the defendant admitted and he was convicted on his guilty plea which he had earlier confirmed.
4. The facts of the case are summarized by the prosecution as follows:

"The complainant and defendant were brothers. There had been some hard feeling against each other which makes the defendant got angry with the



complainant especially the love affair that the complainant had with his (defendant's) mother in law.

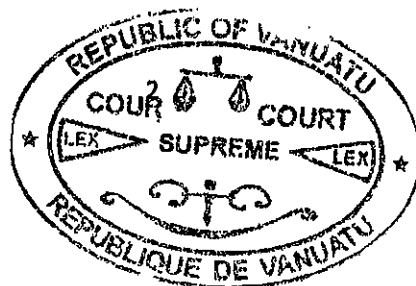
As a result of the hard feelings between the defendant and the complainant the defendant device (sic) a scheme to burn down the complainant's houses. In order to carry the plan the defendant invited his nephew Jean Pascal to have kava with him on the night of 17th January 2014. The defendant sent two boys from the village namely Aru Toa and John to go and bring Jean Pascal over to his house so that they can have kava. The intention behind the kava is for him (defendant) to asked Jean Pascal to accompany him to go and burned down the complainant's house.

The reason why he (Jean Pascal) did not involve in the criminal act was that as he stated in his (police) statement that he find it hard to burn down the house that belong to his uncle.

The first two houses were burned down on the 21st of February 2014, when the complainant was admitted at the Northern District Hospital.

The defendant was not identified until an investigation was conducted. The witness Jean Pascal reveal the facts to the police where the police identify the defendant as the main person burning the houses."

5. On 28 February 2014 the defendant was arrested by police and under caution he admitted burning down the complainant's houses. In particular, the defendant asserted: "... Peter (the complainant) *ibin stonem brekem hand blong mi mo stap stealem kava blong mi stap drink mo hemi stap gat affair wetem stret mama blong wife blong mi. Area wei hemi stap long hem hemi blong mi mo ol tinkink ya nao mekem mi cross tumas mo go bonem haos blong hem*".
6. The defendant, whilst admitting the facts, disputed the complainant's list of items lost in the fire and their valuations (a total of VT8 million). He accepted that both houses were constructed of traditional materials and together with their contents would have been worth no more than VT60,000.
7. It is common ground that the burnt houses were unoccupied when they were set alight. Indeed the complainant and his wife were admitted at the Northern District Hospital at the relevant time and were therefore never in any danger.
8. On various items of evidence being pointed out to the prosecutor, including, the report of the Crime Scene Officer (Cpl Peter Solwie) who attended and made a list of the damaged items he observed at the scene of the incident; the complainant's wife's estimate of their loss ("**VT400,000**"); and the inclusion in the complainant's list of live poultry viz "10 chickens, 20 hens and 16 roosters"! The prosecutor agreed to accept the defendant's estimate of the loss caused by the



fire. On that basis, the complainant's loss is taken to be VT60,000 for sentencing purposes.

9. I am grateful for the pre-sentence report prepared by the Probation Officer and from which I extract the following personal details of the defendant:

- The defendant is 30 years of age and lives at Stone Hills area in Fanafo, Santo;
- He is in a steady "defacto" relationship and has 3 children;
- He maintains his family as a subsistence farmer;
- He reached year six in primary school;
- The defendant expressed regret for his actions and offered to perform a custom reconciliation ceremony to his brother.

10. Similarly I am assisted by the helpful sentencing submissions filed by both counsels which I have taken into consideration.

11. Prosecuting counsel highlights the following aggravating features:

- The damage caused by the fire was substantial;
- The emotional harm caused to the victim;
- Loss of houses and properties which render the complainant homeless;

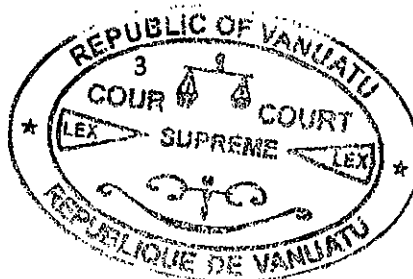
and counsel submits that an immediate sentence of one and a half to 2 years imprisonment without suspension would be appropriate.

12. Defence counsel on the other hand refers to the following mitigating factors:

- Early guilty plea and cooperation with police inquiries;
- First offender and is remorseful for his actions;
- There was an element of provocation by the complainant having an "affair" with the defendant's mother in law;
- The fact that the houses were unoccupied and there was no threat to human life;
- The defendant was remanded in custody for 24 days before being released on bail;

and counsel submits that a wholly suspended sentence of imprisonment should be imposed.

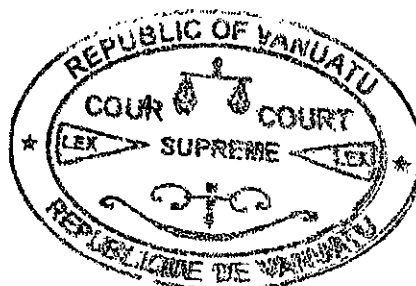
13. The offence of Arson is committed when a person willfully and unlawfully sets fire to the building or property which the person setting fire knows belongs to another person. It is an offence contrary to Section 134(1) of the Penal Code Act [CAP.



135] and carries a maximum penalty of imprisonment for 10 years. Arson is undoubtedly a serious offence.

14. In the present case, the defendant with full knowledge of the complainant's absence and with premeditation, set fire to the complainant's sleeping house and kitchen burning them completely to the ground with all its contents. The complainant and his wife were left homeless and they were obliged to move in with their daughter. They are still striving to rebuild their home and their lives.
15. Although no-one was endangered by the fire, there can be no denying the emotional trauma and sense of utter loss and helplessness that accompanies the loss of a person's home and material possessions in a fire.
16. Kalto Sitangtang regretting after the event will not bring your brother's home and possessions back nor is it likely to heal the rift that existed in your relationship with your elder brother.
17. You profess to some justification and provocation in burning down your brother's house and possessions and you would be well aware that your brother had been assaulted and was hospitalized at the time you burnt down his home. This was a cowardly act of wanton destruction committed in the absence of your brother to ensure maximum damage.
18. Even accepting that your elder brother's infidelity caused you and your wife some grief, the fact remains that it takes two willing parties to have an "affair" and it is not your place to punish your brother for his immoral behaviour, nor, should you yourself resort to criminal behavior by burning down his home.
19. Four (4) years ago in Livo Worahese v. Public Prosecutor [2010] VUCA 11 a case involving the burning down of three buildings including a sleeping house and kitchen, the Court of Appeal in upholding a partly suspended sentence of 2 years imprisonment observed (at para. 14):

"... It is clear to this Court that the crime of arson in this jurisdiction is becoming more prevalent, particularly in Santo, where this offending occurred. It was quite proper therefore for the judge to give weight to the sentencing factor of deterrence to discourage this form of offending. The starting point of 4 years imprisonment and the addition of 1 further year for the aggravating factors was not unreasonable ... This Court accepts that a custodial sentence must be imposed for this offence ..."



20. Similarly in this case a deterrent custodial sentence is necessary and, given the maximum sentence provided by the law and the aggravating features, I adopt a starting point of 3 years imprisonment which is reduced by a year for your early guilty plea and by a further 12 months for other mitigating factors including the 24 days already spent on remand, making an end sentence of 12 months imprisonment which is suspended for 2 years. This means you will not go to prison today, but, if you should re-offend in the next 2 years you will be sent to prison to serve this sentence of 12 months imprisonment in addition to any other sentence you may receive for your re-offending.
21. In addition, I order compensation in the sum of VT60,000 to be paid to your brother Peter Toa at the rate of VT5,000 per month commencing on 15th December 2014 until fully paid up.
22. Finally, I order you within 30 days, to perform a custom reconciliation ceremony to your brother and his family under the supervision of your Chief Amos Ham and to be witnessed by a Probation Officer who is to provide a written report to the Court 7 days after the ceremony
23. You have 14 days to appeal this sentence if you do not agree with it.

DATED at Luganville, Santo, this 20th day of November, 2014.

BY THE COURT



D. V. FATIAKI
Judge.

