

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**

Criminal Case No. 94 of 2014  
Consolidated to Criminal Case No. 95 of 2014

*(Criminal Jurisdiction)*

**PUBLIC PROSECUTOR – VS – WARREN MAO  
FRANK ALBAN**

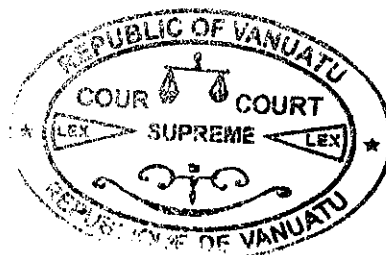
**Sentence:** *Wednesday 9 September 2015 at 3.30pm at Wunpuko, West Coast Santo*  
**Before:** *Justice Harrop*  
**Counsel:** *Mr Ken Massing for the Public Prosecutor*  
*Ms Jane Tari for the Defendant*

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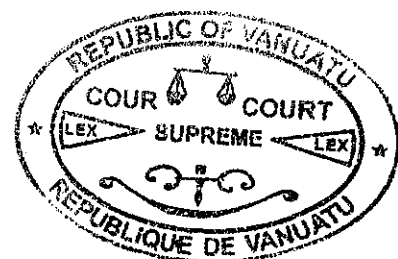
**SENTENCE**

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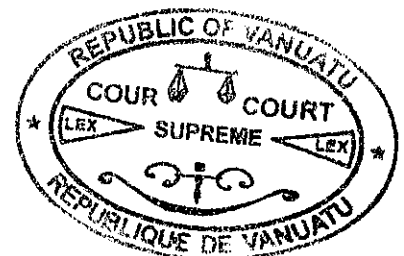
1. Mr Mao faces two counts of arson and pleaded guilty to them before Justice Sey on 18 August 2014 at Luganville. The two incidents involved occurred on 19 February and 2 March 2014 and they are relate to arsons at the defendant's home village Nokuku on North West Santo, some distance to the south of Wunpuko.
2. The other defendant who is involved in this case, Frank Alban, faces Count 2 but not Count 1. He is not present and I have no reason to think that he realizes that he should be here. I understand that he may be in Luganville and that it may be possible to progress the case involving him later in this session. But given the delays it has been possible to progress matters so far as Mr Mao is concerned today and although normally it would be desirable to have both defendants dealt with at once, the charges are separately faced and may be dealt with separately.
3. At the outset of today's hearing Mr Massing sought and was granted leave to amend some of the particulars in the counts specifically in Count 1 the description of the structure which was destroyed was changed from house to shelter and in Count 2 it was changed from house to window screens. There were also consequential changes made to the brief facts which had been prepared earlier.
4. Following those amendments the two Counts were put to Mr Mao, he pleaded guilty to each of them and I convicted him.



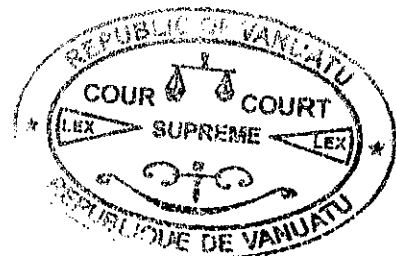
5. In terms of sentencing Mr Massing notes that the maximum penalty for each of these charges is 10 years imprisonment and so they are obviously serious. He highlights the aggravating features notably that in each case Mr Mao took the law into his own hands because he says that he was responding to provocation from Alan Kenneth. On the one hand in relation to the burning of a building which Mr Mao had used for drying copra and on the other hand in relation to an assault by Alan Kenneth on him. Mr Massing also noted that significant damage had been caused to the shelter and that VT25,000 was sought for compensation; that was made up of VT5,000 for the natangura roofing materials and VT20,000 for the roofing timbers required. Mr Massing said that in all circumstances of the case he was seeking a sentence of community work and he said that informal arrangements could be made so that sentence could be supervised by a chief in the defendant's home village of Nokuku in the absence of a corrections officer.
  
6. Ms Tari noted that Mr Mao is 20 years of age and therefore was only 19 at the time of the incident and that the party with whom he was in a dispute Alan Kenneth was about 28 at the time. Mr Mao says that on the morning of the 19 February Alan Kenneth as a result of tensions between them relating to the use of land, burned down a building which I have previously mentioned called a dock which had been used for drying copra, this was only 3 or 4 years old and obviously was used for commercial gain.
  
7. When that happened Mr Mao, wrongly of course, took the law into his own hands and rather than making a complaint to the Police about what Alan Kenneth had done and seeking compensation, he burned down the shelter. Ms Tari says that the shelter had a solid basic structure of lower walls which were not affected by the fire and so all that need to be done to rebuild it or reinstate was to replace the roof and that has been done by Alan Kenneth. However, as far as the copra dock is concerned Mr Mao has been unable to rebuilt that. So understandably Ms Tari says that Mr Mao is not inclined to pay compensation for Mr Kenneth's loss when his own loss has not been reimbursed. Ms Tari also says that there have been custom ceremonies in relation to both victims.



8. I have to this point not recounted the facts so I will mention them in more detail now. As noted, the shelter was burn down in retribution for the burning down of the copra dock. When spoken to by the Police, Mr Mao admitted that he done deliberately and gone with lighting materials to achieve his purpose, then fled the scene.
9. As to the second incident, the object of that offending was a structure owned by Harry Kenneth who was not involved in the provocation to which I have referred, he apparently was in Luganville at the relevant times.
10. But following an assault by Alan Kenneth, who is the brother of Harry Kenneth, Mr Mao again decided to take the law into his own hands and the prosecution says it was with the assistance of Frank Alban. They went to the victim's yard with a box of matches and a knife, Mr Mao used the knife to cut open the window screen and it is said that Mr Alban lit the match and that is how the window screen was set fire to. It is also said that Mr Mao went to the clothes line and took some clothes and put them on the fire to keep it going and they both escaped the scene.
11. The damage to the house was as I understand it limited to the window screens and so it was not especially serious and there is no claim for compensation relating to that aspect of the matter. Returning to Ms Tari's submissions she says that there was a custom reconciliation ceremony with Alan Kenneth where the agreement was that each party would apologize to the other and no gifts or items would change hands because it was recognized that each had hurt the other. Importantly she highlights that there have been no more issues between the parties since the incident that custom reconciliation. They have been living peacefully together in the village subsequently.
12. This is one of those occasions where there is some benefit in there having been a delay in resolving the case because it provides some evidence as to how to future relationship is likely to be. I am pleased to hear that whatever issues lead to the tension in February last year appear to have been, if not resolved, at least coped with on a peaceful basis since then.

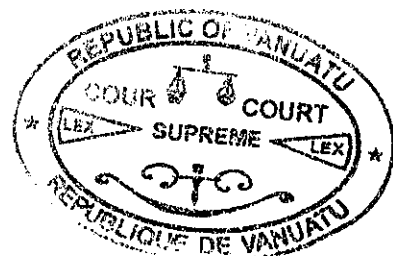


13. In relation to Harry Kenneth, Ms Tari says there was a custom reconciliation ceremony as well and that Mr Mao gave him VT5,000 to recognize that his window screens had been damaged without any provocation from him and this was accepted by Harry Kenneth. So Ms Tari submits that I should make no order for compensation and that and she agrees with Mr Massing's submission that the matter can be dealt with by community work.
14. Arson is a very serious offence and in Vanuatu there seems to be a willingness to react to real or imagined harm that has been done to the defendant or perhaps a member of his family by setting fire to something. In a country with relatively few assets and buildings then that is particularly serious and it costs scarce money, time, effort and materials to repair buildings that are often not the real issue between the parties. Usually some other dispute has led to the arson and it is that which should be sorted out peaceably and by talking. Burning something down does not solve anything and indeed as this case demonstrates it turns to lead to more burning down which also doesn't solve anything.
15. So in general terms the Court deals with far too many arson cases and the usual response is that a firm sentence needs to be imposed because people need to learn that this is totally unacceptable and to find other ways to resolve the disputes.
16. But of course there are a wide range of arsons which may come before the Court, and do. Sometimes, at the most serious end there is a burning of a sleeping house in the middle of the night with people are inside asleep and lives are put at risk or actually lost or injuries result. Obviously this case is very different, it involves relatively minor damage and damage which is not especially costly or difficult to repair.
17. What is aggravating about the case as Mr Massing has rightly emphasized is that you took the law into your own hands. You had an opportunity to do what ultimately Mr Kenneth did, which was to go to the police and if you had done that then he would be the one sitting where you are. There is a real danger as I said in the sentencing in a quite different case yesterday that if people take the law into their own hands, they can make mistakes, they can punish people who actually have done nothing wrong. Now I do not know in this case whether Alan Kenneth burnt your copra dock or not, because you did



not make a complaint, the Police have not investigated that and there has therefore been no charge determined by the Court. You may be right that he did that or you may be wrong. But if people in the community are able to set themselves up as “judge, jury and executioner” as it were, then we have a situation of anarchy and the laws put in place by the Parliament of Vanuatu and particularly the Constitution dictate that this not how things operate in Vanuatu. Rather there are to be proper processes so that if anybody is said to have done something wrong, the defendants are investigated, treated with dignity, given their rights as to legal advice, and to refuse to make a statement and that ultimately if the Police say there is a case to answer then the defendant will be brought before the Court and dealt with fairly.

18. That is how the Constitution says it must be done and so taking the law into your own hands is totally at odds with the civilized judicial and police processes which the Constitution has put in place in Vanuatu.
19. While I accept that there is the aggravating factor here of taking the law into your hands, being realistic about it, I have to proceed on the basis that you were provoked and while that does not excuse what you did, it at least explains it. It was not a case of you just for no reason randomly going and burning down Alan Kenneth’s shelter; rather you were provoked and so the level of criminality is certainly less in your case then it might otherwise have been.
20. But there is of course the second arson which adds to the picture although I have to note again from your perspective there was provocation by Alan Kenneth as well on that occasion and that involved the physical assault. Mr Massing is not in a position to comment on your assertions about that and I do not know whether Alan Kenneth agrees with your versions of events. But for present purposes, I will proceed on the basis that is correct.
21. So when I weigh all of those things up I accept this is not the case which requires a prison sentence, and that the sentence proposed by Mr Massing of community work is appropriate. In many respects when you commit an arson in a village, you are committing an offence not only against the victim but also against the community generally and so giving back something to the community by carrying out community work is entirely appropriate.



22. I understand that arrangements can be made through your father and perhaps with the local chief to ensure that you carry out that sentence and that a probation officer from Luganville can contact your village to check that you are doing the work required which must be done within 12 months as I understand it.
23. Weighing everything up, taking into account of course your guilty pleas at the earliest opportunity in relation to the counts as they now are, I am satisfied that a sentence of **125 hours community work** is the appropriate sentence and I sentence you accordingly.
24. You should understand that even though I have not imposed a prison sentence and a suspended prison sentence might have well been appropriate here you do have two convictions now for arson and as a young man, you will go through the rest of your life with those convictions on your record.
25. If you were to commit any other arson in the future, of course the Court would be aware that you have previous convictions for arson and you would most likely be sent to prison because you have been given an opportunity to have a community- based sentence here. If you choose not to take that opportunity and to commit a further arson, you would effectively be saying to the Court that you have not learnt the lesson that I have tried to pass on to you today.
26. You have 14 days to appeal against this decision if you wish to do that. In that event you should talk to Ms Tari straight after the sentencing.

DATED at Wunpuko, West Coast Santo this 9<sup>th</sup> day of September 2015.

BY THE COURT