

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

Criminal Case No. 24 of 2015

PUBLIC PROSECUTOR

-v-

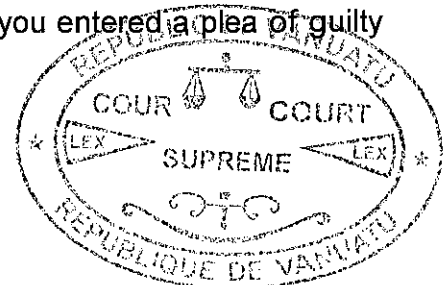
JOHN WUSS

Mr Massing for Prosecution
Mr Kalwatman for the Defendant

Hearing 6th May 2015

Sentence

1. John Wuss you have pleaded guilty to two charges, one of arson and one of malicious damage.
2. The offences were committed in October 2012. A year later you were interviewed by the Police and made a full admission. The actual charges were not laid until much later still. From the statement you made to the Police it would seem you were involved in a custom hearing before the Chiefs. Your counsel has confirmed you paid VT 15,000 to them for payment to the complainant. Apparently the complainant hasn't received any of that payment.
3. The basic facts are agreed. You allowed the complainant onto your land. He started to build a house. You thought the house was too close to the Church community water source and you told him to stop building. He did not. You tried to enlist the help of the Chiefs to reason with him. They do not appear to have done anything. You became frustrated and on the morning of 9th October you went to the building site and cut a support pole, you damaged part of the foundations and then you set fire to a kitchen extension.
4. Arson is a serious offence, it carries a maximum sentence of 10 years. Malicious damage has a maximum penalty of 1 year. When you first came to court you pleaded not guilty and the case was adjourned to today for trial. Through your counsel I learnt that you had misunderstood the consequences of pleading not guilty and that you wished the charges to be put to you again. They were and you entered a plea of guilty



to each charge. I indicated then that from the facts at my disposal I would consider a community based sentence. The case was further adjourned to allow time for both prosecution and defence counsel time to formulate submissions on sentence.

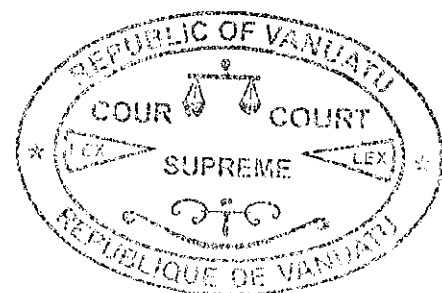
5. I have now heard those submissions and in view of additional information revealed following them I have decided not to pass a community based sentence. Instead I believe a short prison sentence suspended for a short period will be adequate. The primary reason why I have had this change of heart is that it appears to me your community has not served you too well. Therefore whilst you owe a debt to society for the offences you admit to, your debt to your community may not be that pressing. In the circumstances I will impose a sentence which shows society's displeasure, one of imprisonment.

6. I will impose a sentence for arson and the sentence for malicious damage will be identical and run concurrently.

7. Arson is a serious offence. The starting point in your case is 2½ years. There are no particular aggravating factors. You probably did more damage cutting the support pole than resulted from the arson. The offences were committed during the day and there was no danger to any persons. The damage was not insignificant but the partly built property was not completely destroyed. You now accept you were wrong to take the law into your own hands and whilst your actions cannot be excused your frustration is perhaps understandable.

8. I cannot give you full credit for a guilty plea. However I will give you credit for your early admission to the Police and for appearing before the Chiefs and accepting their punishment. I acknowledge that when you clearly understood the implications of pleading not guilty you asked for the charges to be put to you again. The term should accordingly be reduced to two years which means an allowance of less than the full 1/3rd that a guilty plea would entail. Your acceptance of the settlement in custom and the remorse shown by taking part in that process together with your good character and lack of previous convictions will reduce the term by a further 12 months. Finally I believe your sentence should also be reduced by a further six months to reflect the delay in bringing these charges to court. This delay was through no fault of yours but it has meant that despite your early acceptance of responsibility you have had this cloud hanging over you for the past two and a half years.

9. That leaves a balance left of 6 months to be served. That term will be suspended for a period of 12 months.



10. For the offence of malicious damage you will also be sentenced to 6 months imprisonment, that sentence to run concurrently with the sentence imposed for arson and so will be suspended for 12 months as well.

11. What this all means is that you will not go to prison this morning. If you do not commit a further offence or offences within 12 months from today you will not serve any time in prison. If you do commit a further offence within 12 months you are liable to be required to serve the sentence imposed today and any sentence imposed by the court for any new offence.

12. I must also inform you that you have the right to appeal against the sentence passed on you today. You have 14 days in which to lodge an appeal. You do not have to but I would suggest you do seek legal on the question of an appeal.

6th May 2015


Chetwynd J

