

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

Criminal Case No: 19 of 2015

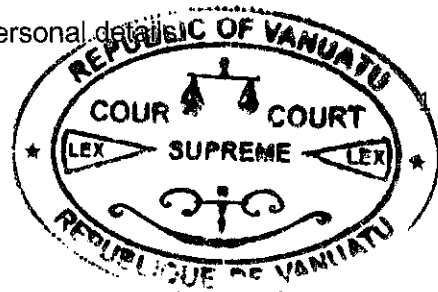
PUBLIC PROSECUTOR -VS- CALEB GODDEN

Coram: Mr Justice Dudley Aru

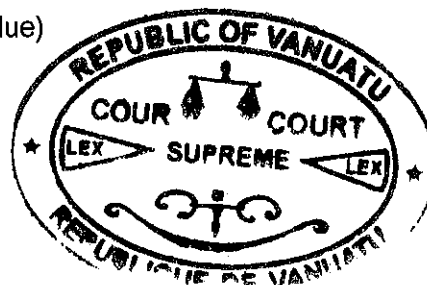
Counsel: Mr Ken Massing for Public Prosecutor
Ms. Jane Tari for Defendant

SENTENCE

1. Caleb Godden you pleaded guilty to one count of arson contrary to section 134 (1) of the Penal Code [CAP 135] on 14 April 2015 and you were convicted accordingly. You are here today to receive your sentence.
2. The brief of facts are that on 24 January 2015 you set fire to a house built on an airfield on the island of Merelava. The airfield was locally constructed to allow Dr Mark to deliver medical services to the people of Merelava in his plane. At the time of the incident, the house was not inhabited. It was built of natagura leaves and local materials with no walls. Furthermore, it is said that the house has no real value and no other property was damaged as a result of the fire .
3. When cautioned by the Police, you admitted committing the offence. Setting fire to a building or property which you know belongs to someone else is a serious offence as the maximum penalty is imprisonment for 10 years .
4. From your Presentence report I extract the following personal details



- You are 18 years old and you come from the island of Merelava ;
 - You are doing year 13 at Matevulu College and you intend on becoming an engineer. Apart from this you are also a skillful soccer player;
 - You are a nonviolent person and you are the second child out five children and you depend entirely on your parents for financial support;
 - Health wise you are allergic to selfish ;and
 - You are a member of the Global Harvests Centre and regularly attends their services
5. Your Probation officer states that your offending occurred during school holidays when you were on Merelava and you now regret your actions. You told your probation officer that the reason you burned the shelter was because during that time sick people on Merelava needed urgent medical attention from Dr Mark but the shelter built in the center of the airfield prevented his plane from landing. It was built as a result of a dispute over custom ownership of land occupied by the airfield .
6. No custom reconciliation has been done as yet and as the landing area is still disputed, any reconciliation will not be possible.
7. Counsel for the Prosecution, Mr Massing has referred me to the following cases, *Worahese v Public Prosecutor* [2010] VUCA 11; *Public Prosecutor v Hugo* [2011] VUSC 310 ; *Public Prosecutor v Tabi* [2006] VUSC 51 and *Public Prosecutor v Albert* [2010] VUSC 136. He submits that I adopt a starting point of 3 years imprisonment with the following factors as aggravation :
- There was some planning involved ;
 - The complainant will suffer psychological effects of your actions ;
 - Loss suffered (no assessment as to value)



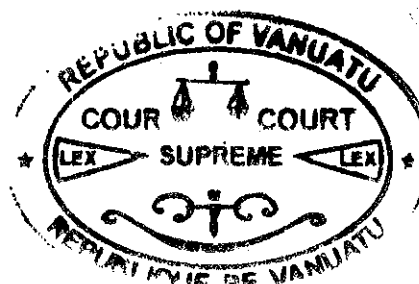
8. Defence Counsel on your behalf also referred me to **Public Prosecutor v Naliupus [1996] VUSC 23**. She submits that I consider the following three sentencing options. First an acquittal pursuant to section 55 (4) of the Penal Code [CAP 135], secondly a fine and finally a suspended sentence. Factors she submits in mitigation are that ;

- You are a first time offender ;
- You are 18 years and doing year 13 at Matevulu College and that you are of good character and eager to have a career;
- You cooperated with the Police and entered a guilty plea at the first opportunity ;
and
- You are remorseful for your actions ;

9. When considering the appropriate sentence, I have taken into account the above submissions. I note that you are young and doing year 13 at Matevulu College which means that you have a good future ahead of you if given the opportunity. You are a first time offender and readily admitted to the offending and you are remorseful for your actions. I note that the house is a shelter with no walls and built of local materials. Its value is not known and nothing else was damaged as it was not occupied . It was put up as an obstruction to aircraft landings as part of the dispute over custom ownership of the land . As a result the sick were unable to receive urgent medical attention from Dr Mark because he was unable to land on the airfield. This then led you to act as you did.

10. Section 55 (4) of the Penal Code states as follows:

“Nothing in this section shall affect the power of any court to convict and discharge any person.”

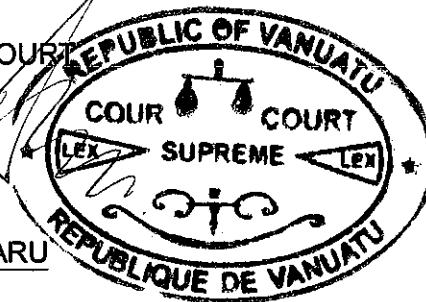


11. You readily admitted your offending and accepted responsibility for which you were convicted. I believe the experience you have been through has taught you a valuable lesson. I have also considered the following cases where the courts have exercised discretion under section 55 and these are *Public Prosecutor v Kalsakau* [2010] VUSC 47 and *Public Prosecutor v Iati* [2012] VUSC 196. Today I am willing to give you a second chance and I urge you to make good use of this opportunity to complete your studies and be a good law abiding citizen.

12. Caleb Godden you were convicted on 14 April 2015, today I discharge you without any penalty. You may go.

DATED at Luganville, this 20th day of April 2015

BY THE COURT



DUDLEY ARU

Judge.