

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

**Criminal**  
**Case No. 17/2622 SC/CRML and**  
**Criminal**  
**Case No. 15/1003 SC/CRML**

**PUBLIC PROSECUTOR**

**V**

**JONATHAN SESIL  
ANSEN DAVID  
ANTHONY LOUGHMAN  
SAMUEL SULI  
MATTIEN DAN  
TARI WAKO  
BEN ROY  
REX TOM KIEL  
SAM LOA  
KENNY KARSAM  
JOHN KASIS**

*Date of Hearing:* 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> December 2017 at 9:00am  
*Date of Judgment:* 8<sup>th</sup> December 2017  
*Before:* Justice David Chetwynd  
*Counsel:* Ms Betina Ngwele for Public Prosecutor

*Mr Daniel Yawha for Jonathan Sesil, Ansen David  
and Anthony Loughman.*

*Mr Willie Kapalu for Samuel Suli, Moses Noah, Roy  
Kami, Madien Dan, Tari Wako, Alfred Michael, Ben  
Roy, Kenny Karsam and Komie Roger.*

*Mr Robin Kapapa for Rex Tom Kiel and Sam Loa.*

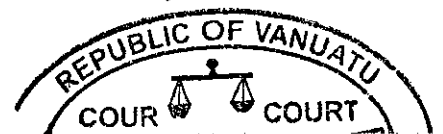
*Mr Gregory Takau for Jackson Kamisak, Mark Man,  
John Kasis and Stephen Iamak.*

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## **JUDGMENT**

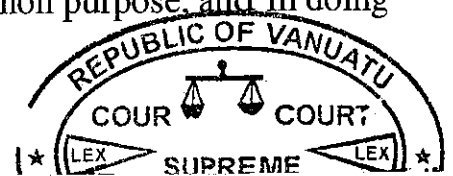
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1. If I had started this trial by saying I did not need evidence and that I was just going to convict all the defendants and send them to prison, everyone would



have been, quite rightly, appalled. However that is what the evidence shows the defendants did in this case.

2. On 18<sup>th</sup> July 2015 several groups of young men went to Tanna Lodge. They intended to and in fact did, burn the resort to the ground. They were so intent because they believed the son of the owner had killed another young man. They had no proof he had done so, all they were acting on was rumour. It later transpired that the son was innocent and he was acquitted of charges of murder in the Supreme Court.
3. The groups of young men caused considerable damage costing many millions of vatu to put right. They also damaged severely the reputation of Tanna as a tourist destination.
4. This case is all about who did this. Originally there were some 26 defendants. After hearing the evidence I have no doubt there should be more. The evidence is that there were quite probably over 300 people gathered at Tanna Lodge that day and whilst many were there to see what was going on, there were more young men involved in the mayhem of that day than appear in Court today.
5. The prosecution have laid charges of unlawful assembly and arson against 11 young men. 8 of them face charges of unlawful assembly and arson 3 face charges of unlawful assembly only.
6. It is timely at this stage to remind myself that it is the prosecution who must prove the elements of the offences beyond reasonable doubt.
7. Unlawful assembly arises when 3 or more people gather together (assemble) with the intent to commit an offence or with a common purpose, and in doing



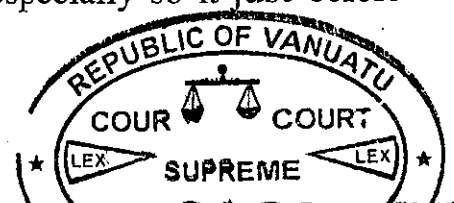
so frighten nearby persons. The maximum penalty for such offence is 3 years imprisonment. The prosecution therefore have to prove that there was a group of 3 or more people who had the intention of committing an offence or who were acting in a way which caused reasonable fear to those nearby. It is irrelevant if the original purpose of the assembly was lawful if the gathering conducts itself as required by the section.

8. The defendants are lucky because if they begin to do what they intend to do and there is a breach of the peace, then assembly becomes a riot. The maximum penalty for riot is 10 years.

9. Arson is when someone sets light to property which is not his own. The maximum penalty is 10 years.

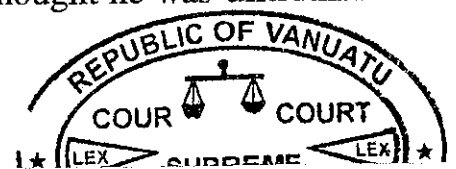
10. It is easiest in this case to consider the allegations of arson. Dealing with Count 3 involving Rex Tom Kiel and Sam Loa. They are accused of burning down the workshop/garage of Tanna Lodge. There is ample evidence of them doing so. Evidence from Lency Peter is of Rex Tom Kiel leading a group of young men. They went past the workshop/garage he saw Sam Loa pick up a large stone and smash the door handle. He saw both men go into the building. They came out and shortly afterwards there was smoke and flames coming from the building. Tuk Daniel saw Rex Tom Kiel with a group of men. Officer John Roel spoke to Tom Rex Kiel near the building.

11. Whilst there is no direct evidence about who started the fire, I am entitled to make inference as long as that inference is reasonable and based on proven facts. It is a reasonable inference that if two men go into a building and when they leave the building shortly after it is plainly on fire, then one or both of those two men set fire to the building. This is especially so it just before



entering the building one asks if anyone has any matches and then later tells a Police Officer, we burnt the building down or words to that effect.

12. It is suggested by Rex Tom Kiel that when he spoke to Officer Roel he did not mean we burnt the building but that those on top of the hill did. Sam Loa did not give any evidence. He was perfectly entitled to remain silent. There was ample evidence against him though.
13. There is another arson charge against Ben Roy and Mattien Dan. It is alleged they were involved in burning down villa No. 10. They were seen by a number of witnesses including Tain Nalau and William Iata. They were also seen by George James who saw Mattien Dan throwing stones at the Late Chief James. I have no doubt that Ben Roy and Mattien Dan were involved in the burning down of villa 10.
14. Count 5 involves Tari Wako. He was seen by a number of witnesses who saw him taking an active part in the arson involving Villa 7. The witnesses were clear and adamant about what they saw him doing.
15. Count 6 relates to Villa 8. Jonathan Sesil, Ansen David, Mattien Dan, Samuel Suli and Tari Wako are charged with the arson of Villa 8.
16. Count 7 charges Jonathan Sesil, Ansen David, Mattien Dan, Samuel Suli, Tari Wako and Ben Roy with arson of Villa 9. They were also charged under Count 8 with burning down villa 6.
17. A number of witnesses including Lency Henry, William Iata, Tain Nalau and George James gave evidence about these offences. So did Song Stephens. I do not rely on his evidence even though it is corroborated by others. His evidence was not reliable. This was not because I thought he was untruthful



but because he had forgotten details of what had happened and was confused about other elements. During the trial I was concerned he had perjured himself and asked Ms Bakeo of the Public Solicitor's Office to advise him about possible perjury. It became clear that his problem was confusion and forgetfulness not perjury.

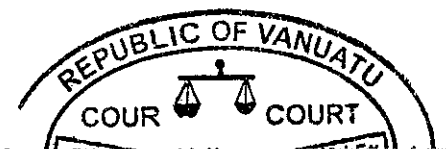
18. The witnesses mentioned all saw the defendants milling around and taking an active part in the arson. The evidence is of one or other of the group running around the area of the bungalows holding coconut leaves, breaking wooden louvres on the windows of the villas, opening doors and throwing molotov cocktails at the villas.

19. There is ample evidence to show this group or members of it went into each Villa. Before they entered there was no fire. Soon after they came out the Villas were seen to be on fire. There is no doubt they were involved in arson.

20. There may well have been other young men involved in the arson. It is not for me in this trial to say that. They are not before the Court now but possibly will face charges in the future.

21. All of the defendants who are charged with arson are charged with unlawful assembly. Having accepted that those defendants are, without a shadow of a doubt, guilty of arson they are also guilty of unlawful assembly.

22. There are two additional defendants facing charges of unlawful assembly. They are Anthony Loughman and Kenny Karsam. Anthony Loughman was seen by several witnesses as moving around with the group. He was seen using his mobile phone to take photographs. He says that was all he was doing. I do not accept that. In his evidence he said he only took 3 photographs. This is not the actions of someone trying to record the whole event. This is the action of



someone who was part of the unlawful assembly who, fortunately for him, did not or was not seen to take any active step to set the Villas alight.

23.No doubt Kenny Karsam was part of the unlawful assembly. In fact two witnesses actually saw him trying to set fire to the Villas. He is not charged with arson but he is guilty of unlawful assembly.

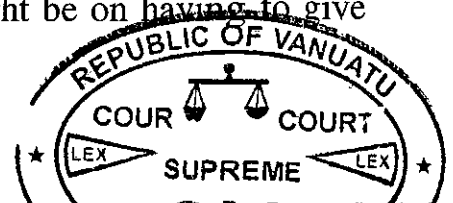
24.That leaves the unlawful assembly in respect of Rex Tom Kiel, Jackson Kamisak, Mark Man, Sam Loa, John Kasis and Stephen Iamak. There is clear evidence to show Rex Tom Kiel and Sam Loa were together and they were part of an unruly group burning property and acting aggressively. I accept the evidence of the Police Officer that John Kasis was there too as part of the group. However there is no or very limited evidence to put Mark Man, Jackson Kamisak and Stephen Iamak in the group intent on burning something down at Tanna Lodge.

25.The upshot is there is evidence to show Rex Tom Kiel, Sam Loa and John Kasis were together as part of the group acting in a manner to cause other people around to fear for their safety. They are guilty of unlawful assembly.

26.Mark Man, Jackson Kamisak and Stephen Iamak are acquitted of the charge against them.

27.The prosecutors have not made out the charge of attempted arson against Jonathan Sesil, Samuel Sul and Mattien Dan involving the restaurant. They are acquitted of that charge.

28.It is unfortunate that the evidence shows that upwards of 300 people were gathered at Tanna Lodge that day but only a handful of people came forward with evidence. I understand the pressures there might be on having to give




evidence against a close relative, friend or work colleague. However, this was a very serious incident involving very serious offences. The ramifications for Tanna as a tourist destination may reverberate for some time yet. In addition I think the words of Edmond Burke are relevant. He said that all that is necessary for evil to triumph is that good men do nothing.

29. The defendants will be remanded in custody for sentencing in Port Vila.

**DATED at Port Vila this 14<sup>th</sup> day of December, 2017.**

**BY THE COURT**

  
.....\*  
**DAVID CHETWYND**  
Judge

