

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

Criminal Case No. 3875 of 2016

PUBLIC PROSECUTOR

v.

- 1. SAMSON LEO**
- 2. SELWYN GARU**
- 3. CHRISA LEO**
- 4. MARKSON LEO**
- 5. JOHN LUGAO**
- 6. BRUNO LEO**
- 7. PATRICK LEGA**
- 8. HANS LEO**

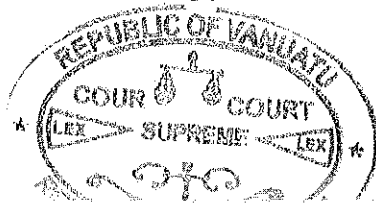
Coram: Justice D. V. Fatiaki

Counsel: Mr. D. Boe for the State
Mr. R. Tevi for the Defendants

Date of Delivery: 03 June 2017

VERDICT

1. At the outset because of the piecemeal manner in which the case has developed and the different pleas on the charges, I think I should say something about the charges and how the Court has dealt with the three (3) defendants who failed to appear when the case began.
2. Initially there were eight (8) defendants charged in the Information laid by the Public Prosecutor's Office. The defendants were Samson Leo, Selwyn Garu, Crisa Leo, Markson Leo, John Lugao, Bruno Leo, Patrick Lega and Hans Leo. The original Information contained 11 charges or counts – 1 of Unlawful Assembly and 1 of Riot in which all 8 defendants are jointly charged; two (2) counts of Malicious Damage to Property; three (3) counts of Unlawful Entry; a count of Threats to Kill in which only Samson Leo is charged and three (3) counts of Theft.
3. When the case stated on Monday the prosecutor withdrew all three (3) Theft counts and one count each of Unlawful Entry and Malicious Damage to Property leaving a total of six (6) live charges. Three of the defendants: Chrisa Leo, Markson Leo and Hans Leo did not appear and had not been personally served with trial notices. After discussions with both counsels it became apparent that these defendants may have been wrongly committed in their absence and,



accordingly, all three (3) defendants were discharged leaving it open to the prosecutor to refile charges (in future proceedings) if considered appropriate.

4. The trial proper commenced with five (5) defendants present namely, Samson Leo, Selwyn Garu, John Lugao, Bruno Leo and Patrick Lega on an Information containing six (6) live charges. The defendants' pleas were then taken. All five (5) defendants pleaded not guilty ("*ino true*") to Unlawful Assembly and Riot. As to Count 3 of Malicious Damage to Yvong Lingi's kitchen and possessions – Bruno Leo pleaded guilty ("*I tru*"); As to Count 5 of Unlawful Entry into Ham Soso and Yvong Lingi's sleeping houses – Samson and Bruno Leo both pleaded guilty ("*I true*"). All defendants denied Count 7 of Unlawful Entry into Marcel Soso's house and Samson Leo who was the only defendant charged on Count 8 of Threats to Kill Ham Soso, denied the charge. Samson and Bruno Leo were not convicted immediately as they could have been, instead, the Court preferred to hear the evidence before finally deciding to hear the evidence on the matter.

5. The prosecution case started and continued for 2 ½ days in which it called 6 witnesses who gave evidence and were cross-examined by defence counsel. The prosecution witnesses were:

PW1: Yvong Lingi (the principal complainant)

PW2: Stelio Lingi (Yvong's younger brother)

PW3: Sophie Lingi (Yvong's wife)

PW4: Melanie Soso (Ham Soso's wife)

PW5: Hutchinson Bogiri (a kastom chief and chairman of the area Council of Chiefs); and

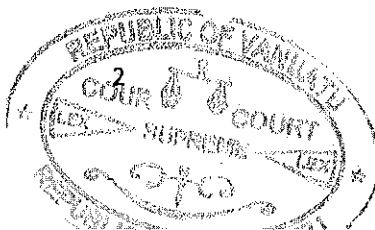
PW6: Ham Soso

6. Before considering the prosecution case in more detail I repeat what was read out to the defendants at the start of the case in both English and Bislama:

"In this trial you will be presumed to be innocent unless and until the prosecution has proved your guilt beyond reasonable doubt. It is not your task to prove your innocence. If at the end of the trial, any reasonable doubt exists as to your guilt, you will be deemed to be innocent of the charge and will be acquitted"

7. From that extract five (5) things are clear and apply in all criminal cases where an accused person pleads not guilty. These are:

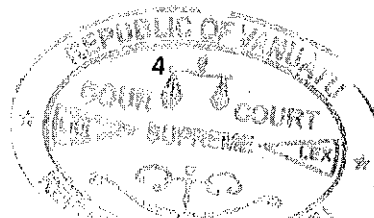
- (1) The Court presumes an accused person to be innocent of any charge at the commencement of the trial;
- (2) The prosecution have the sole burden or duty to prove the charge against the accused;
- (3) The standard of proof that the prosecution must achieve to the satisfaction of the Court is "*beyond reasonable doubt*";



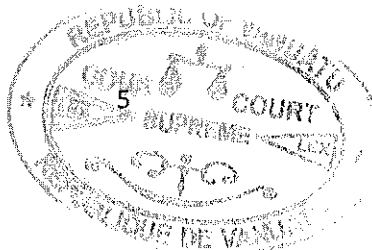
- (4) The accused does not have to prove his innocence or even call any evidence. He is entitled to remain silent; and
- (5) If after hearing all the evidence the Court is left with a reasonable doubt about the guilt of an accused then the accused will be acquitted.
8. In this case, although the defendants were told that they need not give evidence or call any witnesses, the first defendant Samson Leo elected and gave sworn evidence and was cross-examined. I shall deal with his evidence in more detail later in this verdict. Defence counsel said they also intended to call Selwyn Garu as a witness after he was found not guilty in a "no-case" submission.
9. I also remind myself that despite the defendants being jointly charged I am obliged to consider the evidence separately against each defendant whose guilt or innocence rests entirely on the quality of the evidence led by the prosecution against him and him alone. This means that just because the Court may be satisfied of one defendant's guilt does not affect or mean that his co-defender must also be guilty and vica versa.
10. I now turn to the ingredients or elements of the offences with which the defendants are charged and which the prosecution must establish or prove beyond a reasonable doubt against each defendant.
11. To establish an offence of Unlawful Assembly (Count 1) the prosecution must produce evidence which establishes or proves 3 things:
- (1) That there was an assembly or gathering or grouping of 3 or more defendants;
 - (2) That the assembly or group had an unlawful purpose or had an intention to commit an unlawful act; and
 - (3) That the group behaved in such a manner as to cause fear in the minds of the people witnessing their behaviour that a breach of the peace would occur.
12. The second count of Riot (Count 2) is where an unlawful assembly begins to put its unlawful purpose into effect causing terror in the persons who observe it happening.
13. Malicious Damage to Property (Count 3) occurs when a person wilfully and unlawfully destroys or damages the property of another person. In this case the prosecution alleges that it was Yvong Lingi's property that was damaged by the defendants acting together in a joint criminal enterprise.



14. Count 5 deals with Unlawful Entry into Ham Soso and Yvong Lingi's sleeping houses without their permission and removing their household belongings and contents.
15. In the last live charge of: Threats to Kill (Count 8) the prosecution charges only Samson Leo with verbally threatening Ham Soso to: "... *Kat out string blong leg blong hem*".
16. It is also convenient that I mention here that at the end of the case, in the absence of any evidence from Marcel Soso, prosecuting counsel was obliged to withdraw Count 7 of Unlawful Entry into his house by Samson and Bruno Leo who were accordingly found not guilty and acquitted.
17. At the end of the prosecution's case, defence counsel also made a "no-case" submission which prosecuting counsel conceded against Selwyn Garu who was then pronounced "not guilty" by the Court and directed to leave the accused's dock. There were now only four (4) defendants left remaining on the Information namely Samson and Bruno Leo, John Lugao and Patrick Lega who were required to make their defence in accordance with Section 88 of the CPC.
18. The situation changed dramatically again after the first defendant Samson Leo finished his evidence in his defence and the Court was informed by defence counsel that the remaining three defendants namely: John Lugao, Patrick Lega and Bruno Leo had withdrawn their elections to give sworn evidence and would, instead, remain silent. They were also not calling Selwyn Garu as a witness as earlier intimated. Counsel requested however that the first and second counts of Unlawful Assembly and Riot be repute to the defendants.
19. On re-reading the two (2) charges to the defendants' Samson Leo and Bruno Leo changed their pleas to guilty ("*I tru*") and the Court immediately convicted them both of Unlawful Assembly and Riot. John Lugao and Patrick Lega maintained their not guilty pleas and were the only two remaining defendants in the case who had maintained their not guilty pleas since the beginning. Samson Leo also maintained his not guilty plea on the Threat to Kill charge.
20. To prove these charges the prosecution relies on the evidence principally of Yvong and Stelio Lingi; and Ham Soso and his wife Melanie.
21. In summary the prosecution's case is that in the daytime of 10 June 2014 whilst Yvong Lingi was at his home at Aronbwaratu village, the defendants (excluding Selwyn Garu) were heard shouting and advancing towards his home armed with long bush knives and an axe which they then used in chopping his kitchen house, kitchen utensils and crockery while he stood and watched terrified and helpless. His family members fled in terror and remained at the nakamal overnight.

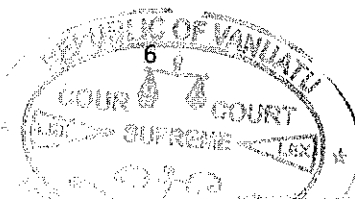


22. The next day 11 June 2014 Yvong Lingi saw the defendants (including Selwyn Garu) return to his compound, enter his sleeping house and removed all his belongings and put them outside at a nasara near the road. The belongings were later transported to Abatuntora village. After witnessing the removal of his household goods Yvong Lingi then joined his other family members who had fled and sought refuge at Laone village where they remained for 4 months before eventually returning to their homes at Aronbwaratu village with the assistance of the local chiefs and pastor.
23. In cross-examination Yvong Lingi frankly admitted stoning the defendants with husked dry coconuts because they were clearing a "*tabu garden*" that belonged to his late father without performing the necessary kastom ceremony so the land could be cleared and shared out to the tribe. Yvong accepted that the invasion of his compound and destruction of his kitchen and utensils occurred soon after the stoning.
24. The admitted stoning incident defence counsel submits amounts to provocation and excuses or diminishes the actions of the defendants in retaliation. I cannot agree. Section 27 of the Penal Code defines what constitutes "*provocation*" in law. In brief the provocative incident must itself be an unlawful act and produce a loss of self-control and an immediate retaliation which is "*not disproportionate to the degree of provocation*".
25. In this case whilst the stoning of the defendants in the "*tabu garden*" was undoubtedly an unlawful and potential dangerous act that angered the defendants, their retaliation in going armed and destroying Yvong's kitchen and utensils and banishing him and his family from the village for 4 months then emptying his sleeping house of its contents the following day and transporting them to another village, was wholly disproportionate and excessive. No one was struck by the coconut stoning and the defendants did not even see the person who threw the coconuts. They acted on mere suspicion albeit, as it turns out, correctly.
26. Further there has to be an immediate loss of self-control and here the defendants clearly knew what they were doing when they went as a group armed with lethal weapons intent on damaging Yvong's house without bothering to confirm that it was him who threw the coconuts.
27. In this regard, I disbelieve the first defendant Samson Leo when he said their anger about the coconut throwing "*ended at the garden*" and that he and his sons went to Yvong's house because he (Yvong) had challenged them to a fight. That was never put to Yvong in cross-examination as it should have been if it formed an important part of the defence's case.



28. Indeed Ham Soso frankly admitted in his evidence that it was he (not Yvong) who had challenged the defendants because he was upset with them removing his household goods from his house and transporting it to Abwatuntora village from where his mother originates. I also do not believe Samson Leo's sworn denial that he is a chief of Aronbwaratu village. In my view only a chief could issue a banishing order like "*aot lo village*".
29. I accept Samson Leo's evidence about the coconut stoning while they were in the "*tabu garden*" and how a coconut almost hit his wife. I also accept his evidence that John Lugao his son in law and Patrick Lega his close relative were also clearing the "*tabu garden*" with his family and, in particular, I accept that he had told Patrick Lega to accompany him and his sons when they went to Yvong's house to see and witness what happened. I also accept Ham Soso's evidence that Patrick Lega had approached them as they sheltered in the nakamal after the attack and told them that Samson Leo had ordered them to: "*aot lo village*".
30. As for John Lugao, I accept Stelio Lingi and Sophie Lingi's evidence that he was with Samson Leo and his sons when they entered Yvong's compound and he too was holding a long bush knife. This evidence is also confirmed by Hutchinson Bogiri to whom John Lugao had said, when asked: "*Mi mi jas followem olgeta naoia*".
31. Although both Yvong and Stelio admitted in cross-examination that the names of John Lugao and Patrick Lega were not mentioned in their police statements they both claimed they had told the police but the police failed to record the names. They nevertheless confirmed that their evidence in court was the truth and I accept their explanation for the omission of the names in their police statements.
32. Although the evidence of damaging property by John Lugao and Patrick Lega is sparse I am satisfied beyond a reasonable doubt that their presence with Samson and his sons was intentional and knowing and gave them comfort in damaging Yvong's kitchen and properties and further, the fact they were themselves armed with bush knives indicates a readiness to engage in and actively participate in the attack should they be called upon to assist. In short they aided and abetted Samson Leo and his sons in the damage caused to Yvong Lingi's kitchen and house and were active participants in the removal of Yvong Lingi and Ham Soso's household belongings the next day.
33. Accordingly I find all charges against John Lugao and Patrick Lega proven beyond a reasonable doubt and I convict each of them of the following offences:

On Count 1 of Unlawful Assembly and on Count 2 of Rioting through Aronbwaratu village on the afternoon of 10 June 2014. I also convict them on Count 3 of Damaging Yvong Lingi's house and properties and of Unlawfully



Entering both Ham Soso and Yvong Lingi's sleeping houses on 11 June 2014 and removing therefrom all household contents and belongings.

34. Likewise on the basis of their guilty pleas, I convict Samson Leo and Bruno Leo of the offences of Malicious Damage to Yvong Lingi's house kitchen wall and kitchen utensils, eating plates, cups, dishes and cutlery.
35. The remaining Count 8 is a charge of Threats to Kill against Samson Leo only. On this charge I unhesitatingly accept and believe the evidence of Ham Soso and his wife Melanie that after being told that Yvong Lingo was not in their house, Samson Leo told Ham Soso to tell the truth before "*mi cutem aot string blo leg blo yu*". I accept that that was a direct verbal threat to Ham Soso to kill or maim him permanently reinforced by the presence of a large bush knife in Samson Leo's hand at the time the threat was uttered.
36. Needless to say I reject entirely Samson Leo's less than truthful claim in cross-examination that he was hearing about the threat for the first time in court.
37. Samson Leo is accordingly convicted of the offence of Threats to Kill as charged.
38. In summary the following are the verdicts of the Court:

On Count 1 of Unlawful Assembly – all 4 defendants are convicted as charged;

On Count 2 of Riot – again all 4 defendants are convicted as charged;

On Count 3 of Malicious Damage to Yvong Lingi's kitchen and properties – all 4 defendants are convicted as charged;


On Count 5 of Unlawful Entry into Yvong Lingi and Ham Soso's sleeping houses on 11 June 2014 – all 4 defendants are convicted as charged;

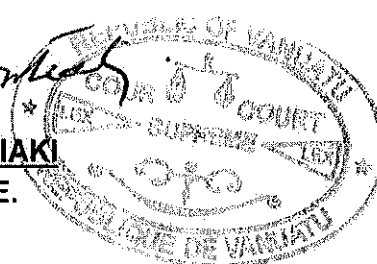
On Count 7 of Unlawful Entry into Marcel Soso's house – all defendants are found not guilty and acquitted; and

On Count 8 of Threat to Kill – Samson Leo is convicted as charged.

DATED at Angoro, North Pentecost, this 3rd day of June, 2017.

BY THE COURT


D. V. FATIAKI
JUDGE.



The seal is circular with the text "SUPREME COURT" at the top and "REPUBLIC OF VANUATU" at the bottom. In the center, it says "SUPREME COURT" and "REPUBLIC OF VANUATU" around a central emblem.