

**Public Prosecutor**

v.

John James Vira Leo

**Edgel Viramauri**

Lington Lini Trisipa

Wilkins Tarilape

**Jeffrey Bani**

Leonard Lini

**Bule Hani**

**Manui Langon Vanua**

**Vanua Lini**

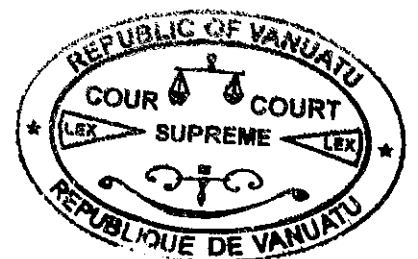
**Before:** Justice G.A. Andrée Wiltens  
**Hearing:** 4 April 2018  
**Counsel:** Mr S. Blessing for the Public Prosecutor  
Mr R. Tevi for all Defendants

---

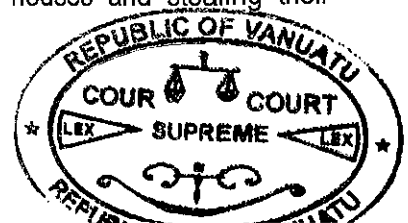
**Sentence**

---

1. Four of the accused, namely Mr Trisipa, Mr Tarilape, Mr Leonard Lini and Mr Hani, have already been sentenced to various terms of suspended imprisonment sentences by Justice Chetwynd in respect of some of the charges. This sentencing involves Mr Viramauri, Mr Bani, Mr Vanua and Mr Vanua Lini. The remaining defendant maintains his not guilty pleas to all the charges he faces.



2. All the four defendants before me have pleaded guilty to the following charges:
  - Rioting, Count 3, contrary to s 70 of the Penal Code – maximum penalty 10 years imprisonment;
  - Malicious damage, Counts 4 to 8 inclusive, contrary to s 133 of the Penal Code – maximum penalty 1 year imprisonment; and
  - Arson, Counts 10 to 15 inclusive, contrary to s 134 of the Penal Code – maximum penalty 15 years imprisonment.
3. In addition, the defendant Mr Bani has pleaded to Theft, Count 21, contrary to ss 122 and 125 of the Penal Code – maximum penalty 12 years imprisonment.
4. As well, the defendant Mr Viramauri has further pleaded guilty to:
  - Threatening to Kill, Count 16, contrary to s 115 of the Penal Code – maximum penalty 15 years imprisonment; and
  - Theft, Counts 17 and 18, contrary to ss 122 and 125 of the Penal Code – maximum penalty 12 years imprisonment.
5. A new, much improved summary of facts was tendered on 27 March 2018, which Mr Tevi, on behalf of all these accused, has confirmed is correct and is accepted by the accused.
6. Mr Vira Leo is said to be the leader of the *Tauraga Movement*, also known as *Custom Government* and *Tauraga Nation* in North-Eastern Penetecost. In about December 2010, he placed a customary caution or taboo in respect of a certain of the sea within the boundary of Nageha village. He did so under the guise or belief that he had a right to so act. The prosecution case is that Mr Vira Leo had no such right, and that he had not sought permission of the land owners or other villagers. The taboo was said to be broken on about 10 December 2015 by two villagers who were seen to be looking for sea urchins, bechedemer.
7. The following day Mr Vira Leo instructed the defendant Mr Viramauri to confirm the sighting. The two villagers denied breaking the taboo. Mr Viramauri told them that Mr Vira Leo demanded an explanation from them. The two villagers decided to apologise with a tusked pig, and went to see Mr Vira Leo in person. The prosecution case is that Mr Vira Leo at first berated both villagers, then assaulted one of them repeatedly before driving them away. Mr Vira Leo is then said to have followed them, and threaten them to take their families away from the village or he would shoot them. Mr Vira Leo is then said to have taken a shovel to both of the villager's house as well as the Nageha village church before returning to his own home. Mr Vira Leo was not finished and he returned again and continued to damage the villagers' houses. The two villagers collected their families, abandoned their belongings and fled to a nearby village.
8. These four defendants, together with others were gathered at Mr Vira Leo's nakamal at Varanyasu village. They agreed to go and completely destroy the houses Mr Vira Leo had damaged. At about 7pm the villagers who had fled returned to check on their properties. They observed all the defendants and others further damaging their houses and stealing their

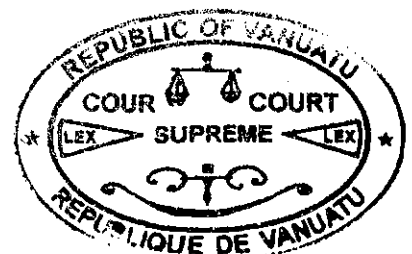


property – in particular they saw Mr Viramauri uprooting and stealing 2 kava plant heads, a bunch of bananas, 2 mattresses, 8 pots, 5 dishes, a nappy and 2 chickens. At the same time Mr Bani stole 6 cans of tuna, 2 cracker biscuits, 2 blue batteries and a bunch of bananas. The group took their stolen items back to Mr Vira Leo's nakamal and cooked dinner together. They then agreed to return the next morning and burn down the houses belonging to the two villagers and their families.

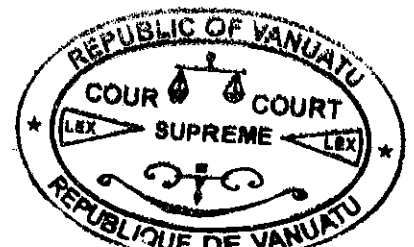
9. The next morning these defendants and others, allegedly led by Mr Vira Leo, returned to Nageha and set fire to four houses and burnt them to the ground – the value of those houses is agreed to be VT 1million each.
10. The villagers who fled found it impossible to re-settle, partly at least due to being further threatened. Other villages did not want to get involved in their plight. The victims total some 20 people, some elderly and some very young. They were forced to live in isolated bush areas and scavenge to survive.
11. One of those displaced villagers reported the matter to the police on about 15 December 2015. When Mr Viramauri heard that the report had been made and that he was likely to be arrested, he was exasperated and threatened one of the displaced villagers that if the police came to arrest him he would kill him.
12. Once arrested, all the defendants save for Mr Vira Leo fully admitted their involvement and their various criminal acts, including all participating in damaging the houses and subsequently taking part in burning them own.
13. Mr Blessing has provided a number of authorities that deal with appropriate sentencing levels in relation to:

arson: *Worahese v PP* [2010] VUCA 11, *PP v Jimmy* [2012] VUCA 1;  
riot: *PP v Tess* [2011] VUSC 237, *PP v Leo* [2017] VUSC 67;  
threatening to kill: *PP v Walker* [2007] VUSC 63, *Walker v PP* [2007] VUCA 12; and  
theft: *PP v Molsir* [2017] VUSC 74, *PP v Abraham* [2012] VUSC 18, *PP v Saki* [2010] VUSC 103, *PP v Killion* [2004] VUSC 17, and *PP v Manehavi* [2006] VUSC 108.

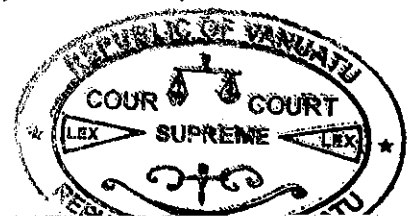
14. There are clearly a number of aggravating factors in the admitted offending:
  - Premeditation and planning;
  - Total destruction of homes and personal property – it is ironic that several of the defendants' goals in life include the desire to provide homes for their families, yet had little hesitation in destroying those of others;
  - The value of the damage caused – with a loss of over VT 4 million;
  - Taking the law into their own hands to impose their beliefs on others and to exert control over others;
  - The significant and completely unwarranted suffering and hardship caused to the victims – not only at the time, but which is enduring.



15. Mr Blessing submitted that a starting point of between 4 to 6 years imprisonment was appropriate for the riot charge, between 4 and 7 months imprisonment for the malicious damage charges, and between 4 and 6 years imprisonment for the arson charges, with between 5 and 6 years imprisonment for the threatening to kill charge, and between 4 and 7 years imprisonment for the theft charges. Mr Blessing accepts discounts are available for the pleas, but points out that reparation or reconciliation are conspicuous by their absence.
16. Mr Tevi has not put any counter-authorities before the Court; and he accepts the starting points submitted by Mr Blessing. He submits that this offending must be seen in the light of all these defendants being very much under the influence and control of Mr Vira Leo – he directed the actions undertaken, according to Mr Tevi.
17. Mr Tevi concentrates on the mitigating aspects of pleas of guilty, lack of previous convictions, and submits that reparation/reconciliation has been thwarted by Mr Vira Leo's influences. Mr Tevi stresses the need for parity with those defendants sentenced by Justice Chetwynd.
18. Justice Chetwynd dealt with one accused on the basis solely of the rioting count. The other 3 defendants, Mr Leonard Lini, Mr Trisipa and Mr Hani pleaded guilty to the riot charge, the 5 malicious damage charges and the 6 charges of arson. Each was sentenced to an end sentence of 2 years 6 months imprisonment on all charges concurrently. Each further had their sentences suspended for 2 years.
19. I note the defendants various ages: it is agreed by Mr Tevi that despite serious discrepancies on the papers, Mr Viramauri is now 45 years of age, and the other 3 defendants are each now 17 years of age. I note the offending occurred at the end of 2015.
20. I note also, again despite varying information, that the defendants have all spent time in custody:
  - Mr Viramauri            5 months 3 days;
  - Mr Bani                    3 months 2 days;
  - Mr Lini                    3 months 2 days; and
  - Mr Hani                    3 months.
21. Despite in his written submissions describing the pleas as "at first instance", Mr Tevi had to accept that his clients' pleas were not at the first opportunity. The defendants dealt with by Justice Chetwynd pleaded guilty on 6 June 2017 – these defendants only pleaded guilty on 15 February 2018.
22. I have no difficulty in taking the sentencing starting points for Mr Vanua and Mr Lini on the same basis as Justice Chetwynd dealt with Mr Lini, Mr Trisipa and Mr Hani – due to the principle of parity of sentencing. They all share equal culpability for their criminal actions – the only difference is the date of their pleas.



23. The starting points for Mr Vanua and Mr Lini are therefore as follows:
- 5 years imprisonment on the riot charge,
  - 9 months imprisonment on each of the malicious damage charges, and
  - 6 years imprisonment on the arson charges.
24. Taking into account their youth at the time of the offending (less 12 months), their lack of previous convictions (less 11 months), and their personal factors (stated remorse, time in custody, difficulty with reconciliation due to pressure by others, and positive Pre-Sentence Reports regarding possible rehabilitation – less 5 months); and finally also considering the timing of their guilty pleas (less 11 months), the end sentence that each must serve is 2 years 8 months imprisonment. That will be reflected in end sentences of 2 years 8 months imprisonment for the arson charges (the lead offences); with 18 months imprisonment on the riot charge and 6 months imprisonment on all of the malicious damage charges.
25. All those sentences are to run concurrently
26. I am prepared to suspend those sentences for 2 years, on the same basis as Justice Chetwynd determined. Both defendants are also to undertake rehabilitation programmes as directed by the Probation Officer on Anger Management/Violence Awareness and undertake the Niufala Rod programme as directed by the Probation Officer.
27. Mr Bani faces an additional charge of theft – otherwise he would be in exactly the same position as Mr Vanua and Mr Lini. His sentence must reflect that additional offending. The starting points for Mr Bani are as follows:
- 5 years imprisonment on the riot charge,
  - 9 months imprisonment on each of the malicious damage charges,
  - 6 years imprisonment on the arson charges, and
  - 4 years imprisonment on the theft charge.
  -
28. Taking the same factors into account as for Mr Vanua and Mr Lini, the end sentence that he must serve is 2 years 10 months imprisonment. That will be reflected in end sentences of 2 years 10 months imprisonment for the arson charges (the lead offences); with 18 months imprisonment on the riot charge; with 6 months on all the malicious damage charges, and 2 years imprisonment on the theft charge.
29. All the sentences are to run concurrently
30. I am prepared to suspend those sentences for 2 years, on the same basis as the others. Mr Bani is also to undertake rehabilitation programmes as directed by the Probation Officer on Anger Management/Violence Awareness and undertake the Niufala Rod programme as directed by the Probation Officer.
31. I see Mr Viramauri quite differently. Not only was he significantly older than all the others to be sentenced and therefore entitled to less mitigation on the basis of youth/immaturity, but on his



own admission he was the second-in-command behind Mr Vira Leo, and a Minister according to custom governance structure. I note he was involved from the very beginning of this sad event right through to the end – he first confronted the villagers, and lastly he threatened to kill. In between those acts he was involved in much the same way as the others in the group offending. He faces 2 additional charges of theft and one of threatening to kill.

32. The starting points for Mr Viramauri are as follows:

- 5 years imprisonment on the riot charge,
- 9 months imprisonment on each of the malicious damage charges,
- 6 years imprisonment on the arson charges,
- 4 years imprisonment on the theft charges, and
- 2 years imprisonment on the threatening to kill charge.

33. Taking his mitigating factors into account:

- lack of previous convictions, and given his age this is a significant mitigating factor (less 18 months)
- time spent in custody, and his stated remorse (less 6 months)
- his pleas (less 25%):

the end sentence that he must serve is 3 years imprisonment. That will be reflected in end sentences of 3 years imprisonment for the arson charges (the lead offences); with 18 months imprisonment on all the riot and threatening to kill charges; 6 months imprisonment on all the malicious damage charges and 2 years imprisonment on the theft charges.

34. All the sentences are to run concurrently

35. I am not prepared to suspend those sentences. Mr Viramauri's role in this offending dictates that an actual custodial sentence be imposed to denounce this type of conduct, to deter him and others from offending in a similar fashion in future, and to protect the community from this type of vigilante conduct.

36. All the defendants have the right to appeal their sentences – they have 14 days, should they wish to do so.

Dated at Port Vila this 4<sup>th</sup> day of April 2018

BY THE COURT

*G.A. Andrée Wilton*

Justice G.A. Andrée Wilton

