

PUBLIC PROSECUTOR v FRANKY BELBONG

Coram: *Hon. Chief Justice V. Lunabek*

Counsel: *Ms M. Taiki for the State*
Mr R. T. Willie for the Defendant

Date of Plea: *11 July 2022*

Date of Sentence: *05 August 2022*

SENTENCE

A. Introduction

1. Franky Belbong, you appear today for sentence having pleaded guilty to two offences of arson on June 2020, contrary to section 134(1) of the Penal Code Act.
2. You were about 22 years old and you reside on Vao island.

B. Facts

3. Both offendings occurred on 29 June 2020 on Vao island.
4. Earlier on 28 June 2020, the first complainant, Gideon Rouvoune, a young man of 19 years old and a farmer who lives on Vao island, was drinking kava with some boys. Franky, you approached them and asked for the first complainant's brother phone (Keven Rouvoune); you asked and you told them to return the phone.
5. You took the phone and left. You did not return the phone. So they went to look for you at your home but you were not there. They returned to the area they were drinking.
6. You later appeared and asked for a fight and the complainant and the other boys fought you and left.

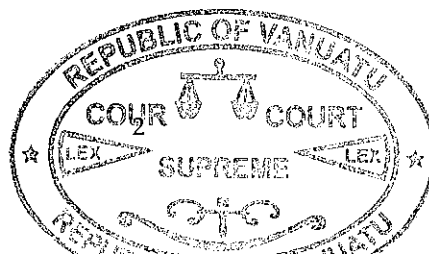


First arson – Gideon Rouvouné's house burnt down

7. On 29th June 2020 in the early hours of morning on Vao, you went to Gideon Rouvouné's house which was still being built and not finished. The incomplete house has only the natangura roof and timber frames on it and you set fire on it.
8. Gideon Rouvouné (the first complainant) was not at the village when you burnt his house, he was living with his grandmother at the time but he was told by his neighbors that his house had been burnt down.
9. Gideon Rouvouné's neighbors had woken up to the sound of bamboo breaking and tried to wash the fire with water.
10. The photographs of the first complainant Gideon Rouvouné's house show the timbers and roof were completely burnt. The photographs show the ashes of the natangura roof completely burnt.

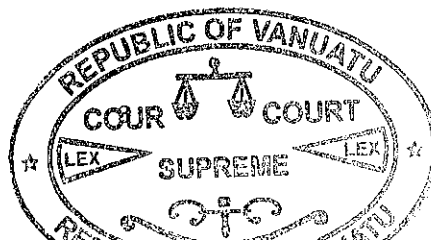
Second arson – Baggio Meltemal's house partially burnt down.

11. Again on the 29 June 2020 in the early hours of the morning, you went to Baggio Meltemal's house (second complainant). Baggio Meltemal was asleep inside his house, which is a semi-permanent as made up of part cement bricks and part bamboo with the roof made of natangura.
12. While Baggio was asleep inside his bedroom, he felt the place was getting very hot when he woke up he was shocked to hear noises like bamboo breaking and that there was fire lighting above his bedroom on the roof.
13. He (Baggio) run outside and began trying to wash the fire out, he was helped by his family members, he also went into the house and tried to remove some of his belongings.
14. They managed to put out the fire which had burnt only one side of his house.
15. The photographs of Baggio Meltemal's house show the one side (left side) of his house completely burnt, natangura roof and bamboo walls burnt as well as the room where Baggio Meltemal was sleeping was burnt with ashes on the floor.
16. Franky Belbong, you had filed a cautioned statement on 30 June 2020 in respect to both allegations. In that statement, you stated that you were drinking alcohol and drunk but you knew the houses of both complainants and you went to burn them both. You were angry because Gideon Rouvouné fought you and Baggio Meltemal was with him. You burnt Gideon Rouvouné's house first and then Baggio Meltemal's. You stated you used a stick fire and threw it on the roof and because of the wind blowing the fire lit. You run away and did not watch.



C. Sentence start point

17. The offence of arson is punishable by a maximum sentence of 10 years imprisonment. It is a serious offence.
18. The following aggravating and personal factors are present in the offending:
 - (a) Victim Baggio Meltetal was sleeping inside his room where the fire was burning, risk of him being seriously injured. The defendant was reckless in endangering human life;
 - (b) Two buildings burnt – Count 1 is in relation to an incomplete house natangura and timber. Count 2 is in relation to left side of the house completely burnt;
 - (c) Loss of value of the materials for the buildings as both of the buildings are used for domestic living;
 - (d) The defendant being angry at both of the victims and took matters into his own hands by setting fire onto both complainants' homes;
 - (e) The offender contributed to the delay of this case as he committed the offending in Malekula in 2020 and then left to reside in Luganville. Police located him and he was summoned to the Magistrate's Court on 6 May 2022 for Preliminary Inquiry. He left Luganville and went to Malo and did not appear for his plea on 13 June 2022. A warrant of arrest was issued against him where he was arrested to be brought to court on 11 July 2022 for plea. This showed his attitudes towards court orders.
19. The prosecution and the defence counsel referred the court to case authorities including the case of *Livo Worahese v PP [2010] VUCA 11*, a case involving the burning down of three buildings including a sleeping house and kitchen. The Court of Appeal accepted a starting point of 4 years imprisonment and an uplift of 1 year for aggravating factors.
20. Here, the appropriate starting point sentence is of 4 years imprisonment taking into account all aggravating factors. That is the total sentence on both counts concurrently.
21. In mitigation, the defendant is a first-time offender; he is a single man; he has made custom reconciliation to the victims and has paid a fine of VT5,000 to the victim. I disallow 12 months (1 year) to the total sentence of 4 years imprisonment. The total sentence is reduced to 3 years.
22. I further reduce that sentence of 3 years by only 15% instead of 25% (because of his own delaying actions) to reflect his guilty plea. The sentence is further reduced to 2 years and 7 months imprisonment. That is the end sentence.



23. I exercise my discretion and I decide that the circumstances of the offending were serious in both offences so I decline to suspend the end term of 2 years and 3 months imprisonment.
24. In addition, I consider the compensation report filed by the Probation office on 11 August 2022. The two houses that defendant Franky Belbong has set fire on them were uncompleted buildings with new local materials purchased. The claim on the loss of materials was of VT50,000 and 10 pieces of iron roof at 10 feet for the two victims in this case. Mr Charley (defendant's father) agreed and promised to settle the compensation on the 15th December 2022.
25. I therefore make an order that defendant Franky Belbong and his family shall settle the compensation claim to the two (2) victims by settling an amount of VT50,000 and purchasing 10 pieces iron roof at 10 feet on the 15th December 2022 to the two victims in this case. I note that the defendant has paid to the victims VT5,000 as custom reconciliation. I count this VT5,000 as compensation. The total VT50,000 will be reduced by VT5,000 to VT45,000.

ORDER

26. Defendant Franky Belbong shall serve an end sentence of 2 years and 3 months imprisonment which deemed to begin on 11 July 2022 to take into consideration of the time he had spent on remand.
27. In addition, defendant Franky Belbong and his family shall pay to victim 1 and victim 2 an amount of VT45,000 cash and provision of 10 pieces of iron roof at 10 feet on the 15th December 2022.
28. Defendant Franky Belbong has 14 days to appeal this sentence if he is dissatisfied with it.

DATED at Port Vila, this 22nd day of August 2022.

BY THE COURT

.....
Hon. Chief Justice V. Lunabek

