

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

Criminal
Case No. 22/1531 SC/CRML

BETWEEN: Public Prosecutor

AND: Samuel Ishmael Douyere
Accused

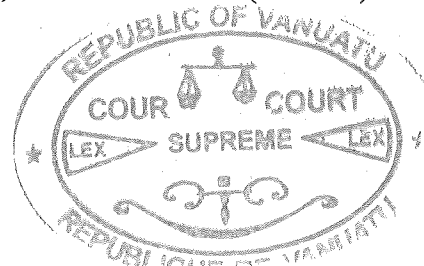
Date of Sentence: 15th September 2022
Before: Justice EP Goldsbrough
Appearances: Boe, D for Public Prosecutor
Willie, R for the Accused

SENTENCE

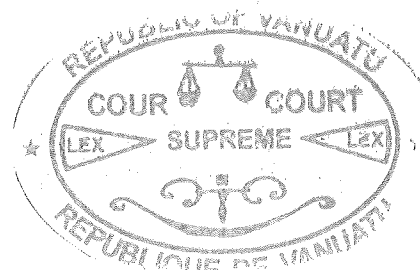
1. Samuel Ishmael Douyere pleaded guilty to four counts of arson and one count of criminal damage.

A. Facts

2. The following were the complainants namely, Marie Tevi, George Usi, Netline Iman, Joseph Talis and Alice Joseph.
3. The victims and the defendant all resided on Aore Island during the time of the offending.
4. On 28 April 2022 the complainants made a report to the police that the defendant had committed the offences of arson on four different houses belonging to the victims on Aore Island.
5. Sometime between 6pm and 10pm at night on the 17th of April 2022 the kitchen of the victim Mari Tevi was set on fire and was partially burnt down. Later it was discovered that the defendant had burnt that victim's kitchen. Some of Mary Tevi's personal items were also burnt at the time. These include plates, cups, and other utensils (Count 1).

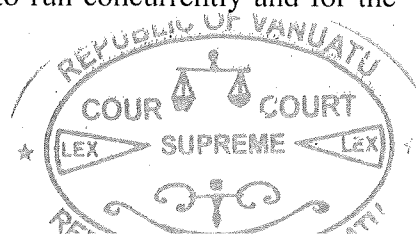


6. Joseph Talis was the victim in the second incident of arson. He was unemployed and he resided at Aore and made his living out of gardening. On Wednesday 20th of April 2022 Joseph Talis was cutting grass in the chief's Sam yard with a grass string cutter.
7. Joseph Talis went back to put his string cutter in his house when he met up with some ladies on his way. One of the ladies told him that she saw light at her home and that someone wanted to burn her house. Mr. Joseph Tali's ran ahead of the ladies to one of Netlin house and saw the defendant light the fire on one of Alice's kitchens.
8. The defendant ran towards the kitchen and a woman tried and stopped the fire. Mr. Talis saw the defendant also set fire to another natangura house belonging to Netlin. Mr. Talis washed the fire with water and the flame went down.
9. The victim ran after the defendant to try stopping him and at the same time he saw the defendant set fire to his house and he managed to douse the fire with water until the flames went down.
10. During the time the defendant had already run away and hid (Count 2).
11. On the 20th of April 2022 around midday the defendant set fire to the victim's kitchen. During the time the victim was on the garden with one Marie to collect the cabbage. While collecting cabbage they were approached by one of the victims Netlin and she told her the defendant burnt her house. The victim ran back home and saw her kitchen had been burnt (Count 3).
12. While burning these houses on the 20th of April 2022, the defendant also cut into pieces the water pipe belonging to your community at Aore village. The water pipe was provided to the community by the government.
13. All the houses were locally built of local materials. One of the properties was burnt on the 17th of April at around 9pm at night which was the kitchen of victim Marie Tevi while other three houses were set on fire on the 20th of April in midday. Also, the defendant had cut the water pipe belonging to the community at Aore Island.
14. The defendant participated in a recorded interview with the police after caution. The defendant made full admissions. That he had burnt all the houses of the victims because he was angry with these victims. He also admitted that he had cut the community water pipe in the process of burning the houses on the 20th of April 2022 during midday (Count 5).
15. He was arrested on the 19th of May 2022 and has been remanded in custody since then.



B. Sentence

16. The maximum penalty for arson is 10 years imprisonment and for criminal damage 1 year. The court will determine a starting point for this sentence considering the maximum penalty available and the factors which are said to aggravate these offences. Aggravating features suggested by the prosecution are the elements of planning, multiple houses burnt, resultant homelessness, emotional harm, and loss of household goods. Most, if not all these factors are not factors of aggravation. There is no evidence of planning and there are already multiple counts which account for multiple houses. Burning down a home inevitably results in the loss of household goods unless notice is given to remove them. Homelessness is perhaps a factor which could be said to aggravate ordinary arson.
17. For the offences of arson, a starting point of four years is set. Damaging the water supply to the village is a distinct and separate offence and whilst the multiple charges of arson may attract a set of concurrent sentences, the separate offence of damage to the water supply should, in the courts view, attract a consecutive sentence. For that a starting point of 6 months is set.
18. This court notes the remarks of the Court of Appeal in *Livo Worahese v PP* [2010] VUCA 11 as regards the prevalence of this type of offences in Santo.
19. The defendant pleaded guilty to most of these charges at an early opportunity but not to all of them. But he had been seen by some of the victims committing these offences and so it would not have been difficult to prove his guilt. The discount available for the guilty plea is brought down from 33% to 25%. Mr. Douyere is still young now, only 17 yrs. of age, and the sentence should reflect that youth. A further discount of 10% is given to reflect that youth.
20. No customary reconciliation has taken place, and none is likely to happen, and no remorse is expressed. There is clearly no possibility of the victims receiving anything in terms of compensation simply because the offender has nothing with which he can pay them.
21. The court has considered whether the sentence imposed should be suspended. There are factors present in your case which suggest suspension is not the right thing to do. There is no sign of remorse for your actions separate from the fact that you have pleaded guilty. You are adamant that there should be no customary reconciliation. These factors suggest that suspending your sentence should be ruled out.
22. Samuel Ishmael Douyere is therefore sentenced to two years eight months imprisonment for each of the four offences of arson, to run concurrently and for the



offence of malicious damage a further four months imprisonment also to run concurrently. The sentence for damage has been made concurrent rather than consecutive taking into account the total sentence imposed. That is a total of 2 years and 8 months which is deemed to have commenced on 19 May 2022.

23. The offender has 14 days within which he may appeal against this sentence.

Dated at Luganville this 15th September 2022

BY THE COURT

EP Goldsbrough
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Justice EP Goldsbrough

