

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

**Criminal Case No. 59 of 2007**

**PUBLIC PROSECUTOR**

**-v-**

**KENETH ATUARY  
AWEN GEORGE**

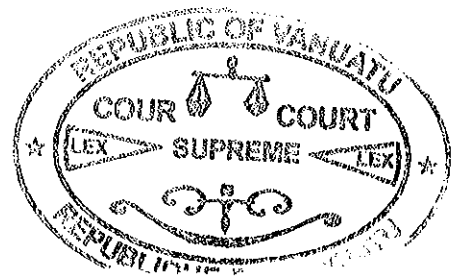
**Coram:** *Justice N. R. DAWSON*

**Counsel:** *Mr. Standish for Public Prosecutor  
Mr. Bennet for Accuseds*

**Date of Sentence:** *10<sup>th</sup> December 2008*

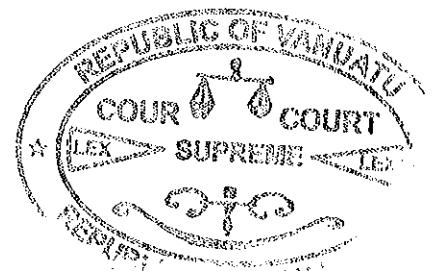
**SENTENCE**

1. Mr. Atuary and Mr. George you appear in Court today for sentencing. Mr. George you appear for sentencing on the charges of Unlawful Entry, Arson, Theft and Damage to Property. Mr. Atuary you appear for charges of Unlawful Entry and Arson. Mr. Atuary I note that you are 24 years of age and Mr. George you are 26 years of age. I note that the maximum sentence for the charge of Unlawful Entry is for 10 years imprisonment. Had it been a domestic dwelling that you had entered then a maximum sentence would have been 20 years imprisonment. Clearly the legislators have differentiated between domestic and commercial buildings. That is not uncommon in many jurisdictions. I note however that the building you burnt down was a Government building of particular significance and importance to the



administration of justice in Vanuatu and that is a circumstance which perhaps slipped between the gaps when a maximum period of sentencing had been set for that particular offence. I make no further comment on that and I will not be taking it into account in my sentencing.

2. The two of you met up in the evening of 6<sup>th</sup> June 2007 when you smoked cannabis and drank kava. You had previously discussed and agreed to set fire to the Supreme Court building. You went to vicinity of the building and waited until about 1 am when the street lights were turned off for the night. You then entered the building by removing a number of louvre windows and climbed into the Court House. Once inside you set a number of fires in a number of locations, both on the first floor and on the ground floor. One fire was lit under a Judge's bench. Both of you participated in the Arson, one carried matches, the other a lighter. Mr. George removed a Vanuatu National Flag from within the building and carried it away with him and set fire to it some hours later.
3. The Court house was a wooden building, which contained wooden furniture and large amounts of paper and the fire spread rapidly. Nearby residents heard noises of breaking glass and witnessed the spread of fire. The fire services were notified and attended but to no avail. Their efforts were limited to restricting the fire to the Supreme Court building, the Island Court Building and the building housing the Department of Geology, Mines and Water Resources.
4. About 11 am on 7<sup>th</sup> June 2007 you both returned to the vicinity of your crime where there were hundreds of other citizens in the vicinity shocked by the total destruction of the buildings concerned.
5. I am also going to set out the amount of damage caused by you in this offending. The fire that you started complete destroyed the Supreme Court building and the building in which was housed the Department of Geology and Mines and Water Resources. The total loss as a result of the fire is inestimable. The contents within the buildings were also totally destroyed. The

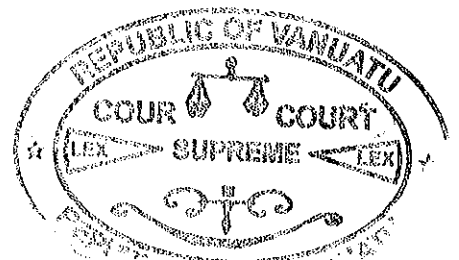


Court house was a unique and treasured building that had historic significance and was the landmark in Port Vila and the country of Vanuatu. It had architectural significance and also enormous symbolic importance as the headquarters of the judicial arm of Government and the Judiciary in the Republic of Vanuatu. The attack on the Court House affected the thinking and attitudes of everyone in Vanuatu. The contents of the Court house including all court files, furniture, computers, office equipment, stationary, judge's equipment, library textbooks, official certificates, wills and other documents were all lost. In the aftermath of the fire the judicial system in Vanuatu has been adversely affected. The Court's files had to be recreated through the use of other Government Departments and private lawyer's records. Cases have been delayed because of the destruction caused by the fire. As a result the Court administration and the Court rooms themselves have been separated with temporary court rooms still being used which causes significant disruption to the administration of justice in Vanuatu.

6. The Registrar of the Supreme Court prepared a schedule in which he estimated losses of over 2 billion Vatu to the judicial system. The losses to the Department of Geology and Mines and Water Resources are also uncalculable. The building was situated in the adjacent to the Court house and was set alight as a result of the fire in the Court house when it spread out of control. That building was also totally destroyed as were the contents the government owned and possessions belonging to staff were destroyed. Some personal belongings destroyed in the fire included passports and birth certificates. Field Testing and laboratory equipment were also destroyed. Irreplaceable data accumulated over 40 years were destroyed in that fire and it is estimated that the loss to the Department of Geology were over 1 billion Vatu.
7. I note Mr. Atuary that you have numerous convictions for unlawful entry and theft. Mr. George while you were in custody on these charges you escaped on several occasions and on one occasion you participated in a home invasion and pack rape for which you have been sentenced to 9 years imprisonment.

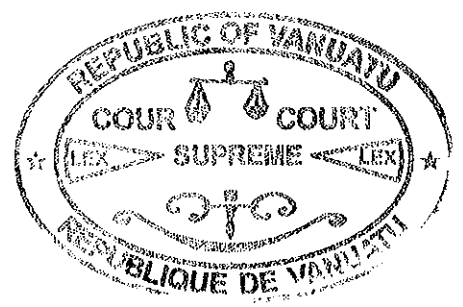


8. I have read the submissions by both counsel for the Public Prosecutor and for yourself and I have also read your probation reports that have been submitted to the Court for sentencing. I have also heard oral submissions from counsel today.
9. In sentencing you both it is necessary that I take into account a number of sentencing factors. The first is that you need to be held accountable for the harm that you caused. I also denounce your behaviour and wish to make it clear to you that it is necessary that I impose a sentence that will serve as a deterrent both to you and to any other persons that might be foolish enough to think that the judicial system in Vanuatu can be attacked in this way. Your sentence needs to reflect the high degree of gravity in your offending and its seriousness. It is appropriate that I consider a sentence near to the maximum. There are a number of aggravating factors in your offending. The first is you acted together in your unlawful purpose. You also conducted a deliberate and direct attack upon the judicial arm of the Government in Vanuatu. The loss caused by your actions is incalculable. Certainly it is well over 3 billion vatu plus ongoing disruption to the administration of justice in Vanuatu and the destruction of irreplaceable records of the Supreme Court and the Department of Geology, Mines and Water Resources. The Supreme Court that was destroyed was of high historical and national significance.
10. Your action also potentially put many people at risk for their lives and safety, as there are many dwelling houses in the immediate area. This is a fire that could easily have spread to those dwelling houses putting those people at risk. There is also a high degree of premeditation and planning by you in committing these offences. I also take into account your respective previous and present convictions in sentencing you today.
11. In mitigation, Mr. George you gave yourself up to the Police and admitted to the offence 3 weeks after the offence happened and you named Mr. Atuary as your



co-offender. When Mr. Atuary was arrested he also admitted his involvement. Guilty pleas were entered at an early stage.

12. There is no relevant precedent for setting a sentence for you for these particular offences. In my view the lead offence is that of Arson, and I will sentence you accordingly. Due to the extremely high aggravating factors relating to your offending it is my view the starting point for sentencing you for the charge of Arson is the maximum of 10 years imprisonment. I have to take into account the mitigating factors, and for you Mr. George, in particular that you gave yourself up to the Police. You are convicted and sentenced to 6 and half years imprisonment. I also have to take into account the mitigating factors relevant to you Mr. Atuary, and you are convicted and sentenced to a term of imprisonment of 7 years.
13. For you both, for the charge of Unlawful Entry, you are convicted and sentenced to a term of imprisonment of 2 years each to be served concurrently. The Unlawful Entry was part and parcel of the Arson offence and should therefore be a concurrent sentence. Mr. George you are also convicted for the charges of Theft and Damage to Property. That is the Theft of the flag from the Supreme Court building and burning it later. In my view that flag would have been burnt in the Court house fire anyway even if you had not stole it. I take into account your overall sentencing and for each of those two offences of Theft and Damage to Property you are convicted and sentenced to a term of imprisonment of 1 month each both to be served concurrently.
14. Mr. George your sentence of 6 years and 6 months is reduced to 6 years and 4 months to take into account 2 months you have already spend in custody. No further reduction was made due to the totality of your sentences. The rape conviction of Mr. George is a distinctly separate offence from this offending and the totality of your sentencing in conjunction with this sentence in my view is just and proportionate.



15. Mr. Atuary your sentence of 7 years is reduced to 6 years 2 months and 20 days after taking into account the time that you have also spent in custody awaiting sentencing for these sentences. You each have the right to appeal these sentences. Any appeal you must lodge a notice of appeal within 14 days of today's date.

**Dated at Port Vila, this 10<sup>th</sup> day of December, 2008**

**BY THE COURT**

