

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

PIERRE CHANEL TABIDENG

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mrs Kayleen Tavoia – Public Prosecutor
Mr Christopher Tavoia for the Defendant

SENTENCE

1. Pierre Channel on 10th November 2009 you pleaded guilty to two separate charges of Arson contrary to section 134 of the Penal Code Act Cap. 135.
2. Two separate persons complained that on 23rd September 2009 at Bulhak Village Central Pentecost, you set fires to their dwelling houses. Channel Buleuru in Criminal Case No. 21 of 2009 alleged you burned down his dwelling house valued at VT96.000. Antonio Virelili alleged you burned down his Nakamal the cost of which he placed at VT409.660.
3. Arson carries a maximum sentence of 10 years imprisonment. The Public Prosecutor submits the Court should punish you by sending you to prison and further that you should be ordered to pay compensation to the complainants for the destruction of their properties.
4. I have considered how the Court should punish you in respect of the two cases in light of all written submissions of Mr Tavoia in responses to the Public Prosecutor's submissions, and also in light of the information contained in your pre-sentence report.



5. I accept the Public Prosecutor's submission that the Court should impose a punishment that should be a deterrence to the other members of the public. And I accept that the sentence should be a custodial one, but I do not accept that the Court should make a compensation order on top of the custodial sentence.
6. The Court is grateful to Mr Tavoia for referring the Court to the case of Public Prosecutor v. Ron Tabi and 17 others; Criminal Case No. 6 of 2006 in support of his submission that the Court should impose a fine rather than imprisonment. However, I do not accept that a fine would be the appropriate punishment in your case.
7. The offence of arson is becoming all too common in the islands of Vanuatu but in particular, on the Island of Pentecost. Maybe this is due to the reason that the Courts have been too lenient in the past. It's for this reason that the Court will impose a custodial sentence as a deterrence to others.
8. A fine would not be appropriate because it appears when you exchanged 3 pigs with rounded tusks to the victims of your offending, this amounted to a customary fine.
9. I consider the mitigating factors such as your early guilty pleas, your being a first-offender and, of course your performance of customary reconciliation ceremony on 25th September 2009, that is only some 2 days after your offendings. These contribute to the lenient approach of sentencing the Court has adopted in sentencing you today.
10. For those reasons, the Court hereby convicts you for two separate charges of Arson and sentences you as follows:-
 - (a) In Criminal Case No. 22 of 2009 – You are sentenced to 18 months imprisonment.



(b) In Criminal Case No. 21 of 2009 – You are sentenced to 6 months imprisonment. This will be served concurrently with the 18 months in Criminal Case No. 22 of 2009.

(c) Under Section 58 of the Penal Code Act (as amended) there is an order for the suspension of part of your sentence of imprisonment. It is ordered that you will serve only 9 full months without parole, and the other 9 months are suspended on condition that you do not re-offend by committing this same offences within a period of 2 years after your release, having served 9 full months.

11. There will be no order for compensation. The complainants may pursue separate civil claims against you if they wish to do so. This is because from the pre-sentence report, it appears that you acted in an act of revenge because the complainants and their relatives have been doing the same things to you and your relatives as well.

12. Finally, the period you have already spent in custody is taken into account in your sentence. That is done by making your sentence going back to 10th November 2009, being the date you were first remanded in custody. Your 9 months of effective imprisonment term begin on 10th November 2009.

DATED at Luganville this 25th day of November 2009.

BY THE COURT


OLIVER A. SAKSAK

Judge

