

PUBLIC PROSECUTOR

-v-

NAKOMAHA WILLIE

Coram: Chief Justice Vincent Lunabek

Counsel: Mr Tristan Karae for the prosecution
Mr Andrew Bal for the defence

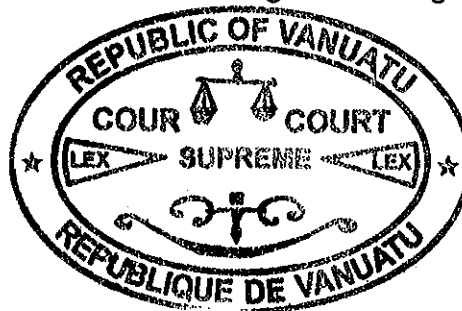
SENTENCE

Mr Nakomaha Willie, you are charged with one count of arson, contrary to section 134(1) of the Penal Cod Act [CAP.135] and one count of Attempted Intentional assault, contrary to sections 28 and 107(c) of the Penal Code Act.

On Monday 23 August 2010, you entered guilty pleas on the two offences charges against you and you were convicted of the two offences accordingly.

The complainant of this case is your father, Mr Willie Iaken. The facts of your offending occurred in 2005. They are this. On or about the 29th October 2005, your father, Mr Willie Iaken, stated that it was sometime around 4.00pm in the afternoon that you set fire to the kitchen and threaten to assault him with a knife. Your father stated that his house was burnt down and that he does not know what was in the kitchen when it burnt down. You also cut down 4 coconut trees that belonged to him.

Your father stated that you were angry with him and your mother because your wife had left you and that you wanted your father and mother to go and bring her back if not you would assault them.



On or about the 31st October 2005 the Police Officer, Mr Tamata, received a phone call and went to Imafin Village and saw that there was a kitchen that was burnt down and also saw four coconut trees were cut down. The officer then arrested you and brought you in for questioning. You were cautioned and questioned. You made admissions to the allegations put before you. You stated that you were angry so you burnt down your parents' house and cut down the 4 coconut trees because you had some problems with your wife.

The relevant provisions of the law that you have broken when you offended on 29 October 2005 are sections 134(1) and 28 and 207(c) of the Penal Code Act [CAP.135]. They provide as follows:

*"134 (1) No person shall willfully and unlawfully set fire to... any building or other property whatsoever which to his knowledge belongs to another.
Penalty: Imprisonment for 10 years."*

"28 (1) An attempt to commit a criminal offence is committed if any act is done or omitted with intent to commit that crime and such act or omission is a step towards the commission of that crime which is immediately connected with it, or would have been had the facts been as the offender supposed them to be.

(4) The commission of an attempted offence shall constitute an offence punishable in the same manner as the offence concerned."

"107 No person shall commit intentional assault on the body of another person.

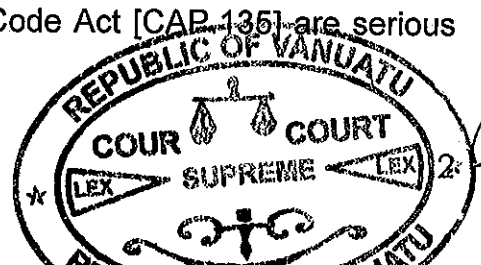
Penalty:

- (a) If no physical damage is caused, imprisonment for 3 months;*
- (b) If damage of a temporary nature is caused, imprisonment for 1 year;*
- (c) If the damage of a permanent nature is caused, imprisonment for 5 years.*

..."

In this case you entered a guilty on an attempt to assault your father, contrary to section 107(c). The maximum penalty for such an offence is 5 years imprisonment. An attempt to commit an assault, contrary to section 107(c) carries a same penalty which is 5 years imprisonment.

Offences of arson contrary to section 134(1) and attempted intentional assault contrary to sections 28 and 107(c) of the Penal Code Act [CAP.135] are serious offences.



When I consider your sentencing, I heard, read and considered submissions made by the prosecution and submissions made by your lawyer on your behalf. I have also read and considered a same day report provided by the Probation Officer to assist the Court in your sentencing.

I note that you committed those offences on 29 October 2005. It is now some 5 years. At the time of the offending, your mother fled to another village. You were constantly threatening your father and mother. These factors added to the gravity of your offending. It was wrong for you to behave this way towards your father and mother in October 2005.

The reason of your offending was that you have a problem with your wife. She left you. You wanted your wife to return home with you. You told your father to give a pig to the father of your wife for your wife to return home. Your father did not do that. He gave the pig to another person during a ceremony. You were not happy. You committed these offences.

It is important for you to understand that if you have a wife, it is your responsibility to love, care and protect her. It is part of your responsibility to find another pig if that is part of your custom. It is also part of your responsibility to communicate with your wife and request her to return. Instead you threw all your anger on your parents. You are now 31 years of age. You were 29 years old in October 2005. So you were not a child or a youth at the time of your offending.

The report shows that after 3 months of your offending in October 2005, you had performed a custom ceremony with your father and mother by giving a pig and kava to your parents after a reconciliation meeting was held at Imafin Nakamal.

The report reveals also that after your offending, you have rebuilt the house you set fire on in October 2005 and you have also rebuilt two other houses for your parents in 2006 and 2007.

I have queried as to why you were not prosecuted earlier just after the offending. The prosecution is not in a position to answer to the queries.



Your mother, Mrs Iarap Willie confirmed that you have performed a custom peace ceremony with her and your father. She said she was shocked last Saturday to see that the police officers came around to inform you to attend Court at Isangel for the same offence, happening five years ago and that she thought you and your parents had already settled in a custom ceremony.

It is important for you to understand that what you have done in October 2005 were serious breaches of the criminal laws of Vanuatu. You must face the law to answer your own actions. Custom ceremony cannot take away the very nature of the crime you did in October 2005. What custom ceremony can do is to mitigate your sentencing only.

If you were dealt with sooner after the offending, you would be sent straight away to custody for committing the arson, contrary to section 134(1) of the Penal Code Act and attempted intentional assault, contrary to sections 28 and 107(c) of the Penal Code Act with the use of a bush knife.

Again, you are warned that the next time you will commit the same offence again you will be sent to custody. This will also be the case for others who will breach the laws of Vanuatu to commit similar type of offences.

In the present case, I sentence you to 100 hours community work for arson, contrary to section 134(1) of the Penal Code Act and 50 hours community work for attempted intentional assault, contrary to sections 28 and 107(c) of the Penal Code Act [CAP.135].

You are ordered to serve these community work sentences consecutively. This means you shall perform a total of 150 hours community work.

You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Isangel, Tanna this 26th day of August 2010

BY THE COURT

Vincent LUNABEK
Chief Justice

