

**PUBLIC PROSECUTOR -v- PETER ALBERT
BADLEY PETER
TOM KEN
FRED JOHN
TIMOTHY JOHN KALO
MICHAEL JACK
SAM KALO**

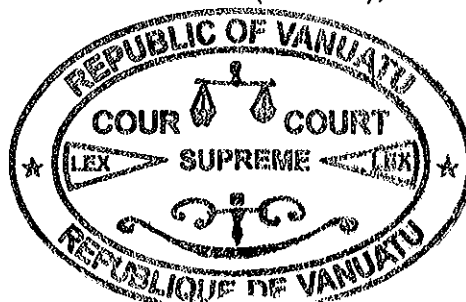
Coram: *Chief Justice Vincent Lunabek*

Counsel: *Mr Tristan Karae for the Public Prosecutor
Mr Eric Molbaleh for the Defendants*

SENTENCE

On 4 May 2010, the following named Defendants pleaded guilty and were convicted on the following counts:

1. Peter Albert pleaded guilty and was convicted of:
 - 1 count of Arson, contrary to section 134(1) of the Penal Code Act [CAP.135] (count 1);
 - 2 counts of damage to property, contrary to section 133 of the Penal Code Act (count 2 and count 4);
2. Badley Peter pleaded guilty and was convicted on 2 counts of damage to property, contrary to section 133 of the Penal Code Act (counts 2 and 4);
3. Tom Ken pleaded guilty and was convicted on 2 counts of damage to property, contrary to section 133 of the Penal Code Act (counts 2 and 4);
4. Fred John pleaded guilty and was convicted on 2 counts of damage to property, contrary to section 133 of the Penal Code Act (counts 2 and 4);
5. Timothy Kalo pleaded guilty and was convicted on 1 count of damage to property, contrary to section 133 of the Penal Code Act (count 2);



6. Michael Jack pleaded guilty and was convicted on 2 counts of damage to property, contrary to section 133 of the Penal Code Act (counts 2 and 4);
7. Sam Kalo pleaded guilty and was convicted on 1 count of damage to property, contrary to section 133 of the Penal Code Act (count 4);

Nulli prosequi were entered in respect to other counts in the information the Defendants and others were discharged on such counts accordingly.

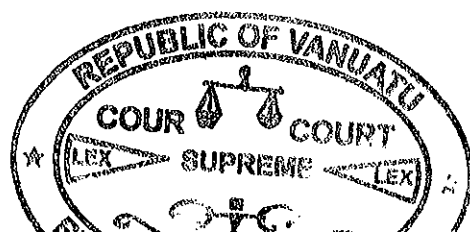
The complainants of this case are Mr Siri Seule and his wife. They live at Saratop located at Epule Village, North Efate. The incident occurred on 10 February 2010.

On or about the 10th of February 2010, the complainant Mr Siri Seule and his wife left the house in the morning to go down to their small tourist shop located near the beach and close to the Epule Bridge.

The complainants stated that they were at the shop for about 10 minutes when Mr Seule's brother Mark Seule came and called them that some of the people from Takara burnt the complainant house down. The complainant and the wife went up to their house and saw that the Defendants had damaged their sleeping house and used knives to make holes through the iron sheet walls of the house. The complainant also saw that some of their properties, including documents, clothes and ripped mattress were thrown all over the place. The complainant also noticed that some of their properties were also stolen by the Defendants including clothes and a keyboard.

The complainant then looked over to the kitchen and saw that it was in ashes, the Defendants had set fire to it and everything was burnt including kitchen utilities. The complainant also saw that their gardens were destroyed and live stocks were killed.

The Police arrived at the scene of the crime and around 12:45 the Police went down to Takara Village and told the Chief about the incident. The Chief called the Defendants and they willing to go into the police vehicle and were brought down to the Police Station. All Defendants were cautioned and interviewed and they made admissions to have met on the road and planned to burn the complainant house that



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day. The Defendants went up to the complainant house and saw that nobody was home, so they damage the house and they all put fire to the complainant kitchen. The Defendants further stated that they threw the complainant properties outside on the lawn and killed the complainant livestock and damaged the complainant garden.

When I consider your sentencing, I heard, read and considered submissions made by the Public Prosecutor and submissions made by your lawyer on your behalf. I also read and considered the pre-sentence report and compensation report filed on behalf of each of you.

I am informed by your lawyer that the reason for your offending is that the complainants live near the source of the Takara River and you live further down in Takara village A and B. You warn the complainant not to wash their clothes in the source of the river but they would not stop dirtying the water.

When the Court passes sentence on each of you, there is a need for the Court to condemn your behaviour.

Instead of you finding a peaceful and lawful way to settle your differences, you decided to take laws into your own hands by doing justice your own way.

This is not the way to behaviour in the community. By acting in the way you did you break the laws of Vanuatu and you commit serious criminal offences.

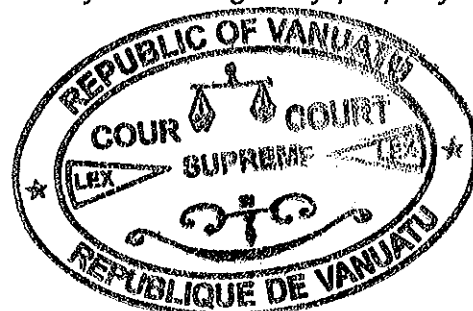
Section 134(1) of the Penal Code Act [CAP.135] prohibits arson. It provides:

"No person shall willfully set fire to, or damage by means of any explosive, any building or other property whatsoever which to his knowledge belongs to another.

Penalty: Imprisonment of 10 years."

Section 133 prohibits malicious damage to property in this way:

"No person shall willful and unlawfully destroy or damage any property which to hi knowledge belongs to another.



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Penalty: Fine of VT5,000 or imprisonment for 1 year or both.” (s.36(3) Interpretation Act [CAP.136].

The appropriate sentence will depend upon the gravity and circumstance of your offending.

In the present case, the circumstance of your offending is aggravated by the following factors:

- You commit these offences by grouping together.
- There is some degree of premeditation.
- The complainant victims were misplaced from their home as their home, food and livestock were destroyed.
- The value of the properties damaged is substantial.

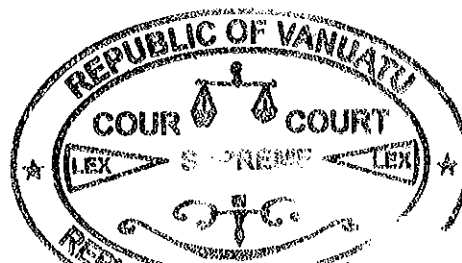
In mitigation, the following are put on your behalf:

Peter Albert

You are 19 years of age. You plead guilty to one count of arson and 2 counts of damage to property. You are not a first time offender. In 2008, you were convicted for theft by the Magistrates Court and you were sentenced to pay 4,000 Vatu fine. You help your parents paying the school fees of your younger brother who is at year 12 at Tebakor School in Port-Vila. On 1 September 2010, you had performed a custom ceremony to the couple victims. The custom ceremony involved your chief, the chief of the victims and all members of the community. The details of the custom ceremony are reproduced in the reconciliation report filed by the Probation Office dated 6 September 2010.

The appropriate sentence for you on the count of arson is 2 years imprisonment. I increase it to 2 years to reflect the aggravating factors which is totaling 4 years imprisonment. I reduced it to 2 years to reflect the mitigating factors.

I suspend your sentence of 2 years imprisonment for a period of 2 years. In addition I order that you perform 150 hours community work pursuant to section 58G of the



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Penal Code Act in respect to Court 1 of arson contrary to section 134(1) of the Penal Code Act.

I also sentence you to 150 hours community work for each and both counts of damage to property, contrary to section 133 and to be serve concurrently to each other and also concurrent to your above sentences. This means you are sentenced to 2 years imprisonment suspended for 2 years and in addition you shall perform 150 hours of community work together and in total.

Badley Peter

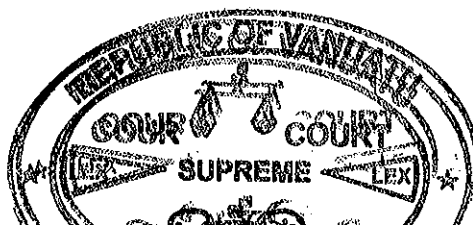
You are 21 years old. You pleaded guilty to 2 counts of malicious damage to property. You are a first time offender. You help your mother doing the gardening and selling produce at the market. You contribute to your community by organizing Presbyterian Church activities as you are the vice-President of Takara B village Presbyterian Church Youth. You are a member of your village string band group and also a member of the village soccer team. You had performed a custom ceremony with the victims on 1 September 2010. The custom ceremony involved your chief, the chief of the victims and all members of the community. The details of the custom ceremony are reproduced in the reconciliation report filed by the Probation Office dated 6 September 2010.

I sentence you to 10 months imprisonment concurrent for each and both counts of damage to property, contrary to section 133 of the Penal Code Act. I suspend your imprisonment term of 10 months for a period of 2 years.

In addition, I order you to perform 150 hours community work on each and both counts concurrently. This means you are sentenced to 10 months imprisonment suspended for 2 years and you shall perform a total 150 hours community work together and in total.

Sam Kalo

You are 23 years of age. You plead guilty and convicted on one count of damage to property contrary to section 133 of the Penal Code Act. You are the second born child of your parents. You are the brother of the Defendants Timothy John and Fred



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John. You left school at year 8 because your parents could not pay for your school fees. You help your parents looking after your disable sister. You cooperate with the police. You had performed a custom ceremony with the victims on 1 September 2010. The custom ceremony involved your chief, the chief of the victims and all members of the community. The details of the custom ceremony are reproduced in the reconciliation report filed by the Probation Office dated 6 September 2010.

I sentence your to 10 months imprisonment for the one count of damage to property contrary to section 133 of the Penal Code Act. I suspend it for a period of 2 years. In addition, I order you to perform 150 hours community work.

Tom Ken

You are 22 years of age. You plead guilty at the very first opportunity given to you by the Court. You have a child of 2 years of age who lives with your mother but you assist your mother with clothes and money. You help your parents doing gardening. You are a member of the Takara B village Presbyterian Youth. You leave school at year 8 as your parents could not afford for your school fees. You are not a first time offender you were convicted for theft in 2006 and you were sentenced to a fine of VT1,000. You had performed a custom ceremony with the victims on 1 September 2010. The custom ceremony involved your chief and the chief of the victims and all members of the community. The details of the custom ceremony are reproduced in the reconciliation report filed by the Probation Office dated 6 September 2010.

I sentence you to 10 months imprisonment for each and both counts of damage to property, contrary to section 133 of the Penal Code Act. I suspend your sentence for a period of 2 years. In addition, I order you to perform 150 hours community work on each and both counts concurrently. This means that you shall perform a total of 150 hours community work while your sentence of 10 months imprisonment is suspended for a period of 2 years.

Fred John

You are 17 years old. You pleaded guilty to two counts of damage to property, contrary to section 133 of the Penal Code Act. You are a first time offender. You have no previous convictions on your record. You are a first time offender. You help



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your parents looking after your disabled sister and also doing gardening. You are a member of o Takara A village Presbyterian Youth. You left school at year 6 because your parents could not afford paying for your school fees. You had performed a custom ceremony with the victims on 1 September 2010. The custom ceremony involved your chief and the chief of the victims and all members of the community. The details of the custom ceremony are reproduced in the reconciliation report filed by the Probation Office dated 6 September 2010.

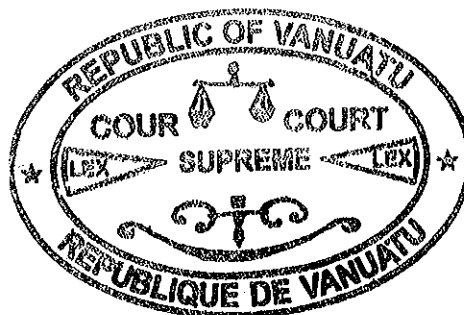
I sentence you to 10 months imprisonment for each and both counts of damage to property, contrary to section 133 of the Penal Code Act concurrently. I suspend them for a period of 2 years.

In addition, I order that you undertake 12 months supervision.

Timothy John Kalo

You are 23 years old. You plead guilty to one count of damage to property, contrary to section 133 of the Penal Code Act. You help your parents looking after your disable sister and doing gardening. You sell kava and you want to develop that business in future. You are a member of Takara B Presbyterian Church Youth. You are not a first time offender and you do have previous conviction in your records. In 2006, you were convicted for theft and sentenced to fine. I would not take them in your sentencing here. You had performed a custom ceremony to the couple victims on 1 September 2010. The custom ceremony involved your chief and the chief of the victims and all members of the community. The details of the custom ceremony are reproduced in the reconciliation report filed by the Probation Office dated 6 September 2010.

I sentence you to 10 months imprisonment and I suspend it for a period of 2 years. In addition, I order that you serve 150 hours community work.



Michael Jack

You are 19 years old. You plead guilty at the very first opportunity given. You are a first time offender. You have no previous convictions on your record. You are a student at Epule Rural Training Centre in mechanic section and you are in your second year in that school. Your future plan is to run your own mechanic workshop. You had performed a custom ceremony to the couple victims on 1 September 2010. The custom ceremony involved your chief and the chief of the victims and all members of the community. The details of the custom ceremony are reproduced in the reconciliation report filed by the Probation Office dated 6 September 2010.

I sentence you to 10 months imprisonment on each and both counts concurrently. I suspend your imprisonment term for 2 years. In addition, I order you to perform 150 hours community work on each and both concurrently. This means that you shall serve a total of 150 hours community work while your sentence of 10 months imprisonment is suspended for a period of 2 years.

Each of you have 14 days to appeal your respective sentences if you are not happy with them.

DATED at Port-Vila this 8th day of September 2010

BY THE COURT

**Vincent LUNABEK
Chief Justice**

