

PUBLIC PROSECUTOR

-v-

Narwie Netai & Others

Coram : V. Lunabek CJ

Counsel: Mr Tristan Karae for the Public Prosecutor
Mr Henzler Vira for the Defendants

Date of plea: 25 August 2011

Date of Judgment: 26 August 2011

Use of 2 translators (local)

SENTENCE

Defendant Narwie Netai, you appear today for sentence. You are a paramount custom chief of Erkirirang area, South Tanna. You are 74 years of age. On 25 August 2011, you plead guilty to one count of unlawful assembly, contrary to section 69 of the Penal Code Act [CAP.135] and one count of inciting and soliciting the commission of the criminal offence of malicious damage to property, contrary to section 133 of the Penal Code Act.

I set out below, the laws of Vanuatu that you have broken alone or with others on 2 February 2008 when you and 50 other persons assembled and damaged the Digicel Tower by pulling it down on the ground:

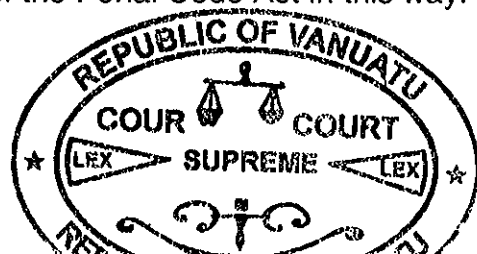
The first is the law against unlawful assembly. Unlawful assembly is prohibited by section 69 of the Penal Code Act which says:

"No person shall take part in an unlawful assembly.

Penalty: imprisonment for 3 years."

Unlawful assembly is defined under section 68 of the Penal Code Act in this way:-

Section 68-



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"When three or more persons assembled with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause nearby persons reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly."

The second law that you have broken is the law against soliciting and inciting others to commit the criminal offence of malicious damage of property, contrary to sections 35 and 133 of the Penal Code Act.

Section 133 provides:

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

Section 35 says:

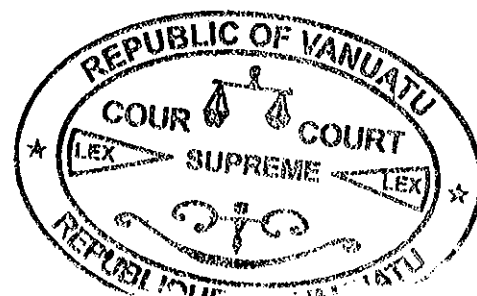
"It shall be unlawful to incite and solicit others to commit any offence, whether or not that offence is committed.

A person guilty of inciting or soliciting an offence may be charged and convicted as a principal offender."

The penalty for such an offence is prescribed by section 36(3) of the Interpretation Act [CAP.132] of a fine of VT5,000 or 1 year imprisonment or both."

The brief facts are set out by the prosecution. Your lawyer accepts these facts on your behalf. You have entered your guilty pleas on the basis of these facts. They are set out as follows:

On 23rd September 2008, Digicel representatives and representatives of people from Envitana including people of Envitana had a meeting. The purpose of that meeting was to reach an agreement for Digicel Company to build a telecommunication tower at Envitana area, South West Tanna. After the meeting, the people of Envitana including their representatives agreed and signed an agreement then Digicel started to build the tower.

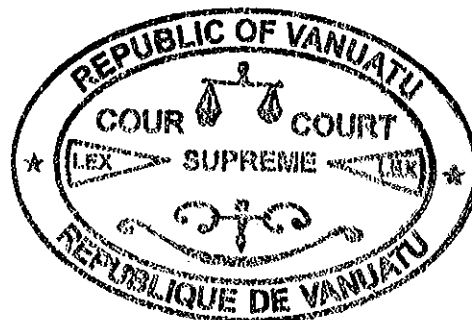


After the agreement, some of the Defendants, especially Bruno Neprei, Chief Yauhua Lounako and Chief Narwie expressed their thinking on the basis of some "custom road". They held several meetings with the idea to pull down the Digicel tower.

On 22nd January 2009, Chief Johnson Kuana of Ikakaha Village called on people from Envitana area to have a meeting as he was then informed that Bruno Neprei, Chief Iauhua and Chief Narwie wanted to pull down the Digicel tower. Chief Johnson Kuana sent Chief Nipiko to get Bruno Neprei, Chief Lounako and Chief Narwie to attend the meeting. They refused to attend the meeting. So after several attempts, Chief Johnson sent 7 men to call on Bruno Neprei, Chief Lounako and Chief Narwie to attend the meeting and say why they wanted to pull down the Digicel tower.

Bruno Neprei, Chief Lounako and Chief Narwie agreed and attended the meeting. Chief Johnson chaired that meeting. During the meeting, Bruno Neprei, Chief Lounako and Chief Narwie said they were going to pull down the tower and they gave one week to Digicel Boss to respond because they said that the Digicel tower was built on "Tabu" place. But Digicel did not respond.

Later on sometime on 1st of February 2009, there was a big meeting taking place at lekuirvang village. The purpose of the meeting was for the Defendants to plan as to how they were going to pull down the Digicel tower. During the discussions, Chief Yauhua and Chief Narwie told other Defendants as to who and how some of the Defendants would remove the posts, the fence and the bolts on the foundation of the tower so that the tower could fall on the ground. After the meeting of 1st February, the Defendants spent the night in the nakamal. On 2nd February 2009, the Defendants assembled together and marched up toward the location of the Digicel tower. Chief Johnson was informed that Chief Yauhua and Chief Narwie lead the Defendants to the location of the tower. Then Chief Johnson sent messages to get police assistance at Isangel police station and he also contacted Digicel Company in Port-Vila about the situation. The police went to the place the tower was built. The police tried to reason Chief Iauhua and Chief Narwie not to damage the tower. The Defendants did not listen to the police and the number of the police officers on the field were outnumbered and so they left.

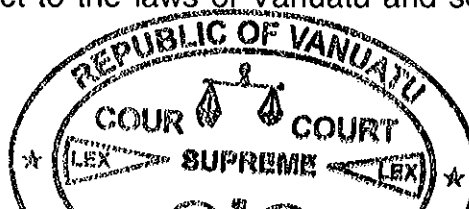


After that the police officers left, the Defendants took firewood and coconut leaves and throw them at the foundation of the tower and also around engine box of the tower. The Defendants then removed the fences, dug the posts of the fences. At the same time, other Defendants removed bolts at the foundation of the tower. The Defendants then took a reengin wire of the tower and they fastened it on a tree and they pulled on it. Once all bolts were removed, the Defendants pulled on the reengin wire and the Digicel tower fell on the ground. When they pulled the tower down on the grounds, the Defendants shouted and climbed on the tower. After they pulled the tower down on the ground, the Defendants made a big custom dance ceremony. During that custom dance ceremony, chief Yauhua Lounako and Chief Narwie lead the Defendants to the nakamal. There, Chief Narwie made custom payment with kava and food to the Defendants for the work they have done by pulling the Digicel tower down on the ground. The complainant in this case filed an assessment report showing the total loss of equipment and recollection of the tower. The total loss was about USD256,516 which is equivalent to 23,000,000 Vatu. On 9th February 2009, police started the investigation in the matter and after caution, they interviewed the Defendants and the Defendants made statements admitting their involvements in the incident.

When I consider the appropriate sentence I am going to pass on you for your offending, I take into consideration submissions made by your lawyer on your behalf. I have also considered the oral report made by the Probation Officer to assist the Court in your sentencing.

Chief Narwie Netai, you have committed very serious offences which attract custodial sentence. Your unlawful actions were carried out as a result of your frustrations, lack of understanding and communication or reactions after you have realized that your proposed site to build Digicel Tour was refused and that the tower was built on the traditional site you use for special custom ceremonies.

In sentencing you, the Court must inform you that as a citizen of Vanuatu, you are subject to the laws of Vanuatu. You must understand that you cannot take the law into your own hands to do justice to yourselves out of frustrations or reactions. Your custom motives or custom rational may be the basis of your actions. However, your custom and traditional practices are subject to the laws of Vanuatu and so as such



your local customs and traditions are not excuses for you to break the laws and commit criminal offences.

In this case, your offending is aggravated by the following factors:

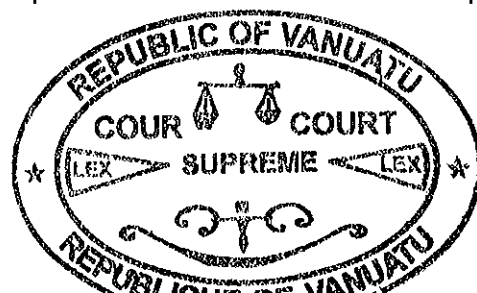
- There was a high degree of planning and pre-meditation.
- This was a criminal joint enterprise.
- Digicel suffered a loss roughly in the sum of VT23 million.
- Loss of mobile communication on Envitana area.
- You are a recognized chief of Envitana area.

In mitigation, you are an old man of 74 years of age. You are married and your wife is of same age like you. You have no children. You are a paramount custom chief with the custom responsibility to look after the activities of taros, kava and banana. You reside in your community and you do gardening. You are a first time offender. You said you were not consulted and you did not give your consent for the tower to be built at the site it was constructed as the site was used to perform custom ceremonies for taro and banana. You ask your lawyer to tell the Court that in future if the Digicel Company wants to build a tower, you are willing for a tower to be built but on a different site.

On balancing between the aggravating and mitigating factors and after proper cross referencing between each and all of them including a deduction of the total sentences for guilty plea of $\frac{1}{3}$, I sentence you as follows:

- 2 years imprisonment for unlawful assembly, contrary to section 69 of the Penal Code Act;
- 11 months imprisonment for inciting and soliciting others to commit the criminal offence of malicious damage to property, contrary to sections 35 and 133 of the Penal Code Act.

Your sentences are concurrent to each other. This means that you are sentenced to a total term of 2 years imprisonment. This is the same sentence passed on other Defendants in similar situation like your own in particular Defendant Bruno Neprei.

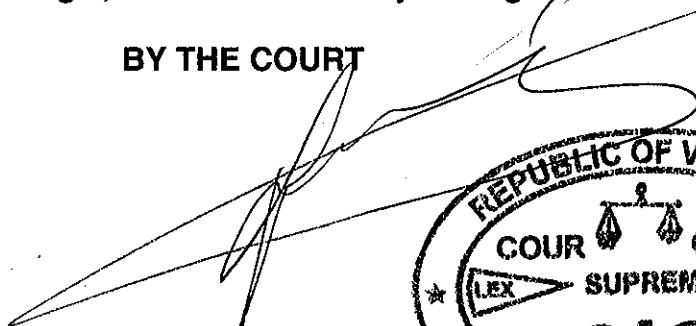


The next question is whether or not, I should suspend your imprisonment sentence. In your case, I decide to suspend your imprisonment sentence of 2 years for a period of 2 years but not 3 years because of your old age. For the same reason, I refuse to make any additional order for community work. You must not reoffend during the period of suspension of your imprisonment sentence. If you reoffend and convicted, your suspended imprisonment sentence of 2 years shall be re-activated.

You have 14 days to appeal your sentence if you are not happy with it.

DATED at Isangel, Tanna this 26th day of August 2011

BY THE COURT



**Vincent LUNABEK
Chief Justice**

