

PUBLIC PROSECUTOR - v -
DICK PAKOA
FILIAMU PAKOA
ORSEN PAKOA
JOE PAKOA
MICHEL WILLIE
WILLIE PAKOA
PETER DANE
JEFFREY PAKOA

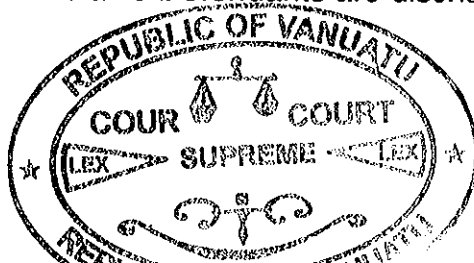
Coram: *V. Lunabek CJ*

Counsel: *Mr Tristan Karae for the public prosecutor*
Mr Jacob Kausiama for the Defendants

SENTENCE

This is the sentence of each of eight (8) above-named Defendants: DICK PAKOA, FILIAMU PAKOA, ORSEN PAKOA, JOE PAKOA, MICHEL WILLIE, WILLIE PAKOA, PETER DANE AND JEFFREY PAKOA.

On 3 May 2011, each and all of you entered guilty pleas in relation to one count of unlawful assembly, contrary to section 69 of the Penal Code Act [CAP.135] (count 1). Also on 3 May 2011, following Defendants: Dick Pakoa, Michel Willie, Willie Pakoa and Peter Dane pleaded guilty to one count of intentional assault, contrary to section 107(b) of the Penal Code Act [CAP.135]. Their sentences are adjourned pending the outcome of the trial of the other Defendants, namely: Filiamu Pakoa, Orsen Pakoa, Joe Pakoa and Jeffrey Pakoa who entered "not guilty pleas" in respect to the offence of intentional assault, contrary to section 107(b) of the Penal Code Act [CAP.135] (count 3). Again on 3 May 2011, the prosecution applied for a nulli prosequi under section 29 of the Criminal Procedure Code Act [CAP.136] in respect to the offence of malicious damage to property charged in count 2 against each and all 8 above-named Defendants. The Court granted that application and each and all 8 Defendants are discharged of



the offence of malicious damage to property, contrary to section 133 of the Penal Code Act.

On 1st August 2011, Defendants Filiamu Pakoa, Orsen Pakoa, Joe Pakoa and Jeffrey Pakoa changed their "not guilty pleas" in relation to the offence of intentional assault, contrary to section 107(b) of the Penal Code Act into "guilty pleas" on the date of their trial on that count of intentional assault (in count 3).

The facts of this case are not disputed. They are that:

The complainant Mr. Robert Toa filed a complaint on the 16 of March 2011. He stated that on the 16th of March 2011 around 1:30pm you all walked into a yard belonging to Louis Bonnis, who contracted the complainant for construction. The complainant and his work men were working that afternoon when you all walked in with axes and knives and started assaulting the employees of Top Line Construction. Five (5) sleeping tents which costs around VT28,000 and two (2) shovels which cost around VT4,000, are damaged.

The medical reports show that there were five employees of the Top line Construction who were assaulted by you and they suffered temporary injuries.

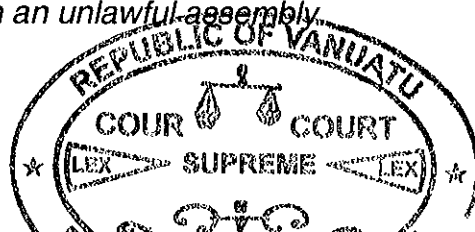
- Mr Jackson Wilbur, suffered injuries to his body; black eye on his right side and a swollen forehead.
- Mr. Joseph Vira, suffered injuries to his body; Swollen and painful face, Swollen and painful jaw joints, Black eye, Scratches on face
- Mr. Clerol Kete suffered injuries to his body; Swollen and pallid jaw joints
- Mr. Keith Tani suffered injuries to his body; Swollen and painful face, Swollen and painful jaw joints
- Mr. Job Tani suffered injuries to his body; Bleeding from both nostrils.

On or about the 16th of March.2011 you were arrested and were then taken to the Police Station at Port Vila and you admitted to the allegations against you.

I set out below the laws that you have broken and you shall be sentenced for:

The first is section 69 of the Penal Code Act which prohibits and penalizes the offence of unlawful assembly. Section 69 of the Penal Code Act reads:

"69. No person shall take part in an unlawful assembly



Penalty: Imprisonment for 3 years."

The offence of unlawful assembly is defined under section 68 in this way:

"68.(1) 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.

(2) It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with common purpose in such a manner as aforesaid."

The second is section 107(b) of the code which prohibits and penalizes the offence of intentional assault on the body of another person causing injury or damage that is not going to be permanent. Section 107(b) provides:

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

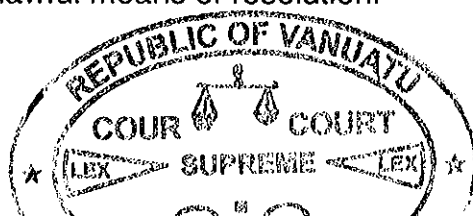
Penalty: if damage of a temporary nature is caused, imprisonment for 1 year."

As it transpires from the maximum penalties imposed by law, the offences of unlawful assembly and intentional assault are serious offences.

In the present case, when I consider your respective sentencing, I take note of the submissions made by the prosecution and the submissions made by your lawyer on behalf of each of you. I also peruse and read the pre-sentence report filed by the Probation Office to assist the Court in your sentencing.

In this case, your offending and the circumstances of your offending are aggravated by the following factors:

- You have recourse to violence to resolve differences you have with others instead of exploring peaceful and lawful means of resolution.



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- You use weapons (axes & knives) to frighten the victims.
- Injuries of bruising and lacerations suffered by the victims.
- You group together in a joint criminal enterprise to commit a criminal offence.

I sentence each of you to 2 years imprisonment for the offence of unlawful assembly and 10 months imprisonment for intentional assault, contrary to section 107(b) of the Penal Code Act as a starting point for each count.

The pre-sentence reports filed by the Probation Office, show the following information in respect to each and all of you:

Dick Pakoa - you are 31 years of age. You live with your defacto partner at Tanaliu village. You help your parents doing gardening and fishing. You are an active member of your community.

You are a first time offender. You have realized your wrongful actions and you inform the Probation Officer that you will not reoffend and you will not take the law into your own hands again. You give an explanation for your offending in that an argument started when the complainant assaulted you while you were fishing with your wife. The following day you told the other boys about what had happened and so other Defendants decided to take revenge while the Chief of the village was in Port-Vila.

You pleaded guilty and you have performed a custom reconciliation ceremony to the victims of the offending. They accepted it and you apologized to them.

Filiamu Pakoa – you are 21 years of age. You are from Tanaliu village, North Efate. You are single and you support and help your father. You work as Aid Post Worker. You were at your home when Dick Pakoa approached you and asked you to assist with assaulting the victims. In explanation for your involvement, you said that three of the victims had approached Mr Dick Pakoa's de facto partner the previous evening, while Mr Dick was in the bush looking for some more fishing bait. You said the victims were flirting with Dick's partner and when Dick returned he told them off. As a result, Mr Dick Pakoa was assaulted by the victims. You said the victims were using flirting words to the woman of the areas without respect. You are a first time offender. You have performed a custom reconciliation

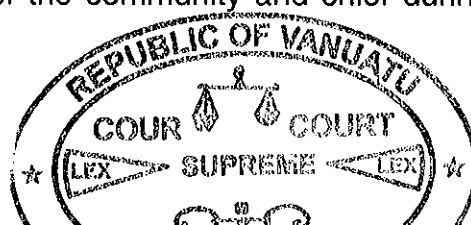


ceremony to the victim and the victims accepted the custom ceremony. You plead guilty to your offending.

Orsen Pakoa – you are 21 years of age. You are from Tanaliu village, North Efate. You have good relationship with your chief and community and you carry out duties as requested by your chief. You have skills in gardening and you play soccer. Your ambition in life is to build your own house. You are a first time offender and you have performed a custom reconciliation ceremony to the victims and the victims accepted the custom ceremony. It is reported by the writer of the report that you did not assault anyone, but you just followed the co-offenders. You were a bystander only that watched as the co-offenders assaulted the victims. You give your explanation of the offending which is that the villagers were not happy about the behaviour that the victims used towards the women from the village. That was the main reason behind the assault. You are remorseful for your offending and you say you will not re-offend in the future.

Joe Pakoa – you are 19 years of age. You are from Tanaliu village, North Efate, and you reside with your father in the village. You assist your father in the village and you are also contributing in the building of a new Community Health Centre and the building of Ulei Primary and Secondary Schools as you have skills in carpentry. You told the writer of the report that you were not present when the co-offenders committed the offences. Your father, Mr Philimon Pakoa, heard about what happened at that time, he had asked you to go over and called your elder brothers to come back home as your father had just returned from Port-Vila as well. You told the writer of the report that you agreed to plead guilty of the offences on plea day because you felt sorry of your brothers. You explain that you went over to try and stop your brothers but when you arrived, the fight had stopped a while ago. Others confirmed this to the writer. You told the writer that due to being absent at the actual incident and arriving later on after the offending, you were also regarded by the victims/complainants as having been involved in the offending.

You were present during the custom ceremony which was performed by the co-offenders to the victims on 13 August 2011. You were present and shared insight to the victims offending since you felt sorry for your brothers and other family members by verbally apologizing in front of the community and chief during the



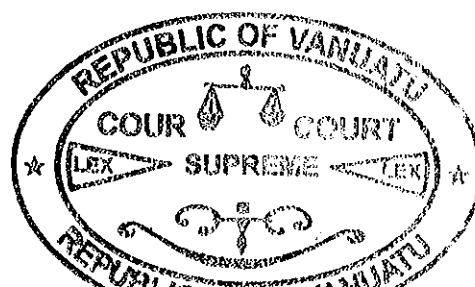
custom ceremony. In the custom ceremony, there was forgiveness, acceptance and peace restore between the group of offenders and the victims.

Michel Willie – you are 21 years of age. You are from Tanaliu village. You have good relationship with y our community and you carry out duties as requested by your chief. You have skills in gardening, welding and fishing. Your ambition is to build a house for you in future. You are a first time offender. You say sorry for your offending. You performed a custom reconciliation ceremony to the victim. The victims accepted your custom ceremony. You have apologized to the victims. You have asked the victims to forgive you for your actions. There were forgiveness and peace restored again as well as acceptance.

Willie Pakoa – you are 21 years of age. You are from Tanaliu village. You have good relationship with your chief and community. You carry out duties as requested by the chief. You have skills in gardening, diving and soccer and hockey. Your ambition in life is to manage a tourist guest house. You say sorry for what you have done. You have performed a custom reconciliation ceremony to the victims on 13 August 2011. The victims accepted your custom ceremony and they forgive you and the others for your wrong doings.

Peter Dane – you are 19 years of age. You come from Tanaliu village. You have a good relationship with your duties as requested by the Chief. You have skills in construction, gardening, diving and hockey. Your ambition in life is to start a fishing project. You are remorseful to your actions. You have performed a custom reconciliation ceremony to the victims. The victims accepted it and forgive you and the others.

Jeffery Pakoa – you are 31 years of age. You age from Tanaliu village. You live in a defacto relationship with a woman and you have 2 children aged six (6) and eight (8). You reside in Port-Vila. You have a close relationship with your father and brothers. Your father and other members of your family look up to you for financial assistance, encouragement and guidance as you are the only one in your family who has full time employment. You assist your father and you act on his behalf for your father's chiefly duties and responsibilities because your father (Mr Philimon Pakoa) is disabled and he uses crutches to walk.



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You first worked for P&O Cruises for nine years and now you work at Hideaway Island Resort as a Bar Manager. Your ambition in life is to be an Evangelist and work for your Church.

It is reported that during the incident, you were trying to stop your co-offenders from assaulting the victims. You stated you were still at the gate when the other Defendants started the actions ahead of you. You have tried to stop the Defendants but it was futile and it was too late. You are sorry for your involvement in the incident.

You have performed a custom reconciliation ceremony to the victims. The victims accepted the custom reconciliation ceremony. They forgive each others, peace was restored and you and the victims have a renewed relationship.

On balancing between the aggravating and mitigating factors, and after cross-referencing each other, I reduce your imprisonment sentences for the respective offences of unlawful assembly in count 1 and intentional assault in count 2, by $\frac{1}{3}$ to reflect your guilty pleas and other discount to reflect the custom reconciliation ceremony, your remorsefulness, time already spent in custody before trial and the fact that you are each and all first time offenders.

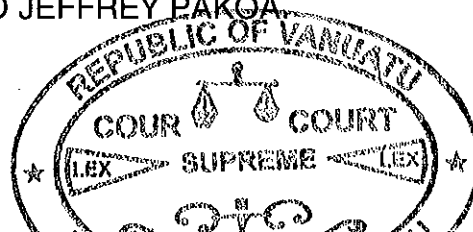
You have each an end sentence of 12 months imprisonment for unlawful assembly, contrary to section 69 of the Penal Code Act and 6 months imprisonment for intentional assault, contrary to section 107(b) of the Penal Code Act [CAP.135].

In the present case, the Court makes the following Orders:

ORDER FOR SENTENCE

1. The following Defendants are sentenced to 12 months imprisonment for unlawful assembly, contrary to section 69 of the Penal Code Act and 6 months imprisonment for intentional assault, contrary to section 107(b) of the Penal Code Act [CAP.135]:

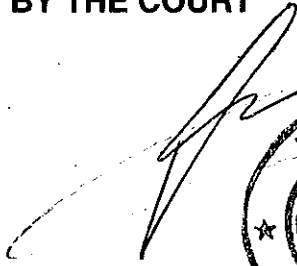
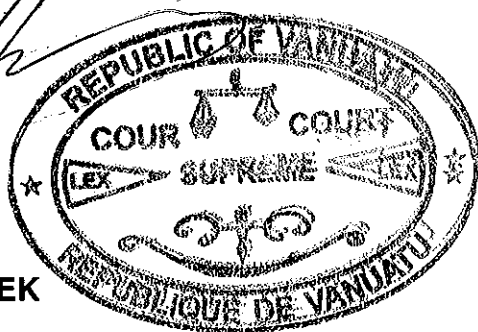
DICK PAKOA, FILIAMU PAKOA, ORSEN PAKOA, MICHEL WILLIE, WILLIE PAKOA, PETER DANE AND JEFFREY PAKOA.



2. The terms of the sentences shall be concurrent. This means that the sentences shall run concurrently for a total period of 12 months.
3. The sentence of 12 months imprisonment for the Defendants referred to in Order 1 above shall be suspended for a period of 2 years.
4. During the suspension of the imprisonment sentence, the Defendants must not reoffend. If any of the Defendants reoffend before the expiry of 2 years suspension period, his sentence of 12 months imprisonment shall be reactivated in relation to him.
5. Defendant Joe Pakoa is discharged without conviction on the offences of unlawful assembly and intentional assault, contrary to sections 69 and 107(b) respectively of the Penal Code Act.
6. In addition to the suspended imprisonment sentence of 12 months, Defendants DICK PAKOA, FILIAMU PAKOA, ORSEN PAKOA, MICHEL WILLIE, WILLIE PAKOA AND PETER DANE are ordered to perform 50 hours of community work.
7. On the facts and the pre-sentence report of the Probation Office in respect to the Defendant Jeffrey Pakoa, I decline to make an additional order for community work.
8. Defendants DICK PAKOA, FILIAMU PAKOA, ORSEN PAKOA, MICHEL WILLIE, WILLIE PAKOA, PETER DANE AND JEFFREY PAKOA have each 14 days to appeal their respective sentence if each is not satisfied with it his own sentence.

DATED at Port-Vila this 1st day of September 2011

BY THE COURT



Vincent LUNABEK
Chief Justice