

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

Criminal Case No. 143 of 2011
Criminal Case No. 144 of 2011

PUBLIC PROSECUTOR

-V-

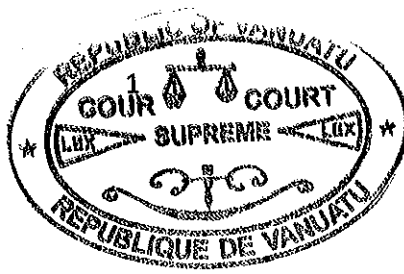
**WILLIE LOUPAS
NARMIN KATIA
MOSES IAKEN
SAM NASWAMLANG
LUI IARAPET
PETER FORGIE
ASSO MANALANG
ETAP SAILAS
KURAS MANALANG
NALIN HAROLD
SAM ERAWIA
SILAS ISWIAP
DICK MANALANG
TOM MANALANG
JOHNNY MANALANG**

Coram: Justice D. V. Fatiaki

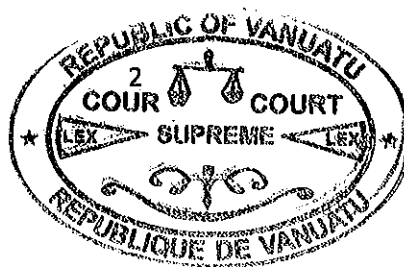
Counsel: Mr. T. Karae for the State
Mr. V. Henzler for the Defendants

Date of Sentencing: 13 February 2012

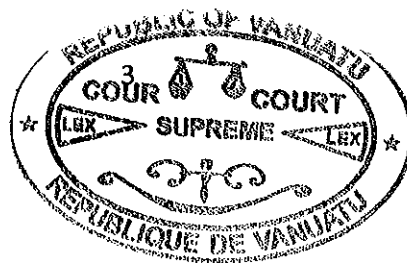
SENTENCE



1. The fifteen (15) defendants were originally committed on two (2) separate informations that jointly charged them, on the first information with Unlawful Assembly; Criminal Trespass; Malicious Damage to Property; and Arson. On the second information the defendants were jointly charged with Intentional Assault and Kidnapping.
2. The informations were later consolidated into one information which jointly charged the defendants with Unlawful Assembly; Malicious Damage to Property; Arson; Intentional Assault Causing Temporary Damage and Kidnapping. The charge of Criminal Trespass was omitted.
3. At the arraignment today only seven (7) of the original fifteen (15) defendant appeared. The court was informed by counsel that the main defendant and "leader" Willie Loupas was deceased, four (4) others were away in Port Vila; two (2) defendants had moved out of Laketam village and were living in another village in North Tanna and one (1) was sick.
4. The seven (7) defendants who appeared were:
 - Narmin Katia;
 - Moses laken;
 - Sam Naswuamlang;
 - Kuras Manalang;
 - Nalin Harold;
 - Dick Manalang and
 - Tom Manalang.
5. On being arraigned all pleaded: "Yes" to the five (5) counts in the information and after agreeing to the summary of facts outlined by the prosecutor, all were convicted.



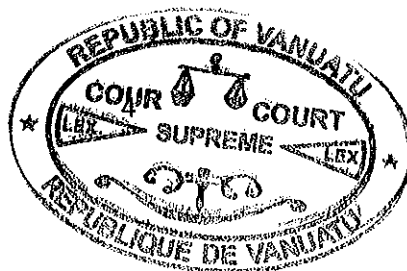
6. The brief facts of the case are that the offences were committed in retaliation for an earlier arson attack by the complainants carried out on **30 June 2011** at the defendants' village at **Laketam**. That attack resulted in the burning of three (3) traditional sleeping houses and a kitchen and completely destroyed the houses and contents which included garden tools, kitchen utensils, clothing and items of bedding. [see: **PP v. Moses Kerefu (2011) VUSC 315**]
7. The defendants' retaliatory attack occurred at about 11.00 a.m. on **20 July 2011** after the defendants' had assembled at **Laketam village**. They then proceeded as a group to the **North Gate Christian Centre School** compound where they threatened the students and teachers before setting fire to three (3) sleeping houses; a kindergarten classroom and a kitchen. All houses were unoccupied at the time but all contents were completely destroyed including clothing; beddings; fishing equipment; kitchen utensils; gardening tools; a solar panel and battery; a guitar and 2 mini stereo players with a total estimated value of **VT500,000**.
8. After setting fire to the houses the defendants turned their anger on to the classrooms and boarding facilities causing estimated damages of **VT200,000** to the walls, louver windows and classroom furniture.
9. Not content with the wanton destruction that had been caused to the houses and school buildings, the defendants next turned their attentions to **John Kerefu** a teacher and boarding master at the school. They dragged him from a classroom and assaulted him with a knife, an iron bar and a chain, inflicting a lacerated wound to his head which required five (5) sutures to close as well as bruising and swelling to his thighs and his left upper arm. After rendering **John Kerefu** helpless, the defendants then tied his hands and took him to the Chief's nakamal at **Laketam village** where further threats were made against his life.
10. Fortunately, the police were able to obtain the release of **John Kerefu** later that afternoon and he was taken to Lenakel hospital and treated for his injuries.



11. Under Police caution all defendants frankly admitted taking part in the incident in retaliation for, an earlier attack by the complainants burning their houses and damaging their gardens, and also, because there was a long-standing dispute over the land occupied by the school compound and the rental payments made for such occupation.
12. The earlier arson attack which involved six (6) individuals including **Moses Kerefu** (the son of **John Kerefu**) was dealt with by this court on **16th December 2011** and sentences of 2 years imprisonment suspended for 3 years as well as supervision sentences of 12 months were imposed on the four (4) defendants who appeared in court. In that case too the defendants all pleaded guilty at the earliest opportunity.
13. In sentencing the defendants in the above case this court noted that:

"... an elaborate kastom reconciliation ceremony was performed at Launalang nakamal involving both sides to the dispute. The defendants party (which includes some of the complainants in this case) presented the complainants' with a cow, six bundles of kava and 6 pigs. In exchange the complainants (which included some of the defendants in this case) presented the defendants with a cow, a pig and four bundles kava. By all accounts relations have been restored between the complainants and defendants and peace has once again been re-established in the community".

14. In sentencing the present defendants I bear in mind the sentence imposed in **Moses Kerefu's** case (op. cit) as a relevant factor and guide. I am also conscious that cordial relations have been re-established between the disputing parties and am concerned not to do anything that could disturb that peace or give rise to a sense of grievance or injustice on the part of the present defendants.



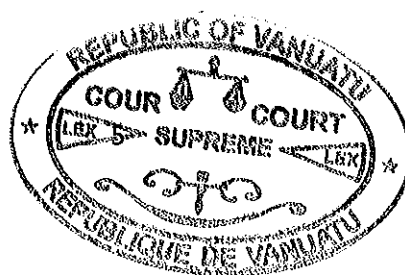
15. I have also considered the sentencing submissions produced by counsels which I found of some assistance. In this regard State counsel correctly identifies the following aggravating factors in the case:

- The degree of planning and pre-meditation;
- This was a joint criminal enterprise;
- Estimated value of the damages caused totalling **VT700,000**;
- Personal injuries sustained by **John Kerefu**; and
- Retaliation rather than seeking peaceful means.

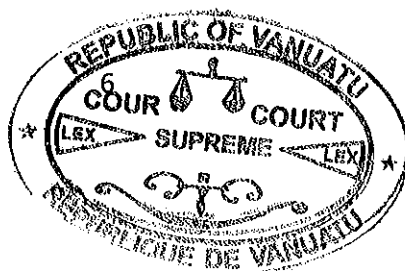
16. Defendant counsel whilst conceding the above aggravating factors nevertheless urges the following factors in mitigation:

- All defendants are first offenders and all have pleaded guilty at the earliest opportunity;
- Most are mature married men with dependant families that they are responsible for and support; and
- The defendants took part in a reciprocal custom reconciliation ceremony attended by members of the complainant/victims families.

17. Even accepting the above mitigating factors this attack was far more serious than that committed on the defendants on 30 June 2011 both, in its intensity and duration. The fact that the attack occurred during a school day and was witnessed by innocent school children would have left them traumatised and terrified. The fact that the school has been closed since the incident and has not been reopened also speaks volumes about the extent of the destruction caused to the school buildings and property and the lasting sense of fear on the victims of the attack.



18. It is also aggravated by the brutal assault and abduction of **John Kerefu** who sustained a serious injuries to his head and body and could have led to much more serious consequences if the police did not rescue him from his attackers.
19. The fact that the defendants have an existing civil claim in the **Tanna Magistrate's Court in Civil Case No. 6 of 2010** indicates that they are aware of the lawful means available through the courts for resolving disputes and obtaining redress.
20. Land disputes are also equally capable of being resolved by lawful processes available in land tribunals and the court and although these processes may not function as quickly as desired, nevertheless, these are the processes that the government in its wisdom has seen fit to establish for dealing with land disputes and the parties are urged to utilise them rather than the illegal "*self-help*" that has marked the past actions of both sides to the underlying land dispute in this case.
21. A school has been closed as a result of this "*on-going*" dispute and many innocent students have become hapless victims and must now look elsewhere for schools. That can never be in anyone's interests not even the defendants who between them have a large number of school-age children.
22. The burning of homes and their contents on both sides has **not** resolved the land dispute **nor** has it speeded up the land tribunals processes. All it has done is to fan retaliatory attacks where there are no winners only losers.
23. The defendants are all mature men in their late 20s, 30s, 40s and even one aged 57 years. All are responsible for families of their own and all should be expected to lead by good example and sound wisdom. By your collective actions you send a dangerous message to your children, that it is alright to take the law into your own hands in an act of revenge without resort to the police or the courts.



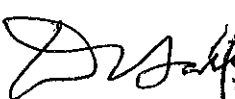
24. Let me say this, such revenge attacks can quickly escalate with fatal consequences and the peace and stability of this island would be destroyed if everyone who had a land dispute resorted to violence or arson as a means of resolving land disputes.
25. Recognising that this is a more serious case than Kerefu's case (op. cit) I impose a starting sentence of 6 years imprisonment on the most serious charge of Arson which carries a maximum penalty of 10 years imprisonment. From that starting point I deduct 2 years in recognition of the defendants early guilty pleas and a further year in recognition of their previous unblemished records and the custom reconciliation ceremony performed by the defendants to the claimants. The end sentence I arrive at is a sentence of 3 years imprisonment. Furthermore and consistent with the court's approach in Kerefu's case I also order the sentences to be suspended for a period of 3 years.
26. Each defendant is also sentenced on the remaining counts as follows:
- Count 1: Unlawful Assembly – 12 months imprisonment;
 - Count 2: Malicious Damage – 9 months imprisonment;
 - Count 4: Intentional Assault Causing Temporary Harm – 9 months imprisonment;
 - Count 5: Kidnapping – 2 years imprisonment.
27. All the above sentences are ordered to be served concurrently with the sentence imposed for the offence of Arson on Count 3 making a total effective sentence for all offences of 3 years imprisonment suspended for 3 years.
28. What this sentence means is that each of you will not go to prison today but if you commit another offence in the next 3 years and are convicted then you will be required to serve this sentence of 3 years imprisonment in addition to any other sentence you may receive for your reoffending.



29. Whether you go to prison or not, is entirely in your hands and I urge each of you to stay out of trouble for the next 3 years and allow the law to resolve any land dispute that may exist between you. If you follow this advice then you will **not** have to serve this sentence, but, if you ignore this warning and re-offend within the next 3 years, then you cannot expect to be treated with the same leniency that the court has shown to you in sentencing each of you today and you will have to serve this sentence of 3 years imprisonment in addition to any other sentence you may receive for re-offending.
30. In addition, I impose on each of you a sentence of **80 hours of community work** to be administered and supervised by a probation officer.
31. For completeness I record that the Prosecutor has entered a "*nolle prosequi*" in respect of the seven (7) defendants who did not appear in court namely, **Lui Iarapet, Peter Forgie, Asso Manalang, Etap Silas, Sam Erawia, Silas Iswiap and Johnny Manalang**. In accordance with the provisions of Section 29 of the Criminal Procedure Code these seven (7) defendants are hereby discharged.
32. You have 14 days in which to appeal against this sentence if you do not agree with it.

DATED at Isangel, Tanna, this 13th day of February, 2012.

BY THE COURT


D. V. FATIAKI
Judge.

