

PUBLIC PROSECUTOR

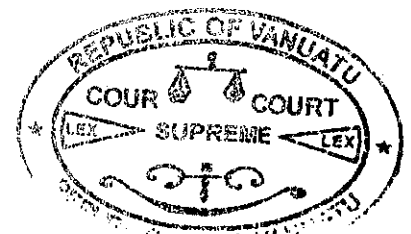
V

HARRY AMOS

Hearing: Wednesday 23 September 2015 at 9:50 am
Before: Justice SM Harrop
Appearances: Betina Ngwele for the Public Prosecutor
Andrew Bal (PSO) for the Defendants

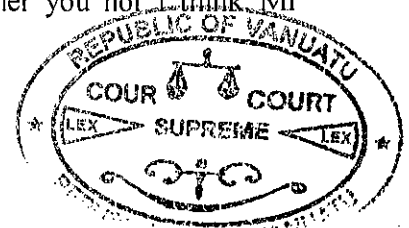
SENTENCE

1. Harry Amos, you are 16 and appear for sentence on one count of aiding and abetting Peter Albert to commit arson. Even though that is offending in a supporting role the maximum penalty is still 10 years imprisonment. You are liable to that regardless of the fact that you are a secondary offender but obviously the role that you had is an important factor in determining the sentence.
2. Your co-offender Peter Albert, did not appear at an earlier sentence hearing and a warrant to arrest was issued. He has now appeared at Court today and his sentencing will occur this Friday but your sentencing has already been put off a couple of times because of his failure to appear and I do not consider you should have to wait any longer. I am therefore going to deal with your sentencing now rather than leave it until Friday.
3. The facts as summarized in the prosecution submissions are that the victim owned a restaurant at Takara village. You and Mr Albert, who is 23, are best friends and he decided to set fire to that restaurant because there was a land dispute relating it. He decided and planned to burn down the restaurant. He did not tell anyone else but on the 31st of January late in afternoon he



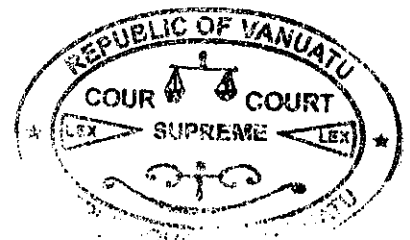
went to your house and asked you to accompany him to the beach so that you could burn down the house together. You were not at your house when he went there though he later found you. You agreed to go with him.

4. I note here that you had a choice whether or not to do that and you decided to go. You had time to think about what you were doing and to decide not to do it, but you chose to go ahead.
5. Early the next morning, the first of February, when it was still dark you went down to the beach together, you went a plantation first and collected dried coconut leaves and you placed them in a hole in the ceiling of the restaurant where there was a break in it. Mr Albert then struck the match and set fire to the coconut leaves and the resulting fire destroyed the whole building. Nothing has been saved.
6. The monetary value of the assets destroyed in the fire, according to the owner, adds up to over 10 million vatu. I have not seen the details of how that is made up but on any view this is a substantial fire, deliberately lit of course as required in an arson case, and it was a commercial building so it is not only the immediate loss of the building and contents which followed but also the loss of income which would be earned from such a place.
7. When spoken to by the police, you immediately admitted the allegations and you said that Peter Albert was the main person behind the burning of the restaurant and you were just helping him out. That indeed is what you have been convicted of. Originally you were charged with arson but that is no longer the case.
8. The aggravating features of this offending involve, as the prosecution points out, the degree of planning and premeditation, that it occurred at night, the very substantial value of the property that was lost and as I have noted there is also a commercial loss of income here no doubt. I do not have any direct information as to how the victim feels about all of this but I can well imagine. I understand he has refused to be involved in a custom reconciliation ceremony and that is his right. Neither you nor I think Mr



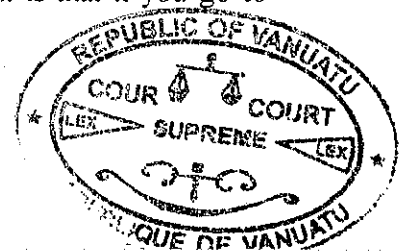
Albert has any money so there is no ability to pay the victim back in any way by way of compensation order or in some other manner simply.

9. The Public Prosecutor in her submissions submits that a starting point for your sentence should be two years and 3 months having regard to the relevant authorities and I have read those. They are Tuku [2014] VUSC 161, *Japeth* [2014] VUSC 157 and *Heron* [2015] VUSC 68. The *Japeth* case is I think the most helpful in this context and it is in fact one of my own judgments. I say it is helpful because it involved a primary offender and on that occasion seven accomplices.
10. I am satisfied that you must certainly receive a lesser starting point and therefore a lesser sentence than Mr Albert for several reasons relating to the offence. Clearly it was Mr Albert's idea and his plan and it appears to have been motivated by his wish to get back in some way at the victim. You yourself had no particular reason that I am aware of to be seeking retribution against him. Significantly too, he is much older than you, he is 23 and you were only 16 years and 1 month at that time so I can readily accept that there was a degree of peer pressure likely to have been involved which led to your deciding to help him.
11. But it needs to be said that you were fully involved. You knew what was planned, you agreed to help, you were involved in the collection of the dried leaves and the placing in the ceiling and ultimately it does not matter too much which one of you lit the match when you are already both involved to the extent I have described. In the *Japeth* case, the seven co-offenders had also helped Mr Japeth and had stopped others putting the fires out as well and there were seven arsons I think with which they had assisted. There I adopted a starting point of 2 years imprisonment.
12. Here there is only the one arson but it is a very valuable property by comparison with those involved in the *Japeth* case so I think a starting point of 2 years and 3 months, or 27 months, is warranted. This was a valuable and



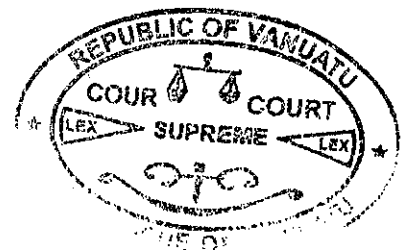
useful commercial property and there can be no justification, whatever dispute there might have been about the land, for this kind of conduct.

13. Mr Bal in his submissions did not identify a starting point which he considers is appropriate but he does suggest an end point of 10 months imprisonment suspended for 2 years together with community work.
14. From the starting point of 2 years and 3 months I must and do deduct one third for your immediate guilty plea reinforced by the fact that you admitted responsibility as soon as you're spoken to by the police. So that is nine months off and brings it down to 18 months.
15. Then I turn to your age and the absence of any previous convictions. If you had been about a month younger the Court could not, by virtue of section 54 of the Penal Code, have sent you to prison unless there was no other appropriate sentence. The fact that you are so close to being in that position means that I am certainly not going to send you to prison today, though I do consider that a suspended sentence of imprisonment is required to recognise how serious this offending is. For your age and absence of previous convictions I deduct another eight months bringing it down to 10 month imprisonment sentence which actually is exactly what Mr Bal suggested was appropriate. So as I have just said I do consider a prison sentence is appropriate but equally it must in light of your age particularly be suspended and I would suspend the ten month prison sentence for 18 months.
16. What that means is that if you commit any offence of any kind, it does not have to be arson, within the next 18 months then you will be required to serve that 10-month prison sentence together with the sentence imposed for whatever offence triggers that.
17. There is another reason I should add why I think suspension is appropriate for such a young person as yourself and that is something that I mentioned when recently granting you bail pending the sentencing despite the fact that you had failed to attend an earlier sentencing date. That is that if you go to



prison there is a significant risk of adverse influence from older offenders and I want to avoid that kind of effect on you.

18. Because I have some confidence that you will not serve any time in custody it is appropriate to impose community work and supervision. Community work is appropriate particularly because although you have offended against the restaurant owner directly, you have also offended against community order and it is appropriate that you give something back by way of community work.
19. I acknowledge the contents of the pre-sentence report which recommends that and also speaks well of various aspects of your character. I take that into account in assessing the length of the sentence. I sentence you to 175 hours' community work, I also impose supervision for 12 months on the conditions which are mentioned in the pre-sentence report. They are four of those and they are as follows:-
- 1) To undertake the niufala rod programme provided by probation;
 - 2) To undertake a spiritual programme/counselling;
 - 3) To perform a custom reconciliation towards the victim and
 - 4) Not to reoffend.
20. As to the custom reconciliation provision that of course is dependent on the victim's attitude and I understand that he may not be willing to be involved in such a ceremony. If that is the case then obviously you do not need to take part in it and probation does not need to force you to do so. But if the victim is willing then you are required to take part.
21. Although I do not make it a condition of the supervision sentence I think you should think long and hard about having anything further to do with Mr Albert. He is an older person who has led you astray significantly in this case. You and those adults who advise you should reassess your continued involvement with him given his attitude as displayed by the arson that he organised and got you to help carry out.



22. Finally, you have 14 days to appeal against this sentence if you wish to do so.

BY THE COURT

Stephen M. Mwanuzi

