

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

Criminal Case No. 16/889

PUBLIC PROSECUTOR

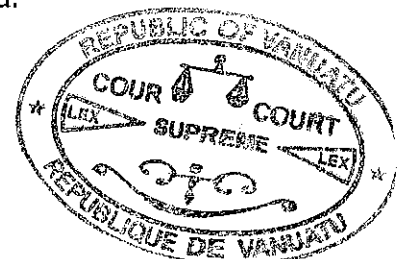
V

RHAU IALU
TIMOTHY POITA
AMOS CHARLIE
AMOS WILLIE NAKOU
NIKELSEN CHARLIE
WILLIE SAUTE
IAUKAS NAUAM-
IAMAK IAMIAM NASSE
KENNETH BREDY
WILLIE IAHAM
JIMMY NAKOU
TOM NAKLINPIN
ISAAC TOM
KEING TARIK
JUDE IAWANTAK
ORI JOE IALU
REUBEN MUSA IAPAKEL
MIKE NAKOU
RADLEY TOM
BRIAN JIMMY AND
SAMUEL IAWANTAK

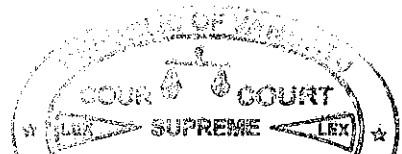
Sentence: Thursday, October 20th 2016 at Isangel, Tanna
Before: Justice JP Geoghegan
Appearances: Tristan Karae for the Public Prosecutor
Willie Kapalu for all Defendants

SENTENCE

1. The offenders to be sentenced today appear for sentencing in respect of a serious incident which occurred in Tanna on February 16th 2016. There are a significant number of offenders, 18 in total. Of those offenders Keing Tarik has not appeared today for sentencing and I am advised has not been able to be served with a summons. A warrant for his arrest is issued.

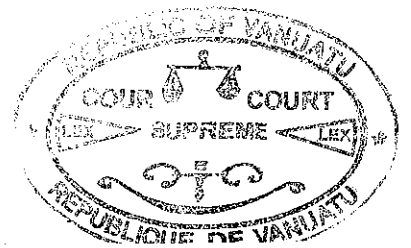


2. The offenders Timothy Poita, Amos Willie Nakou, Jude Iawantak and Samuel Iawantak are currently in custody in Port Vila. They will be sentenced there by me, by agreement with counsel today, at Dumba on Wednesday October 26th at 9 am. Of the remaining offenders to be sentenced today, all of you are charged with unlawful assembly and some of you are charged, in addition, with arson. Nikelsen Charlie, Kenneth Bredy, Jimmy Nakou, Ori Ialu, Reuben Iapakel and Radley Tom appear for sentence in respect of charges of unlawful assembly only. Willie Saute, Iaukas Nauam, Willie Iaham and Tom Naklinpin appear for sentence on an additional charge of arson. Amos Charlie and Iamak Nasse appear for sentence in respect of two additional counts of arson and Isaac Tom appears for sentence in respect of three additional counts of arson.
3. The charge of unlawful assembly contrary to section 69 of the Penal Code carries a maximum term of imprisonment of three years. The charge of arson contrary to section 134 (1) of the Penal Code carries a maximum sentence of imprisonment of ten years.
4. The facts in respect of the matter are outlined in the prosecutor's sentencing submissions and I will refer to those briefly. The incident has its roots in a dispute regarding the occupation of land by the victims of your offending. It appears that both parties have been claiming rights to the land which I understand to be located in the village of Lounapkalangis.
5. On February 16th at around 7 pm the victims of this offending heard six horns being blown that evening. The villagers then heard noises on the road of people shouting and cursing. Some of the victims were still at the village nakamal when they saw a group of men entering the nakamal throwing stones at them and then chasing them. The group was a significant group in terms of numbers and you were armed with knives, sharpened wood, axe and stones. The defendants Radley Tom, Jude Iawantak, Reuben Iapakel and Ori Ialu were seen entering a yard and stealing petrol from the drums in that yard. The village men then ran to get the Chief.
6. You have approached the Chief who has been able to identify some of you. The summary of facts then tells me that Timothy Poita and Isaac Tom were heard



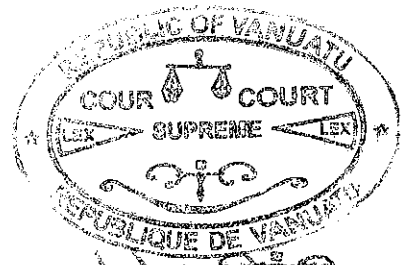
calling out for the other members of the group to bring fuel and ordered them to burn the houses. The Chief of the village shortly thereafter saw his first sleeping house on fire. A warning shot has been fired but you have continued to burn the complainant's houses. In addition you have destroyed sandalwood trees and slaughtered the victim's chickens and pigs. Some of the village men stayed behind in the village but hid in bushes as you have set fire to their homes. In total, 15 houses were burned that evening the owners of the homes lost most of their belongings including clothes, kitchen utensils, money and chattels. You were subsequently interviewed and charged.

7. In short, this appears to be vigilante offending of the most serious kind. It has been indiscriminate and highly dangerous, and it appears that some of the victims of your offending were not even involved in the dispute between the two groups. Some of your victims were elderly including a 75 year old. Some of you have played a greater role than others. Radley Tom, Jude Iawantak, Reuben Iapakel and Ori Ialu were involved in stealing petrol from a fuel station in the village. That is clearly an aggravating feature of the offending.
8. As I have said, Timothy Poita and Isaac Tom were heard to call out to the other members of the group to bring fuel and ordered them to burn the houses. In that context, those two offenders might be regarded as ring leaders of the group although I note that Isaac Tom is only 17 years old.
9. Of some significance although not for today, is that according to pre-sentence reports filed you have all expressed remorse which is relevant to today but only Timothy Poita has shown no remorse for the offending and still clearly places the blame for the incident on the victims. His views and attitudes are not something which can influence the sentencing of you today.
10. As a group of offenders it appears that you may be divided into two broad groups. Firstly those who simply participated in an unlawful assembly and secondly those who were not only involved in such an assembly but who were actively involved to varying degrees in burning down the buildings belonging to the victims.



11. While those participating in an unlawful assembly have accordingly had a lesser role, the role has still been significant, as all it took was for one or more of you to implore the rest of the group to refrain from behaving in the way that they did. Those who engaged in the unlawful assembly undoubtedly had some influence on what happened that night.
12. I have read your pre-sentence reports. All of you appear to have very similar circumstances. You are all subsistence farmers with very limited means. You certainly do not have the means to pay any compensation to the victims and for that reason I do not intend to order it. As I have said, with the exception of Timothy Poita you have all expressed remorse for your actions and have said that you are willing to undertake a reconciliation ceremony. Many of you have children and a family to support. I note that most of you are in your twenties but Ori Ialu is 33 and Iamak Nasse is 31. Frankly, in respect of those two offenders, I would have expected men of that age to have exercised greater judgment and restraint than was shown that night.
13. I also note that Jimmy Nakou and Samuel Iawantak are only 16 and that Radley Tom and Isaac Tom are only 17. There are others who were 18 and 19 and the young age of these offenders is relevant to any sentencing exercise.
14. There are however many things that you all have in common. You are all first time offenders. You are all subsistence farmers with the exception of the youngest offenders. You have all expressed remorse save for Timothy Poita and while no custom ceremony is been held you are all willing to engage in one if that could be arranged. That is with the exception of Timothy Poita.
15. I have read the careful submissions of Mr Garae for the Prosecution and Mr Kapalu on your behalf. The prosecution have referred to Livo Worohese v Public Prosecutor¹, where the Court of Appeal upheld the sentence of two years imprisonment partially suspended for the arson of three buildings which included a sleeping house.

¹ [2010] VUCA 11.



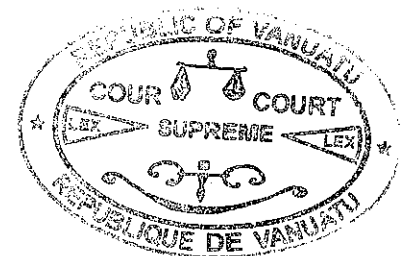
16. In Jackson v Public Prosecutor², the Court of Appeal dealt with the arson of 11 homes involving 8 defendants. In many respects it was a case with a very similar factual background. In the case of one defendant charged with five counts of arson the Court of Appeal observed that a starting point taking into account aggravating features of four years was at the very bottom of the available range and a starting point of six to seven years could have been justified. Mr Garae also refers to the cases of the Public Prosecutor v. Tabi³, Public Prosecutor v. Natuman and Others⁴ and the Public Prosecutor v. Kalman⁵; all of which involved arsons arising from disputes over land.
17. Mr Karae refers to the aggravating features of the offending as follows:-
- (a) the destruction of 13 sleeping houses and 4 kitchens;
 - (b) the fact that you were armed with weapons;
 - (c) the scale of the property loss which has been substantial;
 - (d) the fact that the occupants were forced to flee for their own safety and were therefore prevented from taking steps to protect their property.
18. The only mitigating factors are your early guilty pleas; the fact that you are first time offenders and in the case of some of you, your youth.
19. Mr Karae submits that for those of you charged with arson, there should be a starting point of six to seven years imprisonment with an end sentence of three to four years. All those charged with less serious offences should receive an end sentence of 12 to 18 months imprisonment with the possibility of suspension.
20. Mr Kapalu relies on the case of Public Prosecutor v. Natuman which I have already mentioned. He relies on that as one which the Court should be guided by, as in that decision the Court imposed a sentence of 15 months imprisonment suspended for 18 months together with 200 hours community work. He submits that the Court should be considering an end sentence of 12 months for

² [2011] VUCA 13.

³ [2006] VUSC 51.

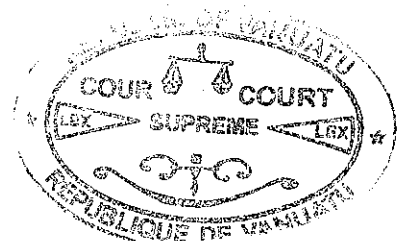
⁴ [2014] VUSC 114.

⁵ [2008] VUSC 38.

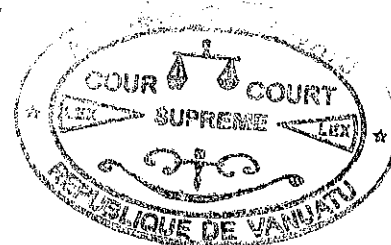


those charged with unlawful assembly and 18 months to two years for those charged with arson. While Natuman is helpful in its review of the authorities I regard this as a much more serious case for a number of reasons:-

- 1) In Natuman the buildings set alight were unused and of little value. That is not the case here. This offending involves a destruction of 15 buildings all of which were in use by the victims together with the almost total loss of their possessions.
 - 2) You have entered the victim's properties with weapons causing them to flee.
 - 3) The potential for injury or loss of life was significantly greater in this case than in Natuman.
 - 4) While the Judge in Natuman was able to deal with all of the offenders in the same way, I do not consider that to be possible here because of the number of charges faced by some of you as compared to others and the degree of involvement of some of you compared to others.
21. In sentencing I need to take into account the need to hold you responsible and accountable, to deter you and others from offending in this way; to provide for any rehabilitative needs; to take into account the interests of the victims and also the need to impose the least restrictive sentence possible taking into account the seriousness of the offending.
22. Looking at the most serious offence of arson and taking into account the aggravating features which I have already referred to I consider that the following starting points should be adopted.
23. For Isaac Tom a starting point of 5 ½ year's imprisonment which reflects your offending and the fact that you appear to hold some authority over your co-offenders.
24. For Iamak Nasse and Amos Charlie, a starting point of 5 years which reflects the two arson charges you have pleaded guilty to.



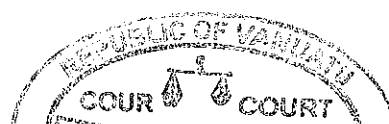
25. For Tom Naklinpin, Willie Saute, Iaukas Nauam and Willie Iaham a starting point of 4 years which reflects the one charge of arson that you are charged with in addition to the unlawful assembly.
26. In respect of Jimmy Nakou, Reuben Iapakel, Radley Tom, Nikelsen Charlie, Kenneth Bredy and Ori Ialu a starting point of 2 years which reflects the fact that you only face one charge of unlawful assembly.
27. Having arrived at those starting points, I then need to take into account the appropriate mitigating factors which include remorse, reconciliation, youth or other personal matters which justify reduction in the starting point. As far as remorse is concerned I accept that you all have shown genuine remorse. In respect of that and the fact that you are first time offenders I consider that that justifies a reduction of 6 months from the starting points that I have referred to.
28. I refer to youth and I consider that those offenders under 20 should receive recognition from the Court for youth and the fact that as teenagers you are more likely to engage in risk taking behaviour, without thought for the consequences and also that the inability to exercise the mature judgment available to adults, justifies an allowance which takes that into account. It is by necessity an arbitrary process and not particularly nuanced, but for the offenders under the age of 20 I propose to reduce their sentences by 25% to reflect that youth. You have all pleaded guilty at the earliest available opportunity and accordingly you are all entitled to a one third allowance for the entry of that plea. I do not consider that there are any other mitigating factors that should be taken into account.
29. Applying the appropriate reductions I then arrive at the following sentences:-
 Iamak Nasse - 3 years imprisonment.
 Tom Naklinpin, Willie Saute and William Iaham - 2 years and 4 months imprisonment.
 Isaac Tom - 2 years 6 months imprisonment.
 Ori Ialu and Reuben Iapakel - 12 months imprisonment.
 Amos Charlie - 2 years and 2 months imprisonment.



Iaukas Nauam – 1 year and 9 months imprisonment.

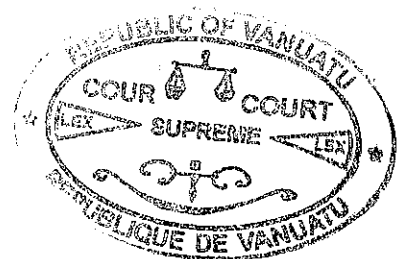
Jimmy Nakou, Radley Tom, Nikelsen Charlie and Kenneth Bredy – 8 months imprisonment.

30. The issue then becomes whether the sentences should be suspended and in this regard I refer to the following factors:-
- (a) I have already referred to the fact that Timothy Poita and Isaac Tom appear to have been the leaders of the group, notwithstanding that Isaac Tom is only 17 years old.
 - (b) In addition many of you are very young. Jimmy Nakou and Samuel Iawantak are only 16, Isaac Tom and Radley Tom are 17, Amos Charlie, Amos Nakou, Nikelsen Charlie and Iaukas Nauam are 18 and Kenneth Bredy is 19.
 - (c) Many of you have families who are dependent upon you.
31. As against that this is serious offending which requires the Court to deliver the clearest of messages that taking the law into your own hands, particularly in the way that you did, cannot be tolerated and that disputes must be settled in an appropriate way in accordance with the laws of the Republic of Vanuatu.
32. As a starting point I consider that youth must be a significant factor in whether a sentence should be suspended or not. I consider that there is little benefit to society in imprisoning teenagers for offending unless there is no other choice. There must be an emphasis on rehabilitation.
33. Having taken those matters into account, I now impose the following sentences:-
- (a) Jimmy Nakou, Radley Tom, Nikelsen Charlie and Kenneth Bredy are sentenced to 8 months imprisonment on a charge of unlawful assembly. The sentence is suspended for 2 years. You are ordered to undertake 150 hours community work and 12 months supervision with a condition of supervision that you attend and complete such courses, training or education, directed by your probation officer to address the causes of your offending. Although Nikelsen Charlie is 20 rather than under 20 I do not see that it would be appropriate to deal with him differently from the



other offenders. This is particularly so as he faces only a charge of unlawful assembly as opposed to a charge of arson.

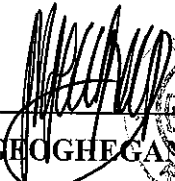
- (b) Iaukas Nauam is sentenced to 1 year 9 months imprisonment on the charge of arson and 8 months imprisonment on the charge of unlawful assembly. That sentence is suspended for 2 years and you are to undertake community work of 200 hours and I impose a supervision sentence of 12 months on the same conditions as the previous offenders.
- (c) Amos Charlie is sentenced to 2 years and 2 months imprisonment on the charge of arson and 8 months imprisonment on the charge of unlawful assembly. The sentence is suspended for 2 years and you are to undertake 200 hours community work and I impose a sentence of supervision for 12 months on the same conditions as the other offenders.
- (d) Isaac Tom you are sentenced to 2 years and 6 months on the charge of arson and 8 months imprisonment on the charge of unlawful assembly. That sentence is suspended for 2 years and I impose community work of 200 hours and a sentence of supervision of 12 months on the same conditions as the other offenders.
34. In imposing these suspended sentences I record that at the outset of matters today, I explained to all of you the meaning and effect of suspended sentences and Mr Kapalu translated my explanation of it to you in bislama. I record that I then stood the matter down so that Mr Kapalu could explain it to you and could confirm that you have understood the suspended sentence. I record that he has confirmed to me that you understand the meaning of that Order.
35. I now move to the older offenders. As I have said two of you Iamak Nasse and Ori lalu are in your 30's. You are far more mature than the younger offenders. I can find no good reason to suspend your sentences given the severity of the offending. With the remaining offenders I also cannot find any good reason why I should suspend your sentences given the severity of your offending.
36. Accordingly, I impose the following sentences :-

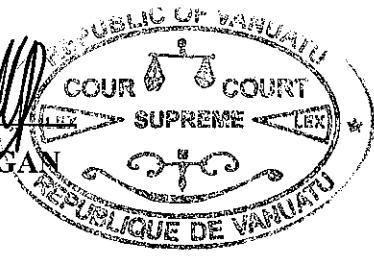


- (a) Iamak Nasse is sentenced to 3 years imprisonment in respect of the charge of arson and 1 year's imprisonment on the charge unlawful assembly.
 - (b) Tom Naklinpin, Willie Saute and William Nauam are sentenced to 2 years and 4 months imprisonment on the count of arson and 1 year's imprisonment on the charge of unlawful assembly.
 - (c) Ori Ialu and Reuben Iapakel are sentenced to 1 year's imprisonment on the charge of unlawful assembly.
37. All of the sentences are to run concurrently in respect of all defendants.
38. You have 14 days to appeal these sentences.

Dated at Isangel, Tanna this 20th day of October, 2016

BY THE COURT


JP GEOGHEGAN
JUDGE



The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The text 'REPUBLIC OF VANUATU' is written along the top inner edge, and 'REPUBLIQUE DE VANUATU' along the bottom inner edge. In the center, the words 'COUR SUPREME' and 'COURT SUPREME' are written on either side of the scale. The word 'LEX' is written on two small banners flanking the scale.