

PUBLIC PROSECUTOR

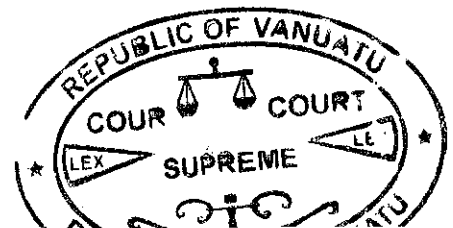
V

JOHN TANAKE

Before: Justice Saksak
Counsel: Lenry Young for Public Prosecutor
Less John Napuati for the Defendant
Date of Plea: 2nd March 2017
Date of Sentence: 1st September 2017

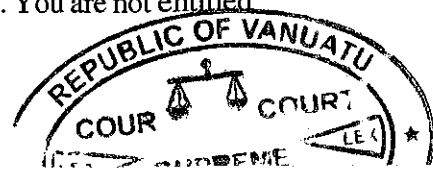
SENTENCE

1. John Tanake, you are here for Sentence having been charged with one Count of Arson contrary to Section 134(1) and to one count of Malicious Damage to Property contrary to Section 133 of the Penal Code Act [CAP. 135] (the Act).
2. On 2nd March 2017 you were away on a tourist ship and your lawyer on your instructions entered guilty pleas on your behalf in relation to the two charges. Initially on 4th October, 2016 you had pleaded not-guilty to the charges and the Court had fixed the case for a trial hearing. But all that changed with your guilty pleas on 2nd March 2017.
3. The offence of arson under section 134(1) of the Act carries a maximum penalty of 10 years imprisonment. And malicious damage to property attracts a fine of VT5,000 or imprisonment for 1 year or to both.
4. The facts of your offendings are simple. On 6th September 2015 at Teouma Area, you set fire to Marie Kalialie's house which totally destroyed her house and all her belongings. The complainant is your mother's sister. Her son Claude Poita had an argument with you over some personal affairs. As a result you took matches, went to the complainant's house and set the house on fire.



The cost of all personal belongings destroyed as listed amounts to VT16,600.
The cost of the house is not known.

5. Clearly you took the law into your own hands. Being closely related to the complainant did not give you any valid excuse or reason to set her house on fire. Your argument was with Claude Poita, not with Marie Kaliale.
6. In considering appropriate punishment I have been assisted only by the sentencing submissions filed by the Prosecution on 21st March 2017. I have not seen any submissions from your lawyer although I have seen an email that suggests there is one. There is also no pre-sentence report as proposed by your lawyer and recorded in the Order issued on 2nd March 2017.
7. As your sentencing has been delayed for too long the Court will sentence you only on the basis of the Prosecution submissions. The principles I apply to your case are laid down in the Court of Appeal Case of Worahese v. Public Prosecutor [2010] VUCA, CRC 1 of 2010; Public Prosecutor v. Buleuru & Others [2004] VUSC 126, and Public Prosecutor v. Natuman [2014] VUSC 114.
8. Applying the principles in these cases the only appropriate sentence for you is to be a custodial sentence. This is to mark –
 - (a) The seriousness of your offendings;
 - (b) The Court's disapproval and condemnation of your action;
 - (c) A deterrence for you and other like-minded people from committing these offences;
 - (d) The Court's protection of the Community at large.
9. I therefore convict you and sentence you as follows –
 - (a) For Arson in Count 1 – 3 years imprisonment.
 - (b) For Damage to Property in Count 2 – 6 months imprisonment concurrent with 3 years for the Arson charge. Your total sentence shall be 3 years imprisonment.
10. As regards mitigation of sentence, in the absence of any submission on your personal particulars, there will be no reduction of sentence. You are not entitled



to 1/3 reduction because you pleaded not-guilty in October 2016 and the Court had fixed your case for a trial hearing.

11. On 2nd March 2017 Mr Napuati told the Court you were working on a tourist ship. That contributes to the delay of sentence. I do not know if that is still the position with you. But of particular concern is the fact that on 4th October, 2016 after you had pleaded not-guilty to the two charges and the Court fixed the matter for trial on 31st October 2016, you were remanded on bail on conditions. The condition in paragraph 4 of that order is that –

“He must not leave Efate.”

12. It is obvious you breached that condition when you left the jurisdiction to work on a tourist ship without first informing the Court or making any appropriate application to vary your bail condition. Having failed and coupled with your willingness to take the law into your own hands by burning down your mother’s sister’s house with her properties, is indicative of you as the type of person who is not prepared to respect the law. That is why a custodial sentence is necessary to act as a deterrence.

13. You are therefore sentenced to an end sentence of 3 years imprisonment but this sentence is suspended for a period of 3 years on good behaviour.

14. I received very late submissions only at 8.00am yesterday morning (31/08/017). I have reluctantly considered them. I do not accept you are entitled to a reduction for guilty plea. I have not seen any supporting evidence for the custom ceremony either. For the remaining factors in (c) and (d) I accept the sentence of 3 years should be suspended for a period of 3 years under Section 57 of the Act.

DATED at Port Vila this 1st day of September, 2017.

BY THE COURT

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OLIVER A. SAKSAK
Judge

