

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 078 OF 2014LAB

STATE

V

KAPUA BAKOA

Counsels : Ms. A. Vavakadakua for State
Mr. M. Fesaitu for Accused

Hearings : 19 and 21 October, 2015

Sentence : 27 October, 2015

SENTENCE

1. On 19 October 2015, in the presence of your counsel, the following counts in the following information was put to you, and you pleaded guilty to count no. 1, and not guilty to count no. 2:

1st Count

Statement of Offence

ARSON: Contrary to section 362 (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

KAPUA BAKOA, on the 20th day of November, 2014 at Nuku, Rabi Island, in the Northern Division, willfully and unlawfully set fire to the **RABI COUNCIL OF LEADERS** building.

2nd Count

Statement of Offence

CRIMINAL INTIMIDATION: Contrary to section 375 (1) (a) (i) and (iv) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

KAPUA BAKOA, on the 20th day of November, 2014 at Nuku, Rabi Island in the Northern Division, without lawful excuse, threatened Police Constable **3627 KIBAU KIBAONIMATANG** with a cane knife with intent to cause alarm to the said Police Constable **3627 KIBAU KIBAONIMATANG**.

2. The prosecution then read to you the summary of facts for count no. 1. They were as follows. You resided at Bukonikai Village on Rabi Island. You are living in defacto relationship with no children. You are 52 years old. You reached class 7 level education. You were not happy with some decisions made by some members of the Rabi Council. You were also not happy with some of the decisions made by the Director of the Rabi Council. You went around looking for empty beer bottles. You found four empty beer bottles. You filled the same with pre-mix fuel, and closed its opening with pieces of cloth. You then took the same to the Rabi Council of Leaders building on 20 November 2014. You told the people inside the building to go outside, and then you set the conference room and the director's office on fire by throwing and smashing the burnt pre-mix filled bottles into those rooms. Before throwing those pre-mix filled beer bottles, you lighted the clothes with your gas lighter. Damages caused by you were worth \$1,410.00.
3. The court then checked with your counsel to see that you are admitting all the elements of the offence of "arson". Through your counsel, you admitted that, on 20 November 2014, you willfully

and unlawfully set fire to the Rabi Council of Leader's building. Because of the above admission, the court found you guilty as charged on count no. 1, and convicted you accordingly.

4. In **State v Atunaisa Raralevu**, Criminal Case No. HAC 026 of 2013S, High Court, Suva, I said the following: **“...”Arson”, as an offence, is viewed seriously by the law makers of this country. It carried a maximum penalty of life imprisonment. Previous case laws had set a tariff between 2 to 4 years imprisonment (see Kelemedi Lagi & Others v State, Criminal Appeal Case No. HAA 0004 of 2004S, High Court, Suva, which was endorsed by the Fiji Court of Appeal in Niko Lesu and Sunia Vosataki v State, Criminal Appeal No. AAU 058 of 2011). However, the Fiji Court of Appeal, in Damodar Naidu & Another v Reginam, Fiji Law Report, Vol 24, 1978, pages 93 to 106, approved a sentence of 7 years imprisonment for accused no. 1 and 10 years imprisonment for accused no. 2, for burning down a number of shops in Rakiraki Town, in May 1977. Of course, the final sentence will depend on the mitigation and aggravating factors...”**

5. In this case, the aggravating factors were as follows:
 - (i) Committing Arson to resolve a problem. You obviously had differences with members of the Rabi Council of Leaders. In a democratic society, it is normal and expected that citizens will have differences with their leaders. Nevertheless, there are peaceful ways and means of persuading your leaders to see things from your point of view. One of them is to write to them expressing your stand on particular issues, and pleading with them on how to change their views. Others are the use of peaceful public protest. Also, you can use the courts to make orders against what you see as wrong. However, to take the law into your hands and commit arson to make a point is not on, and it will only result in your losing your liberty. In this case, you will have to lose your liberty to learn to use peaceful means to make a point.
 - (ii) By committing arson against the complainant's building, you showed utter disregard to their property rights. The Rabi people spent a lot of money to build their meeting house. By setting it on fire and causing \$1,410 damage, you had no regard to their financial sacrifice.

6. The mitigating factors in this case were as follows:
- (i) At the age of 53 years, this is your first offence;
 - (ii) Although you pleaded guilty to count no. 1 approximately 10 months after first call in the High Court, you nevertheless saved the court's time;
 - (iii) You had been remanded in custody since 8 December 2014, when you first appeared in the Labasa Magistrate Court, that is, approximately 11 months ago.
7. I start with a sentence of 3 years imprisonment on count no. 1. I add 2 years for the aggravating factors, making a total of 5 years imprisonment. I deduct 11 months for time already served while remanded in custody, leaving a balance of 4 years 1 month. For being a first offender at 53 years old, I deduct another 1 year, leaving a balance of 3 years 1 month. For pleading guilty, I deduct another 1 year 1 month, leaving a balance of 2 years imprisonment. I sentence you to 2 years imprisonment on count no. 1.
8. Mr. Kapua Bakoa, for willfully and unlawfully setting fire to the Rabi Council of Leaders' building on 20 November 2014, at Rabi Island in the Northern Division, I sentence you to 2 years imprisonment, with a non-parole period of 1 ½ years, effective forthwith, for count no. 1.
9. On count no. 2, since it is a summary offence, pursuant to section 4 (1) (c) of the Criminal Procedure Decree 2009, it is remitted to the Labasa Magistrate Court to be tried before Resident Magistrate Cama Tuberi. Count No. 2 is adjourned to Labasa Magistrate Court on 10 November 2015 at 9.30am for mention. A production order is to be served on the prisoner.


Salesi Temo
JUDGE



Solicitor for the State : **Office of the Director of Public Prosecution, Labasa**
Solicitor for the Accused : **Office of the Legal Aid Commission, Labasa**