

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 17 of 2024

STATE

v

MANASA BULAISEA QALOTAKI

Counsel: Mr. Z. Zunaid for the State
Mr. J. Dinati for the Accused

Date of Sentencing Hearing: 18 November 2024

Date of Sentencing: 3 December 2024

SENTENCE

1. **Manasa Bulaisea Qalotaki**, the accused, is indicted with the offence of *Arson* contrary to section 362(a) of the Crimes Act 2009 laid out as follows in the Amended Information dated 26 August 2024 by the Acting Director of Public Prosecutions:

COUNT 1

Statement of Offence

ARSON: contrary to section 362(a) of the Crimes Act 2009.

Particulars of Offence

MANASA BULAISEA QALOTAKI between the 23rd day of November, 2023 and the 24th day of November, 2023, at Nausori in the Eastern Division, wilfully and unlawfully set fire to the dwelling house of **TIMOCI NAULULEVU**.

2. On 30 October 2024 the accused Manasa Bulaisea Qalotaki pleaded *guilty* to the offence of *Arson* voluntarily and unequivocally, and confirmed by his private counsel Mr. Jerry Dinati.
3. On 18 November 2024 the prosecution read out the *Summary of facts*, which was voluntarily accepted by the accused and confirmed by his counsel Mr. Dinati. The Court then formally convicted the accused of *Arson* followed by Mr. Dinati's plea in mitigation and sentencing submission on behalf of the accused including prosecutor Mr. Zenith Zunaid's sentencing submission. The matter was then adjourned to 3 December 2024 for sentencing and this is the Court's finding on sentence.

Summary of facts

4. The accused Manasa Bulaisea Qalotaki, 33 years and a farmer, reside at Tubalevu village, Namara, Tailevu, in a house belonging to his father and complainant Timoci Naululevu, 66 years and also a farmer. On 24 November 2023 whilst at home the complainant told the accused who was intoxicated to refrain from drinking alcohol as there was a funeral in the village. The accused then approached the complainant who was lying in bed and told him that he will burn the house, to which the complainant reacted by immediately getting out of bed and walked out of the house towards the church having feared for his safety. Immediately thereafter the complainant saw the accused burn his house down and chasing away members of the village who tried to intervene. The complainant's house is valued at **\$55,000.00**, and he suffered loss, financial or otherwise, due to the arson committed by the accused who was later arrested by the police, interviewed under caution, and formally charged for the offence of *Arson* contrary to section 362(a) of the Crimes Act 2009.

In his **record of interview** the accused stated that he resides at Tubalevu village with his wife and father [Q/a 23-25], and on 24 November 2023 he was at home and then left to purchase alcohol and consumed about 3 cans of Black Rock alcohol at home [Q/a 28-32]. The accused stated that at that time his father and sister were also at home, and his sister told him to leave his wife as she had chased her away from their home on Thursday [Q/a 34], and upon hearing this the accused felt angry and then told them to get out of the house as he was going to burn the house [Q/a 33-35]. The accused stated that after his sister and father had left the house, he then used a gas lighter to set fire to the mattress on his bed which then burned the concrete house [Q/a 35-39] consisting of two rooms belonging to his father [Q/a 40-41]. The accused stated that all items were in the house when he burned the house [Q/a 43].

Sentencing analysis for Arson

5. Manasa Bulaisea Qalotaki, the accused, is charged and convicted of the offence of *Arson* contrary to section 362(a) of the Crimes Act 2009 which state:

362. A person commits an indictable offence if he or she wilfully and unlawfully sets fire to-

(a) any building or structure (whether completed or not); ...

Penalty – Imprisonment for life.

6. The maximum penalty for the offence of **Arson** is life imprisonment.
7. In terms of the sentencing tariff for *Arson*, the Fiji Court of Appeal in Nakato v State [2018] FJCA 129; AAU74.2014 (24 August 2018), at paragraphs 90 – 93, held:

*90. The legislation in Fiji clearly indicates the intention to treat **arson** as a very serious offence by making arson an indictable offence and fixing the punishment for arson as life imprisonment. Even the penalty for the offence of attempt to commit arson under section 363 of the Crimes Act is an imprisonment term of 14 years. **In my judgment, the range of 2 to 4 years imprisonment does not***

reflect the seriousness the legislation intended to attribute to the offence of arson and in fact it defeats the obvious intent of the legislature.

91. *It is pertinent to note that;*

- a) *The established sentencing tariff for the offence of rape which carries a maximum penalty of life imprisonment when committed against an adult is an imprisonment term between 7 and 15 years (State v Naicker [2015] FJHC 537; HAC279.2013); and an imprisonment term between 10 to 16 years when rape is committed on a child victim (Anand Abhay Raj v State [2014] FJSC 12).*
- b) *For the offence of manslaughter which carries a maximum penalty of 25 years, the tariff is an imprisonment term between 5 and 12 years (Vakaruru v State [2018] FJCA 124; AAU94.2014 (17 August 2018)).*
- c) *For the offence of aggravated robbery which carries a maximum penalty of 20 years, the lower tariff for a single act is settled as an imprisonment term between 8 and 16 years. (Wise v State [2015] FJSC 7)*

92. *The aforementioned tariffs for the offence of rape, manslaughter and aggravated robbery which carry maximum sentences of life, 25 years and 20 years respectively also suggests that a range of 2 to 4 years imprisonment is not an appropriate tariff for the offence of arson given the maximum penalty of life imprisonment it carries.*

93. *Having considered the views expressed by the courts in the decisions cited above and the aforementioned tariffs, it is my considered view that the tariff for the offence of arson under section 362(a) of the Crimes [Act] should be an imprisonment term between 5 to 12 years. In selecting the lower end of the 5 years imprisonment, I have taken into account inter alia the nature of the offence under section 362(a) which is unlawfully setting fire to a building or a structure, the natural implications of that offence and the maximum penalty which is life imprisonment. Further, this tariff should be regarded as the range of the sentence on conviction after trial. A sentence may inevitably arrive at a final*

sentence which is below 5 years imprisonment in applying the two-tier approach unless the aggravating circumstances are quite substantial. If the final sentence reached is one that is below 3 years imprisonment, then it would be at the discretion of the sentence to opt for any sentencing option as provided under the Sentencing and Penalties Act.

8. The sentencing tariff of 5 to 12 years imprisonment prescribed in Nakato v State (supra) does not apply in this instant because the accused Manasa Bulaisea Qalotaki pleaded *guilty* to the offence of *Arson*, which begs the question in terms of the appropriate or applicable sentencing tariff for *Arson* when the accused pleads guilty to the said offence.
9. On that note in Nakato v State (supra) the Fiji Court of Appeal held at paragraphs 85 to 87:

85. I note that this court in the case of Lesu v State [2014] FJCA 214; AAU58.2011 (5 December 2014) had made the following observations with regard to the tariff for the offence of arson;

“[38] It is now established that the tariff for arson as decided in the case of Lagi v The State [2004] FJHC 69; HAA0004.2004S (12 March 2004S) and thereafter in several other cases is presently established to be 2 to 4 years imprisonment.”

86. Then at paragraph 43 of the said judgment the court said;

“[43] Arson is an extremely serious offence and the maximum penalty is life imprisonment. Despite the serious penalty, as mentioned earlier, the Courts in Fiji for considered reasons have placed the tariff for arson between 2 years and 4 years imprisonment.”

87. It is my considered view that this court did not endorse the range of 2 to 4 years imprisonment as the tariff for arson in Lesu (supra) but as stated above, merely

made an observation that it was the established tariff for the offence of arson.

10. In Lesu v State [2013] FJCA 65; AAU0058.2011 (3 July 2013), Justice Daniel Goundar presiding as single judge of the Fiji Court of Appeal held at paragraph 15:

[15] The tariff for arson was first established by the High Court in Lagi v The State [2004] FJHC 69; HAA0004J.2004S (12 March 2004). The tariff is 2 to 4 years imprisonment. This tariff has been applied in subsequent cases of arson in the High Court (State v Kata [2008] FJHC 219; HAC126.2008 (12 September 2008); State v Lakaia [2010] FJHC 366; HAC023.2010 (27 August 2010); State v Raicebe [2011] FJHC 729; HAC208.2011 (17 November 2011); State v Taqainakoro [2013] FJHC 23; HAC100.2012 (30 January 2013).

11. In Lesu v State [2014] FJCA 214; AAU58.2011 (5 December 2014), the Full Bench of the Fiji Court of Appeal in upholding the tariff of 2 to 4 years imprisonment for *Arson*, quashed the two Appellants custodial terms of 4 years imprisonment with a non-parole period of 3 years imposed by the High Court, and ordered a substituted sentence of 2 years imprisonment backdated to 6 May 2011. Both Appellants had set fire to a house belonging to their chief and complainant Ratu Marika Lewanavanua situated at Sawaieke village, Gau, Lomaiviti province, because they were disappointed with the complainant's decision to permit a new church denomination into their village without consulting the villagers and allowed the church to use the complainant's house for church services.
12. Based on the Fiji Court of Appeal decisions in Nakato v State (supra) and Lesu v State (supra), the sentencing tariff for an accused: (i) tried and convicted of *Arson* is 5 to 12 years imprisonment; and (ii) who pleads guilty and convicted of *Arson* is 2 to 4 years imprisonment. I am of the view that there should be a single sentencing tariff for *Arson* despite the accused person's plea, bearing in mind that a sentencing court can make special deduction for an early guilty plea – see Qurai v State [2015] FJSC 15; CAV24.2014 (20 August 2015).
13. For this instant, I rely on the sentencing tariff of 2 to 4 years for *Arson*, and choose the

starting point of 2 years imprisonment given the objective circumstances of the offending.

14. With the starting point of 2 years imprisonment, 3 years is added for the aggravating factors considering that the accused set fire to his father's house worth \$55,000.00, which concurrently resulted in substantial loss of property incurred by the complainant including the associated psychological and emotional trauma endured by the complainant and other members of the family whose lives and safety were heavily compromised and put at great risk despite no loss of life. Furthermore, the accused person's total disrespect and disregard of his father's advice, hard work and effort in building the dwelling house where one must find solace and comfort including other utility and benefit. A man's house is his castle but the accused person's conduct has undoubtedly breached that particular trust between father and son including the sibling(s). The burden faced by the complainant in having to rebuild and recover from the arson is also an aggravating factor.
15. With the interim custodial term of 5 years, 1 year is deducted for the mitigating factors considering that the accused has no prior conviction, 33 years and a subsistence farmer.
16. For the early guilty plea, one third is deducted from the 4 years resulting in the custodial term of 2 years 8 months.
17. Further deduction of 41 days is made for time spent in custody, thus arriving at the head sentence of 2 years 6 months 19 days imprisonment.

Non-parole period

18. Pursuant to section 18(1) of the Sentencing and Penalties Act 2009, I hereby order a non-parole period of 1 year or 12 months.

Suspended sentence

19. Having considered the circumstances of this case in light of section 26 of the Sentencing and Penalties Act 2009, I have decided not to suspend the sentence.

20. Based on the above reasons, the accused Manasa Bulaisea Qalotaki is convicted of the offence of *Arson* contrary to section 362(a) of the Crimes Act 2009, and hereby sentenced to a custodial term of 2 years 6 months 19 days with a non-parole period of 1 year.

21. Thirty (30) days to appeal to the Fiji Court of Appeal.

Order(s) of the Court

- 1) **Manasa Bulaisea Qalotaki** is convicted of *Arson* contrary to section 362(a) of the Crimes Act 2009, and sentenced to 2 years 6 months 19 days imprisonment with a non-parole period of 1 year.
- 2) A ***Permanent Domestic Violence Restraining Order (DVRO)*** with standard non-molestation orders is hereby issued against Manasa Bulaisea Qalotaki pursuant to sections 22 and 27 of the Domestic Violence Act 2009.



Hon. Justice Pita Bulamainavalu

PUISNE JUDGE

At Suva

3 December 2024

Solicitors

Office of the Director of Public Prosecutions for the State

Dinati Lawyers for the Accused person