

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Criminal Appellate Jurisdiction)

Criminal Appeal
Case No. 21/2936 CoA/CRMA

BETWEEN: Public Prosecutor
Appellant

AND: John Bune
Abel Postlock
Jay Basil
Thomson Wailolo
David Akuna
Paul Silwo
Robert Rupepea
Maxim Raupepea
Kavin Jarry
Jean Jerry
Ray Bune
Kalo Bune
Jean Pual
Respondents

Date of Hearing: 8 November 2021

Before: *Hon. Chief Justice Vincent Lunabek*
Hon. Justice John von Doussa
Hon. Justice Ronald Asher
Hon. Justice Dudley Aru
Justice Gus Andrée Wiltens
Hon. Justice Viran Molisa Trief

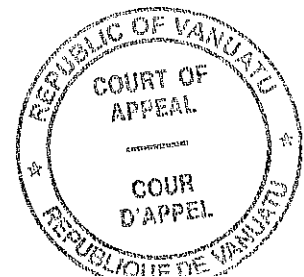
Counsel: *Mr. Damien Boe for the Appellant*
Mr. Nigel Morrison for the Respondents

Date of Decision: 19 November 2021

JUDGMENT

Introduction

1. This is an appeal by the Public Prosecutor against suspension of the sentence in the Court below. The respondents pleaded guilty to one count of unlawful assembly and one count of riot. Their chief John Bune was sentenced to a concurrent sentence of 2 years imprisonment suspended for 2 years. The remaining respondents were sentenced to a concurrent sentence of 1 year imprisonment suspended for 2 years.



The facts

2. On 17 June 2020 at Funataribu village, Big Bay, Santo the respondents assembled together and planned to go to Funataribu village to assault the complainants. They went to the village carrying stones, knives, spears, axes, slings and stones and sticks led by their chief John Bune. They approached the village in a riotous and violent manner shouting and causing fear and panic among the women and children of the village who escaped to take refuge in other villages. The respondents attacked and abused the complainants and caused them bodily injuries. The complainants also lost items such as money, cooking pots, grass-cutters, mobile phones, solar panels and inverters and clothes.
3. Police were alerted and arrived in the afternoon. They brought the victims to the hospital. They were confronted by the respondents. The respondents were arrested and charged initially with 8 counts of unlawful assembly, riots, intentional assault, theft (3 counts) and obstructing police (2 counts). The Police found a knife (30 cm), an axe (53 cm), a spear (126 cm) and a carved wood (115 cm).
4. Initially the respondents pleaded not guilty to all the charges. It was only after the charges were amended removing 6 charges of intentional assault, theft and obstruction of Police, that they pleaded guilty to unlawful assembly and riot.

Submissions on Appeal

5. In summary, the appellant submitted that the sentencing Judge did not consider existing precedent before suspending the sentence and that there were no exceptional circumstances to warrant suspension of the sentences. It was submitted that the sentencing Judge did not turn his mind to the proper application of s 57 of the Penal Code [CAP 135].
6. It was also submitted that the sentencing Judge gave too much weight to the personal circumstances of the respondents and ignored the repugnant nature of their conduct and the circumstances of the case. It was submitted that the aggravating factors highlighted the very serious nature of the offending which warranted additional or alternative sentences.
7. The respondents on the other hand relied on their submissions in the Court below and submitted that the appeal should be dismissed on the basis that the sentencing Judge took into account all the relevant factors before suspending the sentences and no error has been shown in the exercise of the sentencing Judge's discretion.

Discussion

8. The appellant does not dispute the starting point of sentence and the end sentence.
9. The starting point of sentence for chief John Bune, as leader of the group, was 2 years imprisonment for unlawful assembly and 4 years imprisonment for riot to be served concurrently.



The other respondents were sentenced to 1 year imprisonment for unlawful assembly and 2 years imprisonment for riot to be served concurrently.

10. The starting point took into account the maximum sentence available and a number of aggravating factors namely that the defendants assembled together with the intention to commit the offences. They acted together as a joint enterprise and were armed with stones wood, spears, knives, axes and slings and were violent and riotous. They caused fear in the lives of innocent women and children who fled to other villages to seek refuge and were displaced from their ordinary places of residence. They lost personal property such as money, mobile phones, cooking utensils, solar panels etc. The respondents assaulted some victims and were abusive. The activity was planned and it caused losses and inflicted injuries on innocent victims.
11. In mitigation, the sentencing Judge took into account the guilty pleas and allowed a one third discount. Other personal factors taken into account were the fact that the respondents were simple village people and first time offenders, had spent some time in custody and were remorseful for their actions.
12. Taking these factors into account the sentences were reduced then suspended. For chief John Bune he was sentenced to a concurrent end sentence of 2 years imprisonment suspended for a period of 2 years. The remaining respondents were each sentenced to a concurrent sentence of 1 year imprisonment suspended for a period of 2 years.
13. The only issue on appeal is whether the sentences were made manifestly inadequate by suspending them.

Suspension of sentence

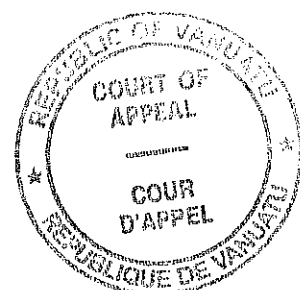
14. Suspending a sentence of imprisonment is a matter of discretion for the sentencing Judge.
15. The decision is arrived at by considering a number of factors as set out in s57 (1) which states:-

“(a) If the Court has convicted a person of an offence considers that:

- (i) in view of the circumstances ; and*
- (ii) in particular, the nature of the crime ; and*
- (iii) the character of the offender*

it is not appropriate to make him or her suffer an immediate imprisonment, it may in its discretion order the suspension of the execution of imprisonment sentence it has imposed upon him or her, on the condition that the person sentenced commits no further offence against any Act, Regulation, Rule or Order within a period fixed by the Court , which must not exceed 3 years;

.....”



16. The appellant submits that the respondents are not first time offenders, but the records considered by the sentencing Judge show nil convictions against all the respondents.
17. Unlawful assembly and rioting are always serious crimes as they could lead to injuries or even death or destruction of property. Each case will be considered on its own merits. In this case there were a number of aggravating factors of the offending which were taken into account by the sentencing Judge before arriving at the starting point of sentence which is not disputed by the appellant.
18. The offending occurred in a remote rural setting involving simple villagers. The sentencing Judge in his remarks at paragraphs 13, 14 and 15 said:-
 - “13. *The defendants had taken the law into their own hands.*
 14. *The only explanation given by the defendants is that they went into the victims village in peace with intention to enquire and resolve the issue of missing kava. And that they followed their chief to ensure his security. It was only when they were attacked that they retaliated in return.*
 15. *The course taken by the chief and the defendants was irresponsible and unwise. Any allegation of missing kava should have been reported to the police to investigate. When the chief and the defendants approached the village of the victims with stones, slings, knives, axes, wood and spears it could hardly be said they had approached with peace, as indeed one could not resolve sensitive issues such as theft of kava with such weapons. There was uncertainty as to who of the victims in the village was responsible for the missing kava.”*
19. We agree no one should take the law into their own hands. Any allegation of criminal conduct must always be reported to the Police to deal with. That is their role and function.
20. Factors warranting the suspension of the sentences were that the respondents were simple villagers from a remote part of Santo and are also first time offenders. They were remorseful for their actions and pleaded guilty to the charges which resulted in their sentences being reduced by the full one third discount. The chief, John Bune, was an old man aged about 75 and it seems that although he was the chief he did not incite the riotous behaviour of the others which happened spontaneously when fighting started .
21. There is a suggestion in the material before the Court that the property that was taken was recovered by the police. The charges of larceny were in any event withdrawn.
22. The pre-sentence reports on each of the respondents recommended community based sentences. Having regard to the background of the respondents we consider there were good grounds which justified the decision of the sentencing Judge to suspend custodial sentences, but to mark the seriousness of their offending we consider a sentence of community work should have been added. Community work will emphasise to the defendants and others in the community around them that riotous behaviour of this kind will attract real consequences on sentence.

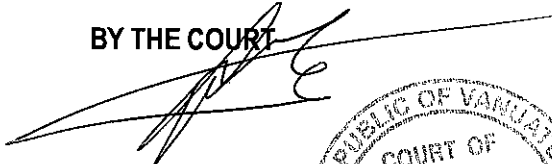


Result

23. The appeal is allowed. In addition to their suspended sentence, the respondents are each to perform 100 hours of community work.

DATED at Port Vila this 19th day of November, 2021

BY THE COURT



.....
Hon Vincent Lunabek
Chief Justice

