

**PUBLIC PROSECUTOR V. LESTUWI RARA  
MALCOLM VANUA WATS  
MALIU RARA  
WILSON WATS  
KASTON MAXON  
HARRY ESEA  
JOHN LILI  
WATS SIVILA**

*Sentence: Tuesday 10 March 2015 at 10.45 am*

*Before: Justice Harrop*

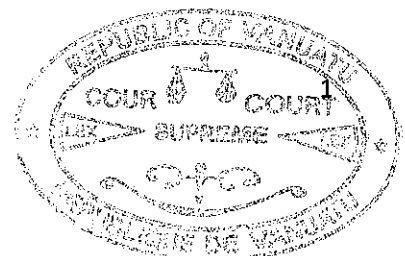
*Present: Mr. Ken Massing for the Public Prosecutor  
Ms Jane Tari for the Defendant*

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## SENTENCE

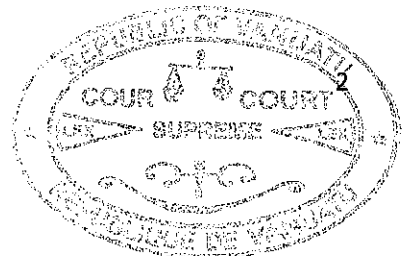
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1. You six men (Lestui Rara, Malcolm Wats, Wilson Wats, Kaston Maxon, John Lili and Wars Sivila) are for sentence on one count of unlawful assembly, with which eight defendants were jointly charged. The six of you pleaded guilty on 2 March and the sentencing was deferred until today to allow the preparation of pre-sentence reports and submissions from counsel. That has all been done and I express my gratitude to counsel and to the probation officers involved for their helpful documents.
2. The other two defendants Harry Esea and Maliu Rara did not appear on the 2 March although the latter has appeared this morning and pleaded guilty, not only to the count of unlawful assembly but also to the additional count of arson. Obviously his offending overall is more serious than yours and he will be sentenced separately tomorrow. The

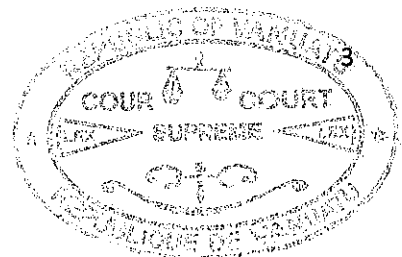


other defendant Harry Esea has not been able to be served with a summons and so has still yet to appear and enter pleas. He also faces the arson count.

3. Unlawful assembly carries a maximum penalty of 3 years imprisonment, so it is a serious offence usually warranting an unsuspended prison sentence. In the simple terms it involves the unlawful gathering of three or more people who either intend to commit a criminal offence or have a common purpose which is not criminal but they conduct themselves so as the cause bystanders to fear a breach of the peace will occur. Here the charge against you is that you were grouped together with a view to committing a criminal offence, namely arson, so it is the more serious of the two options within the definition of unlawful assembly.
4. The facts of this case are rather unusual. You gathered at around midday on 1 January 2015 in South Santo. The primary reason for getting together was that Malcolm Wats' wife had gone off and attended a new church, a Sacred Heart Church, in Kameto village. There was concern that she was spending a lot of time and money there indeed I understand from Ms Tari's submissions that she spent as much as three months away living in that village. This caused a good deal of frustration and resentment on the part of Malcolm Wats, who had to both work hard during the day but also after work he had to manage the household.
5. As a result Malcolm Wats and his son Wilson went looking for Mr Wats' wife at Kameto village. It is said that you were drunk and accompanied by Harry Esea, who was also drunk. On the way, and I understand it is about 15 to 20 minutes' walk from your village to Kameto village, you met the other defendants Lestui Rara, Maliu Rara, Kaston Maxon, John Lili and Wats Sivila at Vulutia village. That is where you made plans to damage and burn down the houses belonging to the community of Kameto village.
6. I pause at this point to note that it is appalling that you decided to go and damage what may well have been property belonging innocent people in that village completely unrelated to that church, which is not of course to suggest that it would be any more acceptable if the property did belong to church members.

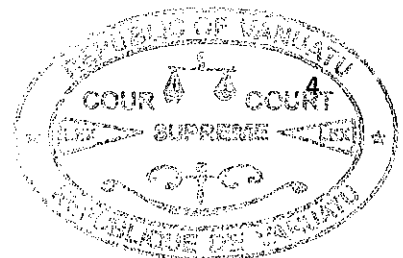


7. You arrived at Kameto village and it is alleged that two of your number (not for sentence today - Maliu Rara and Harry Esea) then to proceeded to burn four houses in the village. Those houses were totally destroyed along with their contents.
8. It is important to record here that you are not charged with damaging property or with arson, merely with the unlawful assembly which led to two others doing those things but, that said, the charge to which you have all pleaded guilty states that you planned to burn down houses in Kameto village. Accordingly you were a group formed for a specific purpose and that purpose was to carry out a serious criminal offence which carries 10 years imprisonment. You were not some aimless group having had some alcohol to drink looking to make trouble in some undecided and unplanned way.
9. The group was quite large, totalling 8 people, and was determined and you made the effort to travel some distance. Now there may well have been some of you, particularly the younger ones, who were simply following along with the prime movers but everybody must take responsibility for their own actions and everybody ought to realise that by being part of the group you made a real contribution to the fear which must have been felt by the people in the village on which you descended.
10. The other aggravating feature here is that this was action against the whole village when you had no reason to do anything to them. The target was apparently members of this new church but the plan does not seem to have been limited to them but rather was a group of community houses which would have been used by the whole village. In addition, clearly there was a significant effort and some planning involved and the purpose was a form of retribution for Ms Wats for exercising her free choice to become involved in that church.
11. Mr. Massing has referred to several other case authorities but with respect I do not find them very helpful because the facts here are very different and other cases usually involved additional charges, so I do not propose to go through those. He submits that Malcom and Wilson Wats should receive a much higher sentence than the other four



because they initiated and planned the gathering. For them he suggests a prison sentence in the 18 to 24 months range but fully suspended. For the other four he suggests a 12 to 18 months prison sentence fully suspended.

12. Ms Tari's submissions note that Lestui Rara and Malcom Wats are the oldest in the group and that the other four are sons of those two elders. Their wives and their sons' wives were involved in this new church which required their wives to attend daily; sometimes they remained in the camp for about week or so without returning home. So there was a lot of anger about this because their wives were not doing their usual duties in the village, around the house and in the gardens.
13. This suggests to me that all of you had a reason to go and it was not just tagging along with Mr. Wats. She suggests or submits however that Malcolm Wats was really the leader and that the other two older ones, Lestui Rara and Kaston Maxon, although the latter is only 22, should receive a greater sentence than the other three. She submits that any prison sentence should be suspended and that the other three defendants Wilson Wats, John Lili and Wats Sivila should be discharged without conviction.
14. I have been read of the pre-sentence reports relating to you and Ms Tari submissions about each of you.
15. Lestuwi Rara you are one of the older ones in the group, you are married with 6 children, you come from South Santo and you have held a chiefly title for 6 years. You are, like the others, a first time offender and you pleaded guilty at the earliest opportunity.
16. Malcolm Wats you have been a chief for 10 years. You work very hard and you earn your income through sales of garden products at Luganville marketplace and in some other ways. You have 8 children and you are known for pioneering the Presbyterian Church in your area. As I have already noted it was primarily your motivation which led to this incident because you were very upset that your wife had spent 3 months at kameto village with the Sacred Heart church. Again, you have no previous convictions and you have pleaded guilty at the first opportunity and cooperated with the Police.



17. Wilson Wats you are Malcolm Wats's son, you are 21 and currently a student at the Vanduhu Rural Training Centre on Malo doing carpentry courses. You too pleaded guilty, have no previous convictions and cooperated with the Police. You are described by Ms Tari as having a bright future ahead of you and you are determined to finish your education. Your participation was simply because you did not think it was right for your mother to be away from your father for 3 months and also you were concerned about the amount of money that she had spent on the new movement but you are now happy that your mother has returned home.
18. Kaston Maxon you are 22, again a first offender with an unblemished record and pleaded guilty at the first opportunity and cooperated well, you have skills as a diver , gardener and a soccer player.
19. John Lili you are 18, again you are a first offender who pleaded guilty at the earliest opportunity. You cooperated with the police and you said that you were in the wrong place with the wrong crowd that day .When you saw the fire started you managed to pull out some clothes and other items. You are remorseful and willing , like the others I should add, to perform a custom reconciliation.
20. Wats Sivila, you are also a young man, though your date of birth is not known. Ms Tari describes you as naïve and as usually following what your peers do. You had been drinking and you followed along without giving too much thought about your participation. You have no previous convictions and pleaded guilty cooperated.
21. I think there is a considerable irony that most of you profess to be Christian and members of either the Presbyterian or Catholic Churches, yet you have behaved in a distinctly unChristian way towards the Kameto villagers, to a fellow church and to Mrs Wats's exercise of choice about what religion she would follow. I believe the bible says some things about respecting others, treating others as you would like to be treated, turning the other cheek if things do not go your way. But you did not follow any of those pieces of advice. Surely the reasonable step was to try to persuade Mrs Wats (and other



wives and partners) to come back to their home village by talking, not by forming an unlawful assembly and planning arson.

22. I wonder how you, particularly Malcolm Wats involved as you are in the Presbyterian Church, would you feel if somebody came to your church and wanted to worship with you but then their former church members from another village turned up and wanted to burn your village down regardless of which houses were affected?
23. I do not think you would be happy. I do not think you would regard that is Christian behaviour and yet that in reverse is what you did.
24. I think this is a case which, whatever the Court may do by way of sentencing, cries out for a custom reconciliation ceremony. That might ideally be done when the other two Harry Esea and Maliu Rara have had their cases resolved but I see no reason why you six cannot do it separately; indeed you all say that you are willing to do the right thing and be involved in such a ceremony. For that I give you credit because it takes courage and responsibility to stand up and do the right thing. At this stage it appears that the victims are not willing to be involved, that is their right.
25. In terms of sentence I accept that Mr. Malcolm Wats who is a chief, a leader and who is the one who most aggrieved by his wife's conduct, that he should receive a greater sentence than the other five. In my view this incident would not have happened without his initiative and gathering the others together. It was his "beef" or problem that the group was seeking to deal with and he had plenty of opportunity to think better of it and to stop it. If he had called it off that any stage there is every reason to think it would have stopped immediately.
26. Having regard to the maximum penalty of 3 years imprisonment and to this being a serious example of unlawful assembly, I consider that a 2 ½ year starting point or 30 months imprisonment is the least I can adopt for Malcolm Wats. Deducted from that must of course be 1/3 for his guilty plea. I accept there is responsibility acknowledged by him and remorse. So that brings it down to 20 months. There also needs to be recognition of



previous good character, the work done in the community and in the church and the willingness to undergo the customary reconciliation. I acknowledge the efforts that Malcolm Wats has made to see that happen. So I would reduce the sentence to 15 months imprisonment and I would suspend that for 2 years. So what that means is that as long as you commit no further offences Mr. Wats within the next 2 years you would not serve any of that prison sentence. However you need to understand that you were to commit an offence within 2 years then you would serve not only the 15 months prison sentence but also the sentence imposed for that further offending.

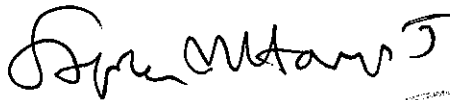
27. In my view there are also ought to be a sentence of community work because this is in a real sense an offence against community values and the Kometa community in particular, so I sentence Malcolm Wats to 125 hours community work.
28. I also direct that a customary reconciliation ceremony occur within 30 days **if the victims agree** to that. If they do not agree than obviously there will be no such ceremony but if it takes place I require a report from the probation officer within 28 days afterwards.
29. Turning to the other five of you, I consider that all of you, to a greater or lesser extent, went along with Mr. Malcolm Wats as leader. I am not going to treat Wilson Wats as more involved as Mr. Massing suggests I should because I recognise that he is the son of Malcolm Wats and will have had little choice about going along with this father's wishes.
30. I do agree that some distinction can be made between Lestui Rara and Kaston Maxon, who are more mature than the other three. But I am emphasise that all of you, whether you are young men or not, you need to learn not to bow to peer pressure when this is the wrong thing to do. Part of developing character and growing up is being prepared to say, even to a chief, I am not going to do that it is wrong. That takes real courage and character.
31. I do not accept that any of you should be discharged without conviction because I think you have to take responsibility for what you did voluntarily and a conviction is



appropriate recognition of that. But I do accept that in all with circumstances a sentence of coming up for sentence if called upon under Section 56 of the Penal Code is appropriate for the three younger ones: Wilson Wats, John Lili and Wats Sivila.

32. That means that for the next 12 months as long as you keep out of trouble there is no penalty but if you were to commit an offence during that period then you will be sentenced not only for the new offence but also re-sentenced on this charge.
33. As to the other two, Lestui Rara and Kaston Maxon, having regard to all of the circumstances I impose 9 months' imprisonment suspended for 12 months and each of you will serve 75 hours community work.
34. The other five defendants are also to be involved in the customary reconciliation ceremony to the victims within 30 days but again only on the basis that if that is what the victim wish to do. I require a report from probation as to that ceremony to be supplied to me within 28 days, if it takes place.
35. Each of you has 14 days to appeal against the sentences if you do not agree with them.

**BY THE COURT**



**STEPHEN HARROP**

**Judge**

