

IN THE SUPREME COURT  
REPUBLIC OF VANUATU  
(Criminal Jurisdiction)

Criminal Case No. 8 of 2015

PUBLIC PROSECUTOR

-v-

BENIAM JOHN  
BATICK THOMAS  
JAME JAMES JOHN  
KAPE MASIKOTO

Mr Massing for Prosecution  
Mr Tevi for the Defendants

Hearing 27th April 2015

Sentence

You have all pleaded guilty to two offences, unlawful Assembly and Arson. The maximum sentence for the former is 3 years and for the latter it is 10 years.

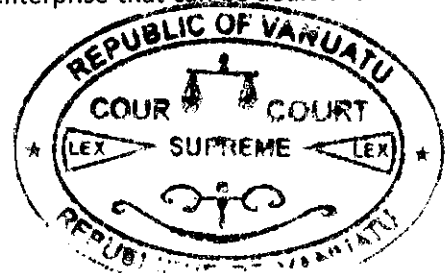
The basic facts are agreed. On 2<sup>nd</sup> November 2014 you assembled together with the common intention to burn down the house of the late Mr Songi Samuel. Batick Thomas carried with him a plastic container which had benzene or petrol in it. The petrol was used to facilitate the burning of the house, together with other flammable material such as coconut leaves. No one was inside the house which, with its contents, was completely destroyed in the conflagration. The offences arose out of the belief that the house was used for the purposes of witchcraft by the late Mr Songi Samuel. It is clear from another judgment of this court that such a belief does not excuse your criminal actions. I will read part of the recent judgment of His Lordship the Chief Justice in the case of Public Prosecutor v. Ray Obed and others, CRC 3 of 2015. The excerpt begins on page 15 at the words, "The accused and any villager for that matter...." And ends on page 16 with the words "...what they did was wrong or a crime".

*[Judgment read]*

What His Lordship said in that case is 100% relevant in your case.

I have listened carefully to what your counsel Mr Tevi has said and taken careful note of what he has put forward in his written submissions. I only have a pre sentence report for Mr Beniam John. I understand reports for others have been prepared but for some reason they have not reached the court file. I have decided to proceed with sentencing all of you today anyway as I intend to treat you all the same. I have also read the submissions from the Public Prosecutor's Office.

I agree with Mr Tevi and Mr Massing that the starting point for the sentence in respect the most serious offence, the arson, is 3 years. Whilst it is true this was a joint criminal enterprise that can be dealt with



in the conviction for Unlawful assembly. There was premeditation but the actual "planning" involved was very short term. 3 years is sufficient to reflect the seriousness of the offence and its consequences.

You have entered pleas of guilty at the earliest opportunity and you should be given full credit for that. The term of 3 years will accordingly be reduced to 2 years. In addition you are all treated as being first time offenders as at the time of the offence. A further reduction should be made of 6 months.

I am required to consider keeping you in the community and to promote reconciliation. I find that to be an impossible task in this case because you continue to lay the blame at someone else's feet. You seem to suggest they were compelled to act as you did because of what the victim was said to have done. I do not accept that you were so compelled. To adopt and adapt what Chief Justice said in the case referred to above, none of you are stupid and you are quite capable of thinking for yourselves. You knew that what you were doing was wrong and that you were not entitled to take the law into your own hands. I therefore find it very hard to see how you can be reconciled when you continue to blame the victim. It is equally difficult to accept that you can be safely returned to the community when you continue to believe you can act with what His Lordship saw as, "... arrogance and with complete disregard for the constitution and the law...". In all the circumstances I will not make an order requiring reconciliation nor shall I make one suspending any part of the sentence. You will all serve a 18 months of imprisonment for the offence of arson.

In respect of the unlawful assembly you will serve a period of 6 months imprisonment, that sentence to run concurrently with the sentence for arson.. The offence carries a maximum of 3 years. The gravity of the offence is reflected in the nature of the charge which arose as a consequence of the unlawful assembly. You have all been sentenced for that consequential offence and the seriousness of the consequential offence is accounted for in that sentence. In my view the starting point for the sentence for the unlawful assembly is between 9 months and 1 year. Whilst it is right to say the result of the unlawful assembly was arson, for the reasons just stated the lower figure is the appropriate starting point. You have pleaded guilty and so you are entitled to a 1/3 reduction leaving a final sentence of 6 months. This means you will serve a total sentence of 1 year and six months.

So far as Mr Kape Masitoto is concerned, this present sentence will run concurrently with that ordered by the Chief Justice in CRC 3 of 2015.

If any one of you is not satisfied with the sentence imposed today you have 14 days in which to lodge an appeal. You should discuss the question of appeal with your lawyer.

27<sup>th</sup> April 2015

  
Chetwynd

