

**IN THE SUPREME COURT
REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

Criminal Case No.2745 of 2016

PUBLIC PROSECUTOR

-v-

**LEONARD LINI
WILKINS TARILAPE
LINGTON LINI TRISIPA
BULE HANI**

*Before Justice David Chetwynd
Hearing 7th July 2017
Mr Blessing for the Public Prosecutor
Mr Rau for the Defendants*

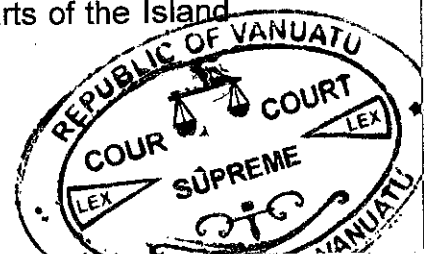
Sentence

1. These four defendants entered guilty pleas on 6th June this year to a number of offences. Wilkins Tarilape pled guilty to a charge of rioting. Leonard Lini, Lington Lini Trisipa and Bule Hani all pleaded guilty to one count of riot, 5 counts of malicious damage and 6 counts of arson.

2. There are other defendants who remain to be dealt with. Two have maintained not guilty pleas to all charges against them and 3 others are subject to warrants of arrest because they failed to appear on a previous occasion. So far as the two who have pleaded not guilty, because of events on other appearances, I have recused myself from dealing with their case because of the possibility of apprehended bias on my part.

3. In relation to the four defendants before me, I have written submissions from the prosecution; written submissions from the defence and pre-sentence reports from the Probation Officer.

4. The facts of the case reveal a worrying scenario. It involves one of the defendants who is not before the court in his role as Chief and founder of a movement known as Tu Raga. I bear in mind that the defendant remains to be tried and that he has had no opportunity to refute or otherwise comment on the "agreed facts" before me. However, there does not appear to be any controversy in saying that the Tu Raga movement or the Custom Government of the Tu Raga eschews all notions of western democracy and governance. Instead the adherents of the ideology, who are based on the Island of Pentecost, wish to be governed in accordance with the laws of custom. The Chief has decided that parts of the Island



of Pentecost should be subject to his rule even if some people living there do not hold the same beliefs as him.

5. Against that background, in December 2015 there was an incident when villagers who were not proponents of the Tu Raga movement were said to have offended against a pronouncement by the Chief concerning fishing in an area of their land. They were apparently summoned to the Chief's presence and one of them was assaulted. The Chief and these four defendants then went to the village where those who were said by the Chief to have transgressed lived. Their houses were damaged and eventually set alight and other property stolen or destroyed. The alleged "transgressors" were then banished by the Chief.

6. A unit of armed police was dispatched to Pentecost and the defendants were arrested and brought to Port Vila and placed in custody. These four defendants were interviewed under caution by the police and all made full or qualified admissions.

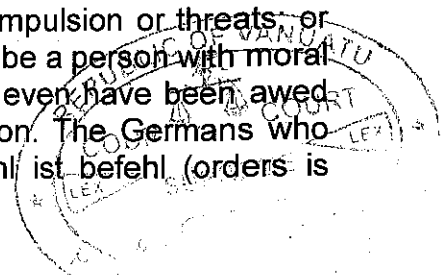
7. The defendants (all of them) appeared in the Supreme Court following committal for trial. The Chief insisted that he and his co-defendants be allowed to appear in custom dress. Unfortunately as a result of the Chief's behaviour an actual trial was delayed. Eventually these four defendants decided that they wanted to plead guilty.

8. As indicated above the Wilkins Tarilape pled guilty to one count alleging riot. He is dealt with on the basis he took part in a riot but did not actually damage or set light to any houses. The three other defendants all agree they took part in the riot and that they also damaged and/or set light to some house in Nageha Village on the island of Pentecost.

9. In submissions made on their behalf they all say they were under the influence of their Chief. This is repeated to the Probation Officer in interviews for pre-sentence reports. Some say they felt threatened by their Chief and they all say that they now see the error of their ways.

10. When I handed down the sentence this morning, giving reasons for the sentences, I told the defendants that for many years now what is commonly known as the Nuremberg defence has not been accepted as absolving a person of responsibility for carrying out criminal acts if that person was aware that they had a choice of obeying orders or not. The defence of superior orders is explicitly set out in the Penal Code [Cap 135] at section 22. I am sure that both exceptions to the defence as set out in s.22 exist in this case. I am sure that the defendants knew their Chief's orders were manifestly unlawful and that he had no authority to issue them.

11. Nor do I believe the defendants were under actual compulsion or threats, or that they were coerced by the Chief whom they considered to be a person with moral authority over them. They may have been cowed, they may even have been awed by their Chief but there was no actual compulsion or coercion. The Germans who stood before the war tribunal in Nuremberg and said *befehl ist befehl* (orders is



orders) were not allowed to escape responsibility for their actions and neither should the defendants be allowed to do so in this case .

12. The defendants all face serious charges. Each one is liable to a sentence of imprisonment of 10 years. Wilkins Tarilape has accepted that he was guilty of rioting and nothing else. He will be treated slightly differently from the three other defendants. They admit that in addition to rioting they caused damage and or set light to property. Although they have admitted a number of offences it would be wrong to order consecutive sentences. All sentences will be concurrent.

13. For the offence of riot the defendants will be sentenced to 5 years imprisonment. For the offence of Arson the defendants Lington Lini Tarisipa, Leonard Lini and Bule Hani will be sentenced to 6 years imprisonment. The latter three defendants will also be sentenced to 2 years imprisonment for malicious damage.

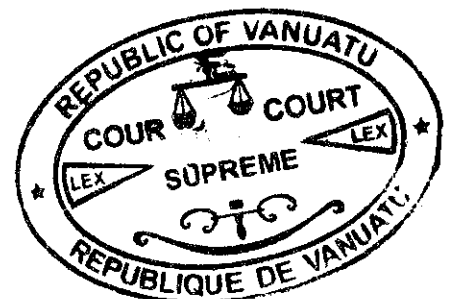
14. There is nothing which particularly aggravates the offences.

15. All the defendants have entered guilty pleas. I appreciate that they initially entered pleas of not guilty but I understand why they did so. They were under pressure from their Chief to say they were not guilty. What is clear from the paperwork though is that all 4 admitted what they had done to the police when they were first questioned. They are all entitled to credit for their pleas although they are not entitled to full 1/3rd credit. Whilst credit for guilty pleas is, under the *Andy*¹ guidelines, usually dealt with last, I intend to indicate at this stage that a year will be deducted from each defendant's sentence in respect of the pleas of guilty. All the defendants will be treated equally in this respect although such allowance might disproportionately affect some defendants.

16. All the defendants spent the same amount of time in custody. They have all been on remand for, as near as makes no difference, 6 months. They are entitled to have that taken into account. That would result in a further year being deducted from their sentences.

17. Finally, looking at each defendant individually, they are all young men. It is suggested that Lintong Lini Tarisipa is the youngest at just 16 ½ years of age. Wilkins Tarilape is apparently the oldest by some 8 to 10 years. They will all be treated as young men with no previous convictions. They have all expressed remorse and are willing to attempt reconciliation. Their victims are not sure they want to be involved in reconciliation ceremonies but hopefully that will change when they learn of what has happened to these defendants. The defendants are entitled to further deductions from their sentences to reflect these matters. Again, although there is a difference in their ages I will treat them all the same and all sentences will be reduced by one further year.

¹Public Prosecutor v Andy [2011] VUCA 11



18. The end result is thus

Wilkins Tarilape

For the offence of Riot, 1 year and 6 months imprisonment.

Lington Lini Tarisipa

For each offence of arson 2 years and 6 months imprisonment to be served concurrently

For the offence of riot 1 year and 6 months imprisonment (concurrent)

For each offence of malicious damage 1 year and 6 months imprisonment to be served concurrently to each other and concurrently with the sentences for arson.

Leonard Lini

For each offence of arson 2 years and 6 months imprisonment to be served concurrently

For the offence of riot 1 year and 6 months imprisonment (concurrent)

For each offence of malicious damage 1 year and 6 months imprisonment to be served concurrently to each other and concurrently with the sentences for arson.

Bule Hani

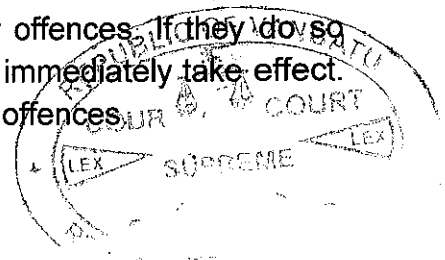
For each offence of arson 2 years and 6 months imprisonment to be served concurrently

For the offence of riot 1 year and 6 months imprisonment (concurrent)

For each offence of malicious damage 1 year and 6 months imprisonment to be served concurrently to each other and concurrently with the sentences for arson.

19. Given the nature of the offences and the circumstances of the offending I am prepared to keep all the defendants in the community. In doing so I hope they can work with each other to try and rebuild the relationship between themselves and the village of Nageha.

20. All four defendants will have their sentences suspended for a period of 2 years from today. This means they walk from the Court this morning and do not need to return to the Corrections Centre. However, as I explained to the defendants this morning, this means that they must not commit any further offences. If they do so within the two year period the sentences imposed today will immediately take effect. In addition they may have additional sentences for the "new" offences.

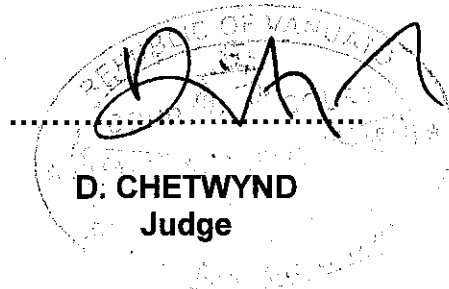


21. All the defendants will undertake rehabilitation programs as directed by a Probation Officer on Anger Management/Violence awareness. Each defendant will undertake the Niufala Rod programme as directed by a Probation officer.

22. Finally, I will remind the defendants of what I said in court, namely if they are unhappy with the sentences handed down then they have the right to appeal. Although I gave full oral reasons for the sentence in Court it is only fair that the time for appeal will only start to run when their counsel receives a copy of these written reasons.

Dated at Port Vila this 7th day of July 2017.

BY THE COURT



D. CHETWYND
Judge