

PUBLIC PROSECUTOR

V

JONATHON SESIL

ANSEN DAVID

ANTHONY LOUGHMAN

SAMUEL SULI

MATTIEN DAN

TARI WAKO

BEN ROY

REX TOM KIEL

SAM LOA

KENNY KARSAM

JOHN KASIS

Coram: *Justice Chetwynd*
Date of Hearing: *6th February 2018 at 9:00am*

SENTENCE

1. All the defendants have been convicted, following trial, of offences of arson or unlawful assembly or both. The trial took place over 5 days at Isangel on Tanna in early December last year. The evidence against these defendants was overwhelming. They were convicted of taking part in a near riot and burning a substantial portion of a tourist resort known as Tanna Lodge. I must note that the defendants were convicted of taking an active role in the burning down of Tanna Lodge and/or the unlawful assembly. They were not convicted, as some seem to think, of just being at Tanna Lodge and doing nothing. There was ample and compelling evidence that these men were part of a mob and that they acted in concert to burn down holiday villas, a workshop and garage and staff accommodation at the Tanna Lodge Resort.



2. What became clear from the evidence heard over the 5 days of trial was that there were undoubtedly others who were involved in the unlawful assembly and arson but they were not before the Court or convicted. 15 other men were charged but were not, for one reason or another, convicted. Whether they or others will face trial is not a matter for me. All I can say is no one seems to have any reservations that some very influential men in the community, including some who were not even on the island at the time but who communicated their "encouragement" by 'phone, were involved in encouraging others to act unlawfully.

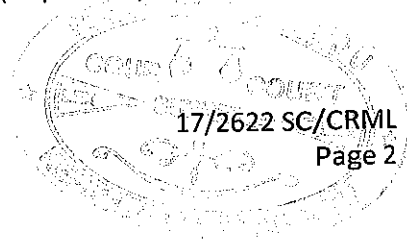
3. The evidence I heard showed the defendants acted as a mob. In my view they should be sentenced as a mob. Some have been convicted on several counts of arson, some on only one count. They should all share the same sentence, in other words they are all to be treated alike. Two defendants are said to have been under the age of 16 at the time of the offences. As such they fall to be dealt with under section 54 of the Penal Code and I must deal with them separately.

4. I also bear in mind that some of those before me were shown to be in the forefront of the unlawful behaviour. The evidence against Rex Tom Kiel for example was he "led" the group of men who burnt down the garage/workshop and staff accommodation. I believe he was doing what others had exhorted him to do and I will treat him no differently than the others convicted by me.

5. The offence of arson under section 134(1) of the Penal Code carries a maximum sentence of 10 years. Arson is undoubtedly considered to be a serious offence. The offences in this case involved property used as accommodation by tourists and staff at Tanna Resort. The possible consequences and the dangers inherent in such circumstances is self-evident. More by luck and good fortune that day no one was killed or seriously injured. There can be no question that a custodial sentence is required, see the case of *Worahese*¹. In the case of *Jackson*² the Court of Appeal indicated that in the case of multiple properties being burnt down a sentence of 4 years was at the very bottom of the available range.

¹ *Worahese v Public Prosecutor* [2010] VUCA 11; Criminal Appeal Case 01 of 2010 (30 April 2010)

² *Jackson v Public Prosecutor* [2011] VUCA 13; Criminal Appeal 07 of 2010 (8 April 2011)



6. In the present case there is clearly a substantial loss to the owners of the resort. Whilst custom compensation may have been proffered, financial compensation is likely never to be recovered. The losses were in the hundreds of millions of vatu. There is scant chance the owners will be able to recover what they have lost through the custom compensation process. The reputation of Tanna as a tourist destination was ruined and many in the local community who worked at the resort suffered also financial loss. Whilst the aggravation and damage should not simply be measured in monetary terms the financial repercussions of the arson attack on Tanna Lodge are an indication of how serious the offences were. In my view the convictions for arson should attract a starting point of 5 years imprisonment.

7. I have received pre-sentence reports for all of the defendants. There is nothing of any note to allow substantial mitigation in any of the reports. There is some remorse shown by some defendants but generally the convictions are not accepted. There is no evidence that any of the defendants have prior convictions and they all appear to have led blameless lives up until 18th July 2015. Most are in their early to mid twenties. I will give them all credit for their good character and reduce their sentences by 1 year.

8. I also take into account that all the defendants would have been under pressure from some of their leaders to retaliate in this unlawful way. I will reduce the sentences by a further 6 months. However, this is only in the particular circumstances of the offending in this case and generally speaking, acting unlawfully even though custom dictates such action, will not mitigate an offence.

9. All the defendants were remanded in custody when arrested. The information is a little sketchy but they seem to have been on remand for at least two weeks in August 2015. That would equate to one month time served.

10. Finally I take into account that these offences occurred over two years ago and the delay has not been the fault of the defendants. The sentences will be reduced by a further 2 months for the delay.

11. The sentence left is one of 39 months or 3 years and 3 months. The defendants all went to trial and there can be no reduction for a guilty plea.



12. For those defendants convicted solely of unlawful assembly, given the maximum sentence under section 69 of the Penal Code is 3 years, they will be sentenced to 2 ½ years imprisonment. They are entitled to the reductions set out above (totalling 21 months) leaving a sentence to serve of 10 months.

13. All sentences will be served concurrently and will be deemed to have started when the defendants were taken into custody after trial on 8th December 2017.

14. I have considered whether the sentences should be suspended but given the seriousness of the offending that is not an option the court can adopt. The defendants will serve their sentences immediately.

15. Turning now to the two young men Karsam and Kasis, they were convicted of unlawful assembly. Karsam was very lucky not to have been charged with arson as two witnesses gave evidence of his trying to set fire to villas. Be that as it may, both were only convicted of unlawful assembly and their co-defendants in that regards have been sentenced to terms of imprisonment. Only their young age prevents them from being sent to prison as well. They will both be sentenced to 200 hours community work and supervision for 12 months.

16. In summary the sentences are:-

Jonathon Sesil Count 6 - Arson 3 years and 3 months, Count 7 – Arson 3 years and 3 months concurrent, Count 8 – Arson 3 years and 3 months concurrent, Count 1 – Unlawful assembly 10 months concurrent (all deemed to have commenced on 8/12/17)

Ansen David Count 6 - Arson 3 years and 3 months, Count 7 – Arson 3 years and 3 months concurrent, Count 8 – Arson 3 years and 3 months concurrent, Count 1 – Unlawful assembly 10 months concurrent (all deemed to have commenced on 8/12/17)

Anthony Loughman Count 1- Unlawful assembly 10 months (deemed to have commenced on 8/12/17)

Samuel Suli Count 6 - Arson 3 years and 3 months, Count 7 – Arson 3 years and 3 months concurrent, Count 8 – Arson 3 years and 3 months concurrent, Count 1 – Unlawful assembly 10 months concurrent (all deemed to have commenced on 8/12/17)

Mattien Dan Count 4 – Arson 3 years and 3 months, Count 6 - Arson 3 years and 3 months concurrent, Count 7 – Arson 3 years and 3 months concurrent, Count 8 – Arson 3 years and 3 months concurrent, Count 1 – Unlawful assembly 10 months concurrent (all deemed to have commenced on 8/12/17)

Tari Wako Count 5 – Arson 3 years and 3 months, Count 6 - Arson 3 years and 3 months concurrent, Count 7 – Arson 3 years and 3 months concurrent, Count 8 – Arson 3 years and 3 months concurrent, Count 1 – Unlawful assembly 10 months concurrent (all deemed to have commenced on 8/12/17)

Ben Roy Count 4 – Arson 3 years and 3 months, Count 7 – Arson 3 years and 3 months concurrent, Count 8 – Arson 3 years and 3 months concurrent, Count 1 – Unlawful assembly 10 months concurrent (all deemed to have commenced on 8/12/17)

Rex Tom Kiel Count 3 – Arson 3 years and 3 months, Count 2 – Unlawful assembly 10 months concurrent (both deemed to have commenced on 8/12/17)

Sam Loa Count 3 – Arson 3 years and 3 months, Count 2 – Unlawful assembly 10 months concurrent (both deemed to have commenced on 8/12/17)

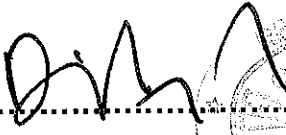
Kenny Karsam Count 1- Unlawful assembly 200 hours community service and supervision for 12 months

John Kasis

Count 2- Unlawful assembly 200 hours community service and supervision for 12 months

DATED at Port Vila, this 6th day of February, 2018.

BY THE COURT



D. CHETWYND
Judge

