

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU

Criminal  
Case No. 18/3369 SC/CRML

**BETWEEN:** Public Prosecutor

**AND:**

1. Kalpapaen Nawen
2. Johnson Natuman
3. Noah Philemon
4. Jack Nawen
5. Iou Kalpapaen
6. Frederick John
7. Jimmy Johnson
8. Kawi Kilima
9. Noki Kilima
10. Nisap Naume
11. Nekin Naume
12. Kuanuan Sam Kahu
13. Tarwei Obed
14. Kilima Maliwan

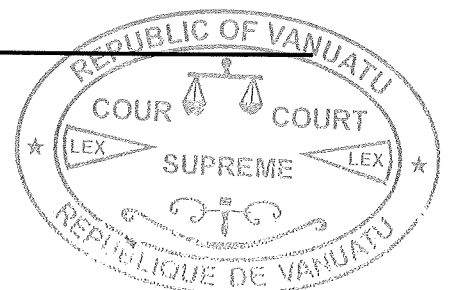
Defendants

*Date of Hearing:* 23 July 2019  
*By:* Justice G.A. Andrée Wiltens  
*Counsel:* Mr P. Toaliu for the Public Prosecutor  
Mr W. Kapalu for the Defendants

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**SENTENCE**

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A. Introduction

1. Defendants 1 to 13 inclusive were convicted of 9 charges of malicious damage to property. Mr Maliwan, the 14<sup>th</sup> defendant was convicted of soliciting the others to commit those offences. The maximum sentence for each of the offences is 12 months imprisonment.

A. Facts

2. At around daybreak on 8 March 2016, defendants 1 to 13 inclusive, together with other unidentified males, went to a neighbouring village at Mensori on Tanna Island armed with axes, knives, sticks and stones. They started to shout for everyone at Mensori village to leave as they were not legally entitled to be there. To re-inforce their demands, they commenced to damage homes and other property.
3. At all times the group was encouraged to act in this way by the 14<sup>th</sup> defendant, their Chief.

B. Aggravating Factors of the Offending

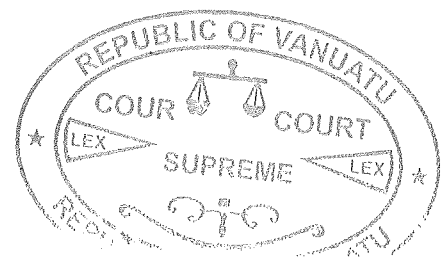
4. There was clearly a degree of planning involved in the offending – not only to get the group together and act in a unified fashion, but additionally to arm themselves. The group quite clearly took the law into their own hands, without considering the consequences of their actions on the victims. Considerable damage was occasioned, as evidenced by photographs, for which reparation is sought. By arming themselves with weapons to reinforce their threats, the group clearly aggravated the distress suffered by the victims.
5. The 14<sup>th</sup> defendant is the more culpable of these men, as he encouraged the others to behave in this criminal fashion. As a Chief, he should have known better.

C. Start Point

6. The start point for this offending, as required to be identified by *PP v Andy* [2011] 14, is set at 8 months imprisonment for defendants 1 to 13 inclusive, and at 11 months imprisonment for Chief Maliwan.

D. Personal Factors

7. There are mitigating factors to also take into account:
  - All the defendants are first offenders;
  - This matter came to a head during a long-standing land dispute between the parties;
  - Defendants 1 to 13 inclusive are farmers/gardeners of limited education; Chief Maliwan is also a gardener, and has told the PSR writer he too has had little education;
  - All the defendants are said to be good community members and regular attendees of Church; and



- All the defendants realise they erred and should not acted in this way. They apologise and have offered to take part in customary reconciliation.

E. End Sentence

8. For the mitigating factors, I reduce the starting points by 2 months for every defendant.
9. I further allow a reduction for the prompt pleas, which were entered at the first available opportunity. The discount amounts to a one-third deduction for each defendant.
10. Defendants 1 to 13 inclusive are accordingly each sentenced to an end sentence of 4 months imprisonment. Defendant 14 is sentenced to an end term of 6 months imprisonment.

F. Suspension

11. Given the seriousness of this offending each sentence should be suspended. There has been no repetition of this type of conduct for over 3 years, and it is undeniable that land disputes do cause tempers to flare – clearly matters have calmed down somewhat. The defendants have accepted their wrong-doing, apologised and are prepared to take part in a custom reconciliation ceremony. In these circumstances I am prepared to exercise my discretion and suspend each sentence for a period of 2 years.
12. As well, defendants 1 to 13 inclusive are to undertake 100 hours community work; and the 14th defendant is to undertake 150 hours of Community work.
13. In the circumstances I do not additionally order a period of supervision.
14. There are continuing issues regarding reparation, which I consider best dealt with by way of civil action unless there can be some agreement between counsel. I am happy to hear submissions on this and to provide a ruling if required.
15. Each defendant has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 23rd day of July 2019  
BY THE COURT

  
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Justice G.A. Andrée Wiltens

