

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

Criminal  
Case No. 15/62 SC/CRML

**BETWEEN:** Public Prosecutor

**AND:** Bongnaim Jehu  
James Dan  
Freddy Maxwell  
Reuben Willie  
Kintor Tangmae  
Roro George

*Date:* 17<sup>th</sup> September 2020  
*By:* Justice G.A. Andrée Wiltens  
*Counsel:* Ms B. Ngwele for the Public Prosecutor  
Ms L. Bakokoto for the Defendants

---

**SENTENCE**

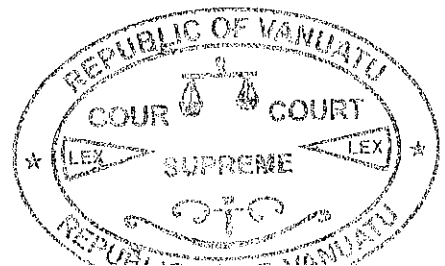
---

A. Introduction

1. Mr Bongnaim Jehu pleaded guilty to unlawful assembly and intentional assault. Mr James Dan pleaded guilty to unlawful assembly, malicious damage to property and intentional assault. Mr Freddy Maxwell pleaded guilty to unlawful assembly, malicious damage to property and intentional assault. Mr Kintor Tangmae pleaded guilty to unlawful assembly and malicious damage to property, and Mr Roro George pleaded guilty to unlawful assembly and malicious damage to property.

B. Facts

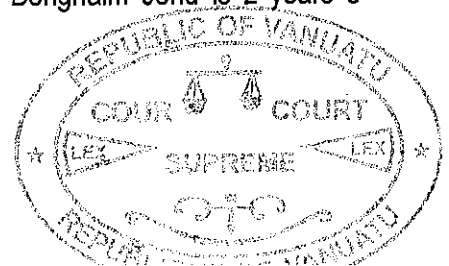
2. On 19 August 2010 a large group of individuals including the Defendants assembled in Vanjever village. As they were concerned the two complainants were using black magic, the Defendants agreed to attack the complainants.



3. Jeredly Tatao saw them coming, armed with a sling shot. So he went and hid in a nearby house. James Dan used the slingshot to project stones at Mr Tatao, hitting him several times. Bongnaim Jehu and Freddy Maxwell joined in the attack by throwing stones at Mr Tatao. Mr Tatao fled to escape the attack, bleeding profusely and was taken in by a neighbour Andrew Welwel.
4. When the assailants saw where Mr Tatao was taken, they advanced on Mr Welwel's house, throwing stones at Mr Tatao and Mr Welwel's house. The house was damaged as a result with 3 doors, window louvers, a chair and the iron roof being damaged. Those inside feared for their lives.
5. The chiefs were informed and attempted to restore calm. They led Andrew Welwel and his family to a nearby village for safety and escorted Mr Tatao to receive medical treatment. Mr Tatao had cuts to his body and his head (2) and stomach. His right eye was swollen as were his hands. He had pains in the chest making it difficult to breath, and his hands were also painful.
6. The Defendants were apprehended and interviewed by the police. They made various confessions.

C. Sentence Start Point

7. The sentence start point is to be arrived at by looking at the maximum sentences available for this offending and then also factoring in aggravating and mitigating aspects of the offending.
8. The maximum penalty for unlawful assembly is 3 years imprisonment.
9. The maximum penalty for malicious damage is 12 months imprisonment.
10. The maximum penalty for intentional assault is 12 months imprisonment.
11. There are no mitigating aspects to this offending. There are however several aggravating factors, as follows.
  - A degree of planning was involved;
  - A group attack on defenceless individuals
  - Taking the law into their own hands
  - The concerted and determined nature of the attack which involved following a complainant from one place to the next while continuing to attack him and cause extensive injuries and damage; and
  - The injuries occasioned, which indicate an indiscriminate attack to all parts of the body.
12. On a global basis, taking all the charges into account concurrently, the sentence start point is set at 3 years imprisonment for James Dan and Freddy Maxwell the two most prominent and culpable offenders. Next most culpable is Bongnaim Jehu – the attack on a person is more culpable than malicious damage. The sentence start point for Bongnaim Jehu is 2 years 8



months imprisonment. The least culpable of the group are Kintor Tangmae and Roro George. Their sentence start point is 2 years 4 months imprisonment.

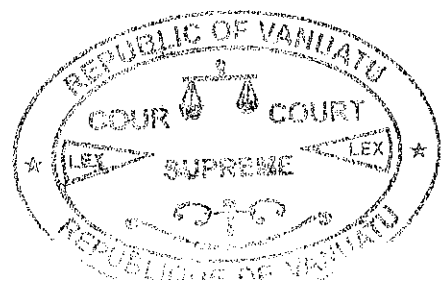
D. Mitigation

13. The defendants have all pleaded guilty to the charges they face. They have done so, despite the considerable age of the file, at the first opportunity each had to enter a plea.
14. Given the aspect of delay, plus the difficulty for the prosecution of witnessing recalling accurately events which occurred a decade ago, I consider the pleas merit a discount of 25%.
15. Delay. This offending occurred 10 years ago. A large part of the delay lies at the feet of the prosecution for not commencing the case for over 4 years. Thereafter the sheer numbers of individuals involved created logistical and geographical issues which precluded the matter being dealt with more expeditiously. The Defendants have all been on restrictive bail for several years. The delay has affected each of the defendants so that a further reduction of sentence is merited in the form of a 10 months reduction.
16. Bongnaim Jehu is 77 years old, married, with 7 grandchildren as well as 6 children of his own. He is supporting his aged and unwell wife. He was the village chief at the time of the offending.
17. James Dan is 33 years old married with 3 children. He is a gardener and also supports his mother. He is the current village chief.
18. Freddy Maxwell is 59 years old, married with 6 sons. He is a gardener and fisherman.
19. Kintor Tangmae is 70 years old, married with 3 children. He is a self-employed gardener and the sole bread- winner.
20. Roro George is 29 years old, married with a new born son. He is a gardener and the sole income-earner.
21. All the defendants have no previous convictions, have expressed remorse for their offending, and are willing to perform a second custom reconciliation ceremony with the complainants. One small ceremony has already taken place in July 2020 with Mr Tatao. All the defendants are reported as having a good community engagement and ties.
22. For their personal factors I further reduce each defendant's sentence by 6 months.

E. End Sentence

23. The end sentence appropriate for this offending are accordingly:

1. Bongnaim Jehu - 8 months imprisonment
2. James Dan - 11 months imprisonment
3. Freddy Maxwell - 11 months imprisonment
4. Kintor Tangmae - 5 months imprisonment



5. Roro George - 5 months imprisonment

F. Suspension

24. The end sentence to be imposed can be suspended in certain circumstances, wholly or in part.

25. These defendants have desisted from further similar offending for over 10 years. The sentencing principles of deterrence and rehabilitation, which would support suspension of sentence, accordingly no longer have application.

26. After the passage of time, there is no need for any of the defendants to serve periods of immediate imprisonment. I consider their offending best reflected in their now doing good in their community and compensating the complainants.

27. Accordingly, the end sentence imposed are;

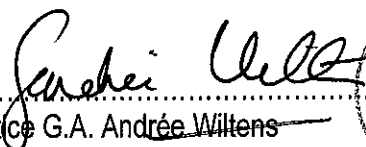
1. Bongnaim Jehu - 100 hours community work
2. James Dan - 120 hours community work
3. Freddy Maxwell - 120 hours community work
4. Kintor Tangmae - 80 hours community work
5. Roro George - 80 hours community work

28. Each defendant is additionally to pay, by way of compensation, the sums of VT 20,000 to Mr Tatao and to Mr Welwel for the hurt and damage occasioned. This compensation is to be paid within 28 days.

29. The Defendants have 14 days to appeal this sentence if they disagree with it.

**Dated at Lakatoro this 17<sup>th</sup> day of September 2020**

**BY THE COURT**

  
Justice G.A. Andrée Wiltens

