

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

Criminal  
Case No. 22/1939 SC/CRML

**BETWEEN:** Public Prosecutor

**AND:** Nelson Sale Garae  
Accused

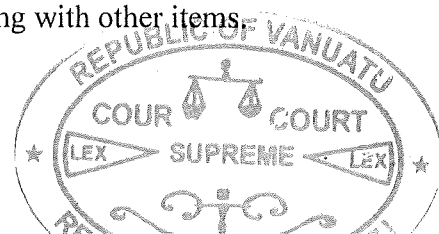
*Date of Sentence:* 19<sup>th</sup> September 2022  
*Before:* Justice EP Goldsbrough  
*Appearances:* Taiki, M for Public Prosecutor  
Vohor, J for the Accused

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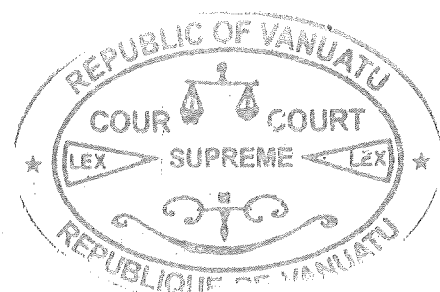
**SENTENCE**

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1. Nelson Sale Garae has pleaded guilty to premeditated murder, contrary to section 106 (1) (b) of the Penal Code, of Samuel Paia. In addition, he has pleaded guilty to three counts of unlawful entry into houses with the intention of stealing and three counts of theft. The victims of the housebreaking and theft are the deceased, Samuel Paia and his two brothers.
2. Nelson Sale Garae had been living with these brothers and from time to time moved from one to the other, often being chased out from one place after stealing and so moving in with another brother until this same pattern repeated itself. This took place around Vumpangmalnal Village South Santo.
3. After one incident of being chased by Samuel for stealing from him, Nelson decided that he would kill Samuel in retribution for what he felt was intolerable behaviour towards him. No more detail than that was presented to the Court about the reason why Nelson decided that he would kill Samuel.
4. But kill Samuel is what he did on 20<sup>th</sup> April 2022. He killed him by stabbing him several times in the stomach and chest. Death was caused by massive bleeding from the wounds. Prior to stabbing him, Nelson told an onlooker of his intentions. The following day he broke into Samuel's house and stole, then John Paia's house and finally Philip Paia's house. Items stolen included a rifle, mattress, solar regulator and battery along with other items.



5. When arrested, Nelson admitted killing Samuel and all the other offences. He did not explain why he had done this.
6. The offence of murder attracts a maximum sentence of life imprisonment. It is not a mandatory life sentence and so the court must determine where amongst the various categories of murder this particular offence should sit.
7. As for the offences of breaking into their homes and stealing various household items after killing Samuel Paia, whilst the stolen items were not many, they represented significant items in the lives of these victims who were also grieving the loss of their brother.
8. The court will begin to determine the appropriate sentence for these offences considering the maximum penalties available. For the murder, a sentence of life imprisonment is available and for the offences of housebreaking twenty years and theft twelve years. As all these offences were committed in a relatively short space of time and effectively as one incident, all sentences will run concurrently.
9. The court will also look at factors which aggravate this murder. It is said that the murder was carefully planned. Whilst there was an amount of planning, evidenced by the fact that the defendant told another person of his intention to kill Samuel, the offence did not require a great deal of planning. The murder was brutal, taking a deal of strength and the use of a weapon. The offence was unprovoked, although the defendant himself would say that he was driven to act in this way, but he has chosen not to explain his actions.
10. The murders that attract a very high penalty are those not usually seen in this jurisdiction connected with well organised and serious criminal activity or those for which a murderer has been hired. In this instance the offence falls at a lower place on the scale than that. In the United Kingdom prior to the introduction of a statutory scheme, a Practice Direction set out three categories of murder which were: -
  - a. The normal starting point
  - b. The higher starting point and
  - c. very serious cases.



11. I find it helpful in setting a starting point for this murder. It falls within the category of 'average' or 'normal'. There was a weapon used and there was a degree of planning which both go to aggravate the offence. For those reasons I would set a starting point of eighteen years.
12. The offender is relatively young and, at least to him, some of the actions, although unexplained, of the brothers have affected him to the extent that he has committed these offences against them. He has no previous convictions. He has also pleaded guilty to this murder at the first available opportunity and for those reason he is entitled to some credit. For his guilty plea a deduction of one third is applied and for the other reasons a further 7% making a total deduction of 40% That would indicate a sentence of fourteen years and six months.
13. The offence of burglary and of theft should also attract sentences but those sentences should be served concurrently, meaning that they will make no difference to the total period of imprisonment to be served. For each of the offences of burglary a sentence of four years imprisonment imposed and for each offence of theft a sentence of three years.
14. The sentence in a case a serious of this should not be suspended. It is also noted that no customary reconciliation ceremony has yet been arranged or taken place.
15. Nelson Sale Garae is sentenced to fourteen years and six months imprisonment for murder, four years imprisonment for each of the burglary offences and three years' imprisonment for each offence of theft, all sentences to be served concurrently and all deemed to have commenced on the day on which he was taken into custody for these offences, which was 22 April 2022.
16. There is a right to appeal this sentence, which right must be exercised within 14 days.

**Dated at Luganville this 19<sup>th</sup> September 2022**

**BY THE COURT**

*EP Goldsbrough*

Justice EP Goldsbrough

