

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

Criminal
Case No. 22/809 SC/CRML

BETWEEN: Public Prosecutor

AND: 1. Vira Mele
2. Terry Polipoli
3. Leo Polipoli
Defendants

Court: Justice G.A. Andrée Willens
Counsel: Mr D. Boe for the Public Prosecutor
Mr J. Garae for the Defendant
Date for Sentence: 18 May 2022

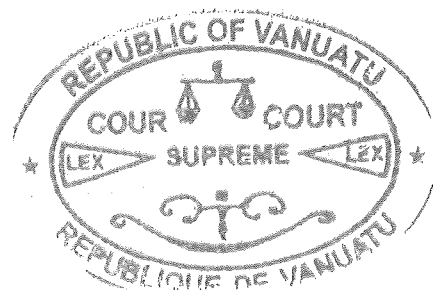
Sentence

A. Introduction

1. Vira Mele, Terry Polipoli and Leo Polipoli are for sentence having pleaded guilty to unlawful assembly. Vira Mele and Terry Polipoli have also pleaded guilty to a charge of arson.

B. Facts

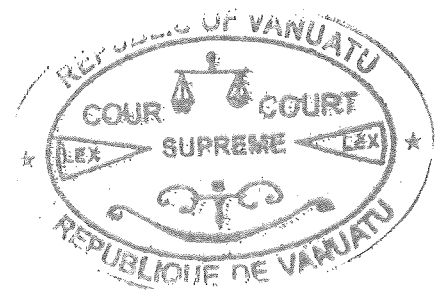
2. This incident took place on 25 February 2022 at Wailapa, South Santo. The defendants had a long-standing issue with where some relatives of theirs, Donald Aji Matan and Minie Alo, were residing. Their view was supported by an Island Court decision of 22 September 2021, directing the relatives to vacate where they were residing.



3. They took matters into their own hands between 8 and 9am that morning. They got together and decided to set fire to their relatives' property.
4. Vira Mele and Terry Polipoli burnt to the ground a thatched sleeping hut and a bush kitchen, both constructed out of local materials.
5. When questioned by the police, the defendants admitted their offending.

C. Sentence Start Point

6. The sentence start point is to be arrived at by having regard to the maximum sentences available and then factoring in the aggravating and mitigating aspects of the offending.
7. The maximum sentence for unlawful assembly is 3 years imprisonment. The maximum sentence for arson is 10 years imprisonment.
8. There are no mitigating aspects to the offending on the part of Vira Mele and Terry Polipoli. However, it is submitted by counsel for Leo Polipoli that he removed items of value from the sleeping house prior to their being burnt – something the PSR-writer also refers to. The prosecution does not challenge that, and it is mitigating of Leo Polipoli's criminal culpability.
9. There are the following aggravating aspects of the offending:
 - The breach of trust due to their being related;
 - The elements of premeditation and planning involved; and
 - In the case of Vira Mele and Terry Polipoli, the fact that there are two different offences involved.
10. The start point that I adopt for the unlawful assembly charge is 16 months imprisonment for Vira Mele and Terry Polipoli. For Leo Polipoli, I adopt a sentence start point of 12 months imprisonment.
11. The start point that I adopt for the arson charge is 3 years imprisonment for Vira Mele and 2 years 6 months imprisonment for Terry Polipoli. I distinguish between them, as Vira Mele has admitted it was his idea to set fire to the buildings, he is significantly older, and he has had the benefit of education and good employment not only to know better, but to gain respect and earn a following by those younger than him. He was the leader of the group.
12. The offences are such that the sentences should run concurrently.



D. Mitigation

13. The defendants entered guilty pleas to the charges at the first available opportunity. Each is entitled to 25% reduction for their prompt pleas, which has saved Court time and expense, and is an indication of their remorse and an acknowledgment of their offending.
14. Vira Mele is 57 years old, married with 8 children, 3 of whom are still at school. He is the family bread winner as a farmer, with a sideline as a surveyor. He had excellent education when young and has held significant employment positions, including as a teacher.
15. Terry Polipoli is 28 years old, residing with his de facto partner and a baby girl. He is a gardener. He had no schooling. He continues to support and care for his aged, asthmatic mother
16. Leo Polipoli is 36 years old, married with 2 children. His schooling came to an end at Year 4. He is the family bread winner, from farming and the sale of kava.
17. There has not been a custom reconciliation ceremony. However, all 3 defendants are willing to undertake such. I note also, that no offers of compensation or reparation have been forthcoming.
18. All 3 defendants have no previous convictions.
19. In the circumstances, there will be a reduction of 5 months from each of the defendant's sentence starting points for their personal factors.

E. End Sentence

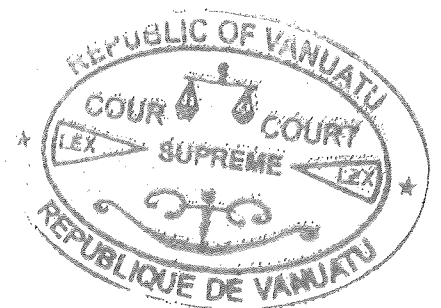
20. The end sentences following the above calculations are as follows:

Vira Mele: For unlawful assembly, 8 months imprisonment, and for the charge of arson, 21 months imprisonment. The sentences are to run concurrently. He has already spent time in custody. Accordingly, in order to preserve his parole rights, the sentence will commence to run from 2 March 2022.

Terry Polipoli: For unlawful assembly, 8 months imprisonment, and for the charge of arson, 17 months imprisonment. The sentences are to run concurrently.

Leo Polipoli: For unlawful assembly, 5 months imprisonment.

21. Vira Mele's offending is too serious to consider suspension of the sentence. His offending warrants a deterrent sentence so that all in the community realise they cannot take the law into their own hands and burn another's house to the ground. To suspend his sentence would be to send the wrong message to the community.



22. I have considered parity of sentence. Despite that, I am exercising my discretion to suspend the sentences of Terry and Leo Polipoli. Their roles are less significant than that of Vira Mele, they are younger, and have not had the advantages he has in terms of education. For them to take the law into their own hands is more understandable given that they were led and really did not comprehend the error of their ways until after the event. I also take into account that each has already served 78 days in custody,
23. Terry and Leo Polipoli's end sentences are suspended for 2 years. They must remain offence-free for 2 years to ensure they do not have to serve their sentences.
24. They must also perform Community Work – Terry Polipoli is to complete 150 hours, and Leo Polipoli is to complete 75 hours.
25. Each defendant has 14 days to appeal the sentence.

Dated at Luganville this 18th day of May 2022
BY THE COURT


Justice G.A. Andrée Wiltens

