

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

Criminal
Case No. 24/3382 SC/RML

BETWEEN: Public Prosecutor

AND: Victor Johnson
Defendant

Before: Justice Oliver A. Saksak

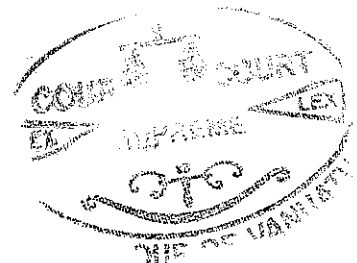
Counsel: Mr Christopher Shem for Public Prosecutor
Mr Harrison Rantes for the Defendant

Date of Plea: 29th November 2024

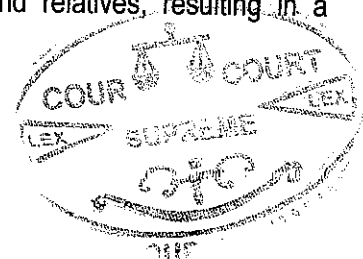
Date of Sentence: 6th December 2024

SENTENCE

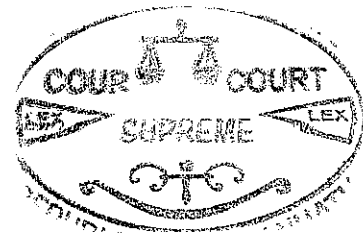
1. The defendant was charged with unlawful entry into a dwelling house (Count 1) domestic violence (Count 2) and arson (Count 3). He pleaded guilty to all 3 Counts and is here for sentence today.
2. Unlawful entry into a dwelling house is a very serious offence under section 143(1) of the Penal Code Act and carries the maximum penalty of 20 years imprisonment. Domestic violence against sections 4 and 10 of the Family Protection Act carries the maximum penalty of 5 years imprisonment or VT 100,000 fine. And arson under section 134(1) carries the penalty of 10 years imprisonment.
3. These offences were committed simultaneously on 1 and 2 September 2024 at Port Resolution, South East Tanna.



4. The complaint is Charley Joseph who is 60 years old. The defendant is his nephew of 25 years old. They are related and live in the same village. On the night of 1st September 2024 the grandsons of the complainant went over to spend the night with the complainant. He arranged to have them sleep in his normal sleeping house while he went to sleep in a separate house. In the night the defendant came around shouting at the top of his voice, swearing and demanding to see Charley Joseph. The defendant held a machete and a hammer at the time.
5. The defendant approached the house where the grandsons were sleeping and forced the door open with his knife. He then entered into the house and saw the grandsons, aged 11 and 12 years. He asked them where grandpa was. The children were scared at the sight of the defendant and the knife he held in his hand. They also feared for their grandpa and told the defendant they did not know where he was, so he left.
6. The defendant then proceeded to the other house and tried to open the door but it was also locked. He then set fire to the roof of the house. There were women and children sleeping in awoken that house. When they were awoken by the fire and the smell, they tried to run outside but the door was locked on the outside with nails holding the door firmly that it could not open. They shouted for help and other family members came to their rescue by removing the nails. The inhabitants of the house were removed and the fire was put out by family members.
7. The defendant's actions were reckless and deliberate. He showed no respect, compassion or mercy for his uncle's properties, including his family members and relatives. He did not care about human lives and properties. He demonstrated his clear intention to burn them to death by locking the door on the outside with nails.
8. There were no mitigating circumstances for his offendings. He put the lives of women and children, the vulnerable members of his community in danger of being burnt alive to death.
9. There were aggravating features of the offendings which are:-
 - a) The degree of planning and premeditation involved,
 - b) The separate nature of the offendings,
 - c) The offendings committed against close family members and relatives, resulting in a serious breach of trust,
 - d) The risk and danger to lives of women and children,

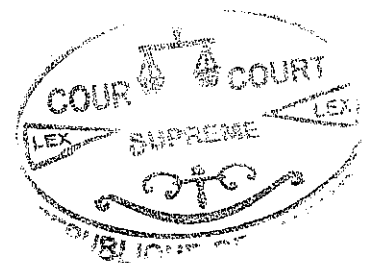


- e) The use of a machete and a hammer as weapons,
 - f) The offendings occurring in the night to ensure his intentions were achieved without hinderances or interference,
 - g) The loss and damage caused to the property of the complainant,
 - h) The fear and trauma caused to the victims among whom were very young children.
10. In assessing the appropriate sentences of the defendant I take into account the submissions by the Prosecution, the defendant's Counsel and the Same Day Pre-Sentence Report (PSR) prepared and filed by the Probation Officer.
11. I consider that the case of PP v Samuel Bule Molsir [2017] VUSC 74 has some similar facts as this case but differs in that the offences of unlawful entry, theft and arson were committed in broad day light, the dwelling house burnt was totally destroyed with cost totalling VT 3 million, and the offender being a young offender. In this case the third offence committed was domestic violence which carries a lesser penalty than theft in the Molsir Case.
12. However considering what the Court of Appeal said in the cases of Kalfau v PP [1990] VUCA 9 and in lakuma v PP [2023] VUCA 43 and the numerous aggravating features listed in paragraph 9 above, it is my view that the defendant's culpability falls on a much higher scale than the case of Molsir in terms of suspension of the sentence. I therefore adopt and apply those cases in sentencing the defendant.
13. It is my view the appropriate sentence for the defendant is to be a custodial sentence. I therefore convict and sentence the defendant as follows-
- a) For unlawful entry into a dwelling house with intent to commit offences- 6 years imprisonment.
 - b) For domestic violence- 2 years imprisonment, concurrent.
 - c) For arson- 3 years imprisonment, concurrent.
14. In mitigation first I consider his guilty plea. He initially pleaded not guilty to the charges and the matter was to have gone to trial, however he sought leave to be re-arraigned and thereafter pleaded guilty. It was a late guilty plea and therefore he is not entitled to the full 1/3 reduction. I



allow only 12 months to be deducted from his start sentence of 6 years. The balance is 5 years imprisonment.

15. I note he is 26 years old and single, coming from a family of 6 children, he being the first born. He had minimal education leaving only in Year 8. He lives in the village earning income from his fishing and subsistence farming. He has two important customary roles in his community being responsible for weather and banana crop seasons. I note also from his PSR that he has performed custom ceremony by presenting a pig, 2 kava stems, 5 mats, a blanket and a 40 yards of calico which the victim accepted.
16. I note the PSR makes no mention of any pre-custodial periods of the defendant. The Court file however shows a warrant of remand in custody was issued on 4th September 2024 and extended to 10 October 2024. On this date a variation order was issued removing the reporting condition in paragraph 8 of the Consent Bail Order dated 27 September 2024. From those records it appears to me the defendant may have been remanded in custody from 4th to 27th September 2024, a total of 23 days. These are included in the 12 months allowed to be deducted generally for all the other factors personal to the defendant.
17. For all those factors together, I reduce his balance of the sentence by a further 12 months, leaving his end sentence to be 4 years imprisonment.
18. Victor Johnson you are sentenced to an end sentence of 4 years imprisonment.
19. In light of what the Court of Appeal said in the cases of Jakuma and Kalfau, I consider that to suspend your sentence would be sending a wrong and negative message to the community. There is therefore no suspension of your sentence.
20. Your sentence of 4 years is to take immediate effect as from today, 6th December 2024.
21. You have a right of appeal against this sentence within 14 days, but you must begin to serve your sentence of imprisonment today.



22. You also have a right to apply for parole after serving 2 years of your 4 year sentence.

DATED at Isangel, Tanna, this 6th day of December 2024

BY THE COURT



Hon. OLIVER A SAKSAK

Judge

