

IN THE COURT OF APPEAL
OF THE REPUBLIC OF VANUATU
(Appellate Jurisdiction)

Criminal Appeal
Case No. 17/1482 CoA/CIVA

BETWEEN: Public Prosecutor
Appellant

AND: Samson Leo
Patrick Lenga
John Lukau
Bruno Leo
Respondents

Coram: *Hon. Vincent Lunabek, Chief Justice*
Hon. Justice John von Doussa
Hon. Justice Ronald Young
Hon. Justice Oliver Saksak
Hon. Justice Dudley Aru
Hon. Justice David Chetwynd
Hon. Justice Paul Geoghegan

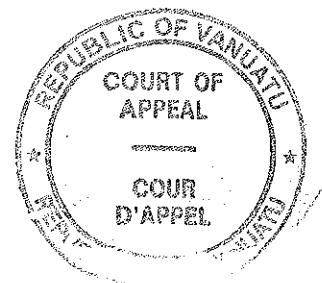
Counsel: *Damien Boe for the Public Prosecutor*
Mr Roger Tevi for the Defendants

Date of Hearing: 17th July 2017

Date of Judgment: 21st July 2017

JUDGMENT

1. During the 10th of June 2014 the four respondents armed with long bush knives and an axe entered Yvong Lingi's house and seriously damaged the

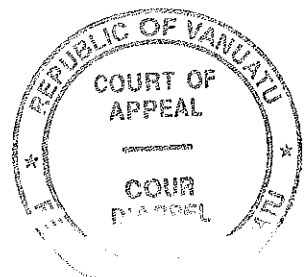


property. Yvong Lingi and his family fled. The next day, the 11th, the four respondents entered Yvong Lingi's house and removed the family's belongings.

2. After trial all four respondents were convicted of unlawful assembly, riot and malicious damage relating to the events of 10 June. All four were convicted of unlawful entry of Yvong Lingi's sleeping house on the 11th. In addition Samson Leo was convicted for threatening to kill Yvong Lingi on 10 June.
3. In the Supreme Court the Judge sentenced each respondent to 3 years imprisonment suspended for three years, compensation to Yvong Lingi and Ham Soso of VT10,000 and each were sentenced to 100 hours community work and 12 months supervision.

Factual Background

4. These events began when Yvong Lingi became upset that Samson Leo had failed to perform the proper kastom ceremony concerning a "tabu garden". Yvong Lingi responded by throwing dried coconuts at Samsen Leo and his family although none struck any of the family. They in turn responded on 10 June by arming themselves with large bush knives and an axe. They approached Yvong Lingi's house shouting and then entered the house. They used the weapons in the Lingi family's kitchen house destroying utensils and crockery. Samson Leo then threatened to kill Yvong Lingi. Yvong Lingi and his family fled in terror. The next day the four respondents entered the sleeping house of the family, gathered their belongings and took them to a

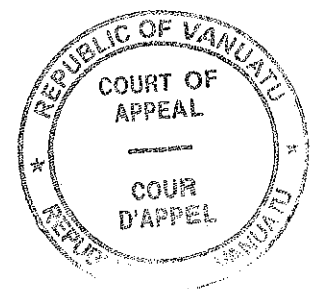


neighbouring village. The respondents told the Lingi family that they had been banished from their village for four months.

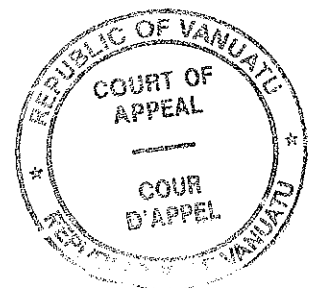
5. The Judge at sentencing treated all respondents equally. He considered the overall offending justified a start sentence of 4 years imprisonment. He deducted 12 months given each of the respondents were first offenders. He noted that although some respondents had changed their pleas to guilty on some of the charges these changes of plea occurred at the beginning of the trial and no deduction for guilty pleas would be given. The Judge then concluded that the prison sentences should be suspended. We will return to his reasoning when we consider the appeal grounds.

The Appeal and Discussion

6. There are three grounds of appeal.
 - (a) An error of law in suspending the prison sentences.
 - (b) The Judge placed too much weight on mitigation.
 - (c) Overall the sentence was manifestly lenient.
7. It is appropriate to first consider ground (b).
8. The Judge gave a 12 month discount for personal circumstances because the respondents were first-time offenders. The Public Prosecutor says this deduction is greater than should be given for personal circumstances.

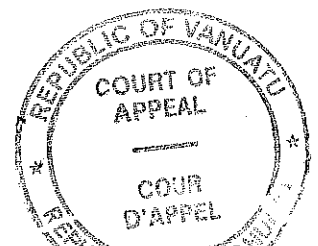


9. The ages of the respondents ranged from their twenties to their fifties. The deduction given for a lack of previous convictions at 25% of the start sentence was very large. Ordinarily discounts of no more than six months could be justified simply because a defendant has no previous convictions. Without finally deciding this point we turn to the other grounds of appeal based on the suspension of the prison sentences.
10. The Judge suspended the sentences of imprisonment because; three years had elapsed since the offending; the complainants had returned to the village and although there had been no reconciliation between the two groups peace had been maintained; the good character of the respondents; the respondents were “justifiably” angry at Yvong Lingi throwing coconuts at them.
11. The Public Prosecutor submits that neither delay in the prosecution nor the actions of the complainants could be a reason to suspend the prison sentence and that the good character of the respondents should not be a ground for suspension. The Prosecutor submits the facts of the case were simply too serious to suspend the prison sentences.
12. Section 57(1) of the Penal Code identifies those factors that are relevant in assessing whether a prison sentence should be suspended. If the Court considers that:
- “(i) in view of the circumstances; and
 - (ii) in particular the nature of the crime; and
 - (iii) the character of the offender.”



If an immediate sentence of imprisonment is not required the Court may suspend the sentence.

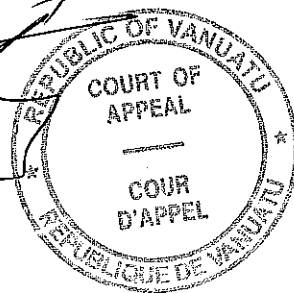
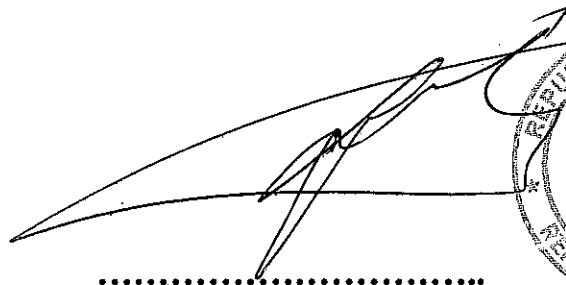
13. We are satisfied that the Judge was entitled to take into account the three factors he identified as relevant to suspension. The Judge correctly concluded that given there had been relative peace in the village for three years this was a relevant factor under s.57(1)(a)(i) given it was part of the circumstances of the offending.
14. The Judge's assessment of the provocation by Mr Lingi was also relevant as it related to the "nature of the crime" (s.57(1)(a)(ii)).
15. Finally the character of the offender is explicitly relevant in s.57(1)(iii). The Judge made no error of law in his approach to suspensions.
16. The final point is whether in suspending the prison sentence the Judge imposed a manifestly inadequate sentence. The Judge did not expressly consider the seriousness of the offending when he considered suspension. However the Judge made it clear in his sentencing remarks that he viewed the facts very seriously. We agree this was a violent episode, with knives and an axe used, threats to kill made, and destruction of property. The complainants were understandably terrified, their lives significantly affected for at least four months.
17. Ordinarily such a violent episode would be met with a term of imprisonment without suspension. However in the particular circumstances we have decided not to interfere with the sentence imposed. The respondents have paid the VT10,000 compensation ordered. A reconciliation ceremony of



sorts has been held. Although the appellant and respondents accepted the parties may not be reconciled Samson Leo and Yvong Lingi did shake hands after sentencing and we understand there has been no further conflict. Finally the respondents have begun serving their community service sentence. In the circumstances, we consider that it would be wrong given all of those factors to interfere with the sentence and impose imprisonment. For these reasons the appeal is dismissed.

DATED at Port Vila this 21st day of July, 2017.

BY THE COURT



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Vincent LUNABEK

Chief Justice