

PUBLIC PROSECUTOR

V

RHAU IALU  
TIMOTHY POITA  
AMOS CHARLIE  
AMOS WILLIE NAKOU  
NIKELSEN CHARLIE  
WILLIE SAUTE  
IAUKAS NAUAM  
IAMAK IAMIAM NASSE  
KENNETH BREDY  
WILLIE IAHAM  
JIMMY NAKOU  
TOM NAKLINPIN  
ISAAC TOM  
KEING TARIK  
JUDE IAWANTAK  
ORI JOE IALU  
REUBEN MUSA IAPAKEL  
MIKE NAKOU  
RADLEY TOM  
BRIAN JIMMY AND  
SAMUEL IAWANTAK

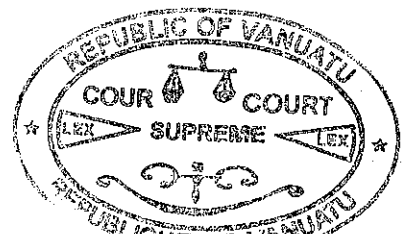
*Ruling: Monday October 31<sup>st</sup> 2016 at 9 am*  
*Before: Justice JP Geoghegan*  
*Appearances: Mr Tristan Karae for the Public Prosecutor*  
*Mr Willie Kapalu for the prisoners*

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SENTENCE

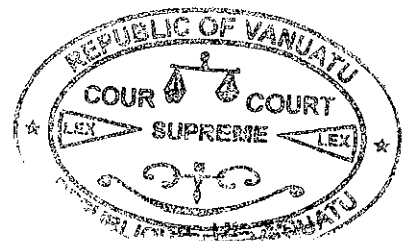
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1. Timothy Poita, Amos Willie Nakou, Samuel Iawantak and Jude Iawantak; you all appear for sentencing today in respect of a serious incident which occurred in Tanna on February 16<sup>th</sup> 2016. I have already sentenced some 14 offenders in Tanna recently in respect of this matter and you are being sentenced in Port Vila as you are currently being held in custody in respect of other matters. Timothy Poita you have been convicted of 14 counts of arson and 1 count of unlawful assembly. Amos Willie Nakou, you have been



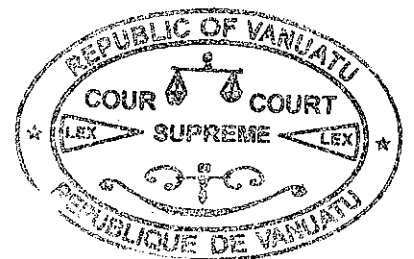
convicted of 11 counts of arson and 1 count of unlawful assembly. Samuel Iawantak; you have been convicted of 3 counts of arson and 1 count of unlawful assembly and Jude Iawantak you have been convicted of 1 charge of unlawful assembly. The charge of unlawful assembly is one contrary to section 69 of the Penal Code and carries a maximum term of imprisonment of 3 years. The charge of arson is one contrary to section 134 sub section 1 of the Penal Code and carries a maximum term of imprisonment of 10 years.

2. I shall refer to the facts of the matter briefly. The incident effectively has its roots in what seems to be something of a long standing dispute regarding the occupation of land by the victims of your offending. It appears that both parties have been claiming rights to that land which I understand to be located in the village of Lounakalangis.
3. On February 16<sup>th</sup> at approximately 7 pm a number of horns have sounded around the village and you and your other co-offenders have then entered the village shouting and cursing at the villagers. Some of the victims were still at the village nakamal when they saw you entering the nakamal throwing stones at them and chasing them. The group, of which you were part, were armed with knives, sharpened wood, axes and stones. The defendants Radley Tom, Jude Iawantak, Rueben Iapikel and Ori Ialu were seen entering a yard and stealing petrol in the drums in that yard. The village men then ran to get the chief.
4. The chief has been able to identify some of you and the summary of facts tells me that Timothy Poita and Issac Tom were heard calling out for the other members of the group to bring fuel and ordered them to burn the houses. Shortly after that the first sleeping house was set on fire. The summary tells me that a warning shot has been fired but you have continued to burn the complainant's homes. In addition you have destroyed sandalwood trees and you have slaughtered the victims' chickens and pigs. Some of the village men stayed behind in the village but were forced to hide in bushes as you set fire to their homes. In total 15 houses were burned that evening. The owners of the houses lost most of their belongings including

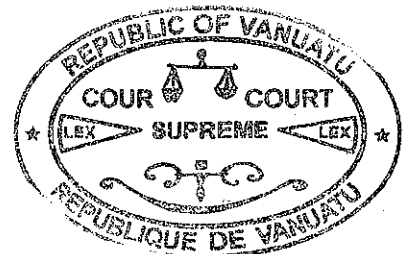


clothes, kitchen utensils, money and chattels. The loss to the victims here has been significant. You were subsequently interviewed and charged. As I said to your co-offenders in sentencing them, in short this appears to be vigilante offending of the most serious kind. It has been indiscriminate and highly dangerous, and it appears that some of the victim of your offending were not even involved in the dispute between the two groups. Some of your victims have been elderly including a 75 year old. Some of you have played a greater role than others and, as I have said, Radley Tom, Jude Iawantak, Reuben Iapakel and Ori Ialu were involved in stealing petrol from a fuel station in the village. That is clearly an aggravating feature of the offending. As I have also said Timothy Poita and Isaac Tom were heard to call out to the other members of the group to bring fuel and ordered them to burn the houses. In that context Mr Poita you may be seen along with Isaac Tom as being a ring leader of the group and although Isaac Tom is only 17 years old or was 17 years old at the time of the offending you are 24 so therefore considerably older.

5. I have read your pre-sentence reports. You have all expressed remorse which is relevant to today's sentencing although I note that you Mr Poita have shown no remorse for the offending and you still clearly place the blame for the incident on the victims. Your views and your lack of remorse will affect your sentencing but of course it cannot affect the sentencing of your co-offenders. As a group of offenders it appears that you may be divided into two broad groups. Firstly those who simply participated in an unlawful assembly and secondly those who were not only involved in such an assembly but who were actively involved to varying degrees in burning down the buildings belonging to the victims. While those participating in an unlawful assembly have accordingly had a lesser role, the role has still been significant as all it took was for one or more of you to implore the rest of the group to refrain from behaving in the way that they did. Those who engaged in the unlawful assembly undoubtedly had an influence on what happened that night.



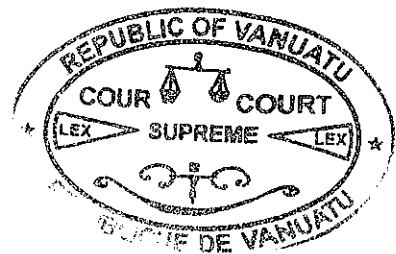
6. I have read your pre-sentence reports. As I have said, all of you appear to have very similar circumstances. You are all subsistence farmers with very limited means. You certainly do not have the means to pay any compensation to the victims and for that reason I do not intend to order it. As I have said, with the exception of Timothy Poita you have all expressed remorse for your actions and you have said that you are willing to undertake a reconciliation ceremony. Some of you have family to support. Of particular note, in terms of sentencing is also the age of the some of the offenders and in that regard I refer particularly to you Samuel Iawantak as you are aged only 16 and to you Amos Willie Nakou as you are aged 18 and that age and youth is a relevant factor in any sentencing exercise.
7. There are however many things that you all have in common. You are all first time offenders; you are all subsistence farmers with the exception of the youngest offenders. You have all expressed remorse save for Timothy Poita and while no custom ceremony has been held you are all willing to engage in one if that could be arranged again with the exception of Timothy Poita.
8. I have read the careful submission of Mr Karae for the prosecution and Mr Kapalu on your behalf. The Prosecution have referred to Livo Worohese v. PP where the Court of Appeal upheld the sentence of 2 years imprisonment, partially suspended, for the arson of 3 buildings which included a sleeping house. In Jackson v. PP the Court of Appeal dealt with the arson of 11 homes involving 8 defendants. In many respects it was a case with a very similar factual background to this one. In the case of one defendant charged with 5 counts of arson, the Court of Appeal observed that a starting point, taking into account aggravating features, of 4 years was at the very bottom of the available range and a starting point of 6 to 7 could have been justified. Mr Karae also refers to the cases of the PP v. Tabi, PP v. Natuman & Others and the PP v. Kalman all of which involve arsons arising from disputes over land. Mr Karae refers to the aggravating features of the offending as follows:-
- a) The destruction of 13 sleeping houses and 4 kitchens.
  - b) The fact that you were armed with weapons.



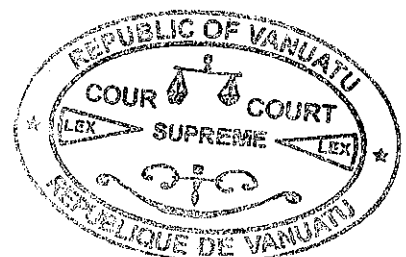
- c) The scale of the property loss which has been substantial; and
- d) The fact that the occupants were forced to flee for their own safety and were therefore prevented from taking steps to protect their property.

The only mitigating factors are your early guilty pleas, the fact that you are first time offenders and, in the case of two of you anyway, your youth.

9. Mr Karae submits that for those of you charged with arson there should be a starting point of 6 to 7 years imprisonment with an end sentence of 3 to 4 years. All those charged with less serious offences should receive an end sentence of 12 to 18 months imprisonment with the possibility of suspension.
10. Mr Kapalu relies on the case of PP v. Natuman which I have already mentioned. He relies on that as one which the Court should be guided by as in that decision the Court imposed a sentence of 15 months imprisonment suspended for 18 months together with 200 hours community work. He submits that the Court should be considering an end sentence of 12 months for those charged with unlawful assembly and 18 months to 2 years for those charged with arson. While Natuman is helpful in its review of the authorities I regard this as a much more serious case for a number of reasons:-
  - a) In Natuman the buildings set alight were unused and were of little value. That is not the case here. This offending involved the destruction of 15 buildings all of which were in use by the victims together with the almost total loss of their possessions.
  - b) You have entered the victim's properties with weapons, causing them to flee.
  - c) The potential for injury or loss of life was significantly greater in this case than in Natuman.
  - d) While the Judge in Natuman was able to deal with all of the offenders in the same way, I do not consider that to be possible here because of the number of charges faced by some of you as compared to other and the degree of involvement of some of you compared to others.

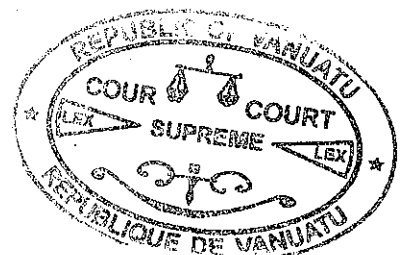


11. In sentencing I need to take into account the need to hold you responsible and accountable for your offending, to deter you and others from offending in this way; to provide for any rehabilitative needs, to take into account the interests of the victims and also the need to impose the least restrictive sentence possible taking into account the seriousness of the offending.
12. Looking at the most serious offence of arson and taking into account the aggravating features which I have already referred to I consider that the following starting points should be adopted.
13. For Timothy Poita, a starting point of 7 years imprisonment which reflect the fact that you have been convicted of 14 arson charges. For Amos Willie Nakou, a starting point of 6 ½ years' imprisonment which reflects the fact that you have been convicted of 11 charges of arson. For Samuel Iawantak, 5 years imprisonment reflective of being convicted of 3 charges of arson and for Jude Iawantak, a starting point of 2 years imprisonment on the charge of unlawful assembly.
14. Having arrived at those starting points I then need to take into account the appropriate mitigating factors which include remorse, reconciliation, youth or other personal matters which justify a reduction in the starting point. As far as remorse is concerned I accept that you all, with the exception of Timothy Poita, have shown genuine remorse. In respect of that and the fact that you are first time offenders I consider that that justifies a reduction of 6 months from the starting points that I have referred to. I refer to youth and I consider that those offenders under 20 should receive recognition from the Court for youth and the fact that as teenagers you are more likely to engage in risk taking behaviour without thought for the consequences and also that the inability to exercise the major judgment available to adults justifies an allowance which takes that into account.
15. As I have said regarding you co-offenders, it is, by necessity an arbitrary process and not particularly nuanced, but for the offenders under the age of



20 I propose to reduce their sentences by 25% to reflect that youth. You have all pleaded guilty at the earliest available opportunity and accordingly you are all entitled to a one third allowance for the entry of that plea. I do not consider that there are any other mitigating factors that should be taken into account.

16. Timothy Poita, I have allowed your co-offenders a discount of 6 months for their remorse and the fact that they were first time offenders. I consider that while an allowance of 2 months in your case is appropriate to reflect the fact that you are a first time offender, you can be entitled to no allowance for remorse as you have shown none. As I have said you are entitled to allowance of one third for you immediate guilty plea. Your end sentence taking those matters into account is a sentence of 4 years and 7 months imprisonment in respect of the charge of arson. An appropriate term of imprisonment on the charge of unlawful assembly is one of 1 year.
17. In respect of Jude Iawantak, I make allowance for remorse as I have said and the fact that you are a first time offender totalling 6 months with a further allowance of 6 months for your guilty plea. Your final sentence is one of 12 months imprisonment on the charge of unlawful assembly. Both Amos Willie Nakou and Sam Iawantak receive allowances for remorse of 6 months, an allowance for youth of 25% and allowance of one third for a guilty plea at the earliest available opportunity. That leaves an end sentence of 3 years imprisonment for Amos Willie Nakou on the count of arson and 8 months on the count of unlawful assembly and 2 years and 2 months imprisonment for you Samuel Iawantak on the charge of arson and 8 months in respect of the unlawful assembly.
18. The issue is then whether I suspend your sentences. In that regard a suspended sentence is one where you would not be required, if the suspension was in whole, to serve your jail sentences. Your imprisonment would be suspended for a specific period and if you committed no further offences during that time then you would not be required to serve any imprisonment. If you committed further offences during the time of your



suspended sentence, you would then be required to be re-sentenced by the Court in respect to these charges.

19. With reference to the issue of suspended sentences I refer to the following factors:-

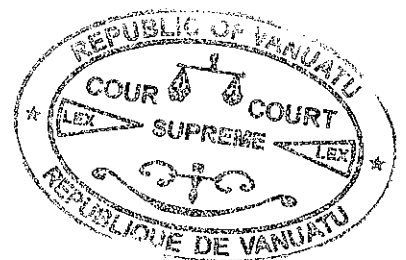
- a) I have already referred to the fact that Timothy Poita appears to have been a ring leader of the group.
- b) Two of you at least are very young under the age of 20 and in the case of Jude Iawantak you are 20 years old. These are relevant factors.
- c) The older offenders will have families who are dependent upon you.

As against that this is serious offending which requires the Court to deliver the clearest of messages that taking the law into your own hands, particularly in the way that you did, cannot be tolerated and that disputes must be settled in an appropriate way in accordance with the laws of the Republic of Vanuatu.

20. As a starting point I consider that youth must be a significant factor in whether a sentence should be suspended or not. I consider that there is little benefit to society in imprisoning teenagers for offending unless there is no other choice and there must be an emphasis on rehabilitation.

21. Taking all of those matters into account, Timothy Poita I can see no good reason to suspend your sentence given that scale and seriousness and the matters which I have already mentioned.

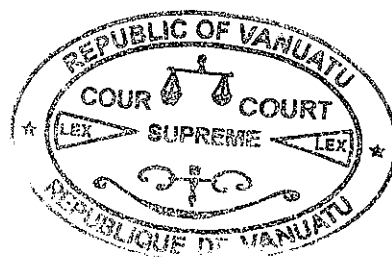
22. Amos Willie Nakou, the scale of your offending involving as it does a total of 12 charges including 11 of arson, raises some added difficulty in considering whether a suspended sentence is appropriate. In short, I consider that the scale and seriousness of your offending warrants a harsher sentence than those imposed on the other offenders under 20. I consider that in the circumstances, a period of imprisonment is required to denounce your





conduct and also as a deterrence to you and others but that due to your age the sentence should be suspended in part.

23. I propose to suspend the sentences of Samuel Iawantak due to his very young age and also Jude Iawantak, as Jude Iawantak has been convicted of one charge of unlawful assembly and this will achieve parity also between you and Nikelsen Charlie who is one of your co-offenders who I sentenced on October 20<sup>th</sup>.
24. Accordingly Timothy Poita, you are sentenced to 4 years and 7 months imprisonment in respect of the arson charges and 1 year imprisonment in respect of the charge of unlawful assembly.
25. Amos Willie Nakou, you are sentenced to 3 years imprisonment on the arson charges and 8 months imprisonment on the unlawful assembly charge. You are to serve 18 months imprisonment and the 18 months balance of sentence is suspended for a period of 18 months from your release from prison. In addition you are sentenced to 12 months supervision to take effect from the date of your release with a condition that you are to undertake and complete such courses, training or education directed by your probation officer to address the causes of your offending. In respect of the sentence of supervision, having looked at the Penal Code I can see no bar to the imposition of a sentence of supervision on a suspended sentence and note that I raised that issue with counsel at the sentencing of your co-offenders.
26. Samuel Iawantak, you are sentenced to 2 years and 2 months imprisonment of the arson charges and 8 months on the unlawful assembly charge. The sentence is suspended for 2 years. You are sentenced to 150 hours community work and supervision for 12 months on the same conditions as I have just referred to in Amos Willie Nakou's sentencing.
27. Jude Iawantak, you are sentenced to 1 years imprisonment on the unlawful assembly charge suspended for 2 years. You are sentenced in addition to 150

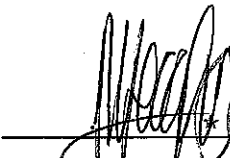


hours community work and 12 months supervision with the same condition of supervision as applying to Samuel Iawantak and Amos Willie Nakou.

28. Your sentences are to run concurrently and you have 14 days to appeal.

**Dated at Port Vila this 31<sup>st</sup> day of October, 2016**

**BY THE COURT**

  
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JP GEOGHEGAN  
JUDGE

