

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

**Criminal
Case No. 20/1889 SC/CRML**

BETWEEN: Public Prosecutor

AND:

- 1. Manipen Yauko**
- 2. Dick Narau**
- 3 Tom Johnson**
- 4. Lency Johnson**
- 5. Jeby Tupas**
- 6. Enauta Manipen**
- 8. Koman Taiking Mael**
- 10. Manipen Afamah**

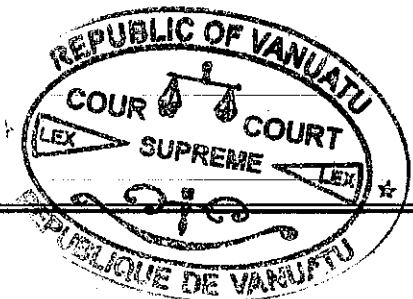
Date: 14th April 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr. P. Toaliu for the Public Prosecutor
Mr. H. Rantes for the Defendants

SENTENCE

A. Introduction

1. The 8 defendants named all pleaded guilty to the following:

- Criminal trespass;
- Malicious damage to property; and
- Arson.



2. In addition D3 Tom Johnson pleaded guilty to intentional assault.

B. Facts

3. The summary of facts which was accepted by all the defendants as true and correct is brief. It sets out that on 1st June 2020 Mr. Manipen Pikasitonga was in his bush kitchen when there was a commotion outside. He looked and saw the group of defendants approaching. They had no permission to be there.
4. At that time D3 Tom Johnson was carrying a bow and arrow. He used the bow and arrow to shoot Mr. Pikasitonga's son Bobby Manipen, then aged 25 years.
5. Mr. Pikasitonga went outside to try and stop what was happening, but he was outnumbered. The group then picked up rocks which they threw at Mr. Pikasitonga's house, causing damage to the house and some banana trees.
6. The group then set fire to Mr. Pikasitonga's bush kitchen, burning it to the ground.
7. When interviewed all the defendants made admissions.
8. Bobby Manipen was injured to his left upper arm and left chest region, the arrow having gone through the arm and into the body. Surgery was required to remove some 120mls of pooled blood in his pleura cavity at Central Vila Hospital. This was a serious injury

C. Sentence Start Point

9. The sentence start point is to be arrived at taking into account the maximum sentence for each offence and factoring in the aggravating and mitigating aspects of the offending.
10. The maximum sentences available are as follows:
 - for criminal trespass, and malicious damage to property, imprisonment for 12 months;
 - for arson, 10 years imprisonment; and
 - for intentional assault, 5 years imprisonment.
11. The aggravating features of the offending include the fact that this was an unprovoked group attack on unsuspecting victims; plus the fact that weapons was used to administer violence.
12. There are no mitigating features to the offending.
13. I adopt a sentence start point, on a global concurrent basis, for all defendants as 2 years imprisonment.

14. In the case of Tom Johnson there has to be a significant uplift given the additional serious charge he has admitted. For him the sentence start point is 3 years imprisonment, taking all his offending into account.

D. Mitigation

15. All these defendants have pleaded guilty at the first opportunity. In my view the evidence against them was strong, and accordingly the mitigation available for a prompt plea is a 25% reduction from the sentence start point.
16. D3 Tom Johnson is aged 48 and was the leader of the group. He is married with 7 children to support. He is a farmer who has never gone to school. He explained that he acted as he did due to Bobby Manipen assaulting his son, and he accepts he over-reacted. The remaining defendants can be seen to be less criminal capable.
17. The defendants limited education and are largely manual workers on the land.
18. None of the defendants has any previous convictions. However, they have also not attended a custom reconciliation ceremony, although they profess to be willing to do so.
19. I allow further discounts of 4 months to reflect each Defendant's additional personal circumstances.

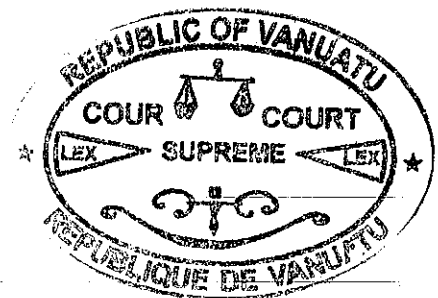
E. End Sentence

20. I consider the following end sentences are appropriate, taking all those matters into account:

D3 Tom Johnson – 24 months imprisonment in respect of the intentional assault charge, 14 months imprisonment on the arson charge, and 3 months imprisonment on the criminal trespass and malicious damage to property charges. All the sentences are to run concurrently.

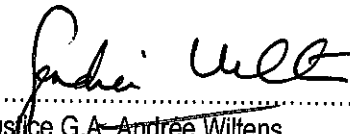
The remaining defendants could each be sentenced to 9 months imprisonment. However, I see no need for them to be incarcerated. Instead I sentence each to 14 months supervision coupled with 150 hours community work. That sentence is imposed in respect of all their charges concurrently.

Reparation: Each pay 5,000vt by way of reparation



21. D3 Tom Johnson's sentence will not be suspended. The important sentencing principles that apply to his case are deterrence and holding him to account for his misconduct. Suspending the sentence would send the wrong message. Not only was he the leader of the group, he was the eldest and should have been an example to the others. Instead he armed himself and actually used his weapon to cause serious injuries to Bobby Manipen.
22. The defendants have 14 days to appeal their sentences if they disagree with them.

Dated at Isangel this 14th day of April 2021
BY THE COURT


Justice G.A. Andree Wiltens

