

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**

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**(Criminal Jurisdiction)**

**Criminal Cases Nos  
185, 186, 187, 189, 190,  
191, 192, 193 & 194 of  
2003**

**PUBLIC PROSECUTOR – VS -**

**DIDIER BULEURU  
MISAEEL TABIMAL  
ALFREDO TABIUSU  
ALLAIN BULEURU  
GABRIEL TABIAKA  
HOPKIN TABISAL  
LOUIS BULE**

**Corum:** Mr Justice Oliver A. Saksak  
Mrs Cynthia Csiba – Clerk

**Counsel:** Mrs Kayleen Tavoia for the Public Prosecutor  
Mr Jacob Kausiama for the Defendants

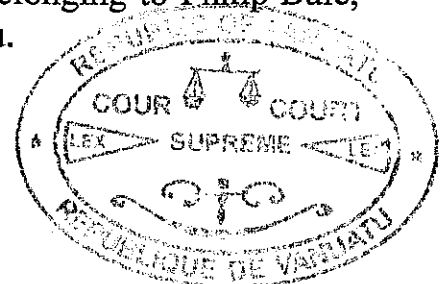
**Date:** 20<sup>th</sup> July 2004 at Bwatnapni, Central Pentecost.

**SENTENCE**

The seven defendants are charged jointly and severally with Arson contrary to section 134(1) of the Penal Code Act [CAP 135]. The defendants wilfully and unlawfully set fires to houses belonging to other people on 31<sup>st</sup> December 2002.

All the seven defendants plead guilty as follows:-

1. Louis Bule admits setting fires to sleeping houses belonging to JeanJacques Talibang and Marie Kalista.
2. Gabriel Tabiaka admits setting fires to houses belonging to Philip Bule, Hedley Bule, Francois Bule and Anna Matanvanu.

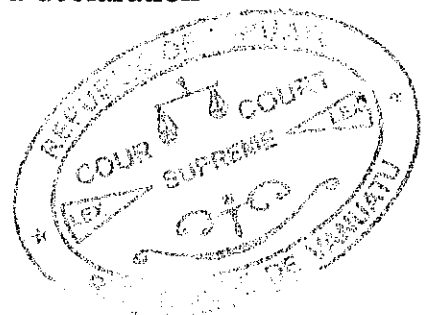


3. Misael Tabimal admits setting fires to houses belonging to Raymond Tabi, Tom Bulewak, Willie Buleuru, and Dunstan Tabi.
4. Alfredo Tabiusu admits settings fires to houses belonging to Philip Bule and Gabriel Tabi.
5. Allain Buleuru admits setting fires to houses belonging to Willie Buleuru, Philip Bule and Tom Bulewak.
6. Didier Buleuru admits setting fires to houses belonging to Danstan Tabi, Tom Bulewak and Willie Buleuru.
7. Hopkin Tabisal admits setting fires to houses belonging to Hedly Bule, Anna Matanvanu and Raymond Tabi.

The only reason they have given to the Court for committing these acts of arson was that they have 18 years of land dispute with those whose houses were burnt. That could not be a good enough reason for the defendants taking the law into their own hands. They each have committed very serious offences which carry a maximum of 10 years imprisonment. Misael Tabimal and Hopkin Tabisal could face up to 40 years in jail. Didier Buleuru, Allain Buleuru and Gabriel Tabiaka could face up to 30 years each in jail. The Court is urged by the Prosecutor to impose prison terms. Didier Buleuru has previous criminal record. The 6 other defendants are first time offenders.

In sentencing the defendants the Court takes into account that the defendants pleaded guilty today. They have expressed regrets and apologies to the Court and to the victims of the-arson activities. They have realised that they have done wrong. They have performed a "TAMAT", an old customary ceremony to restore peace and respect for each other by offering 12 pigs with fully rounded tusks to the victims. I am told by Mr Kausiama that the "Tamat" has a discriminatory effect in that it has restrained the displaced victims from returning to their village to rebuild their houses. Mr Kausiama urges the Court to be lenient and to impose suspended sentences.

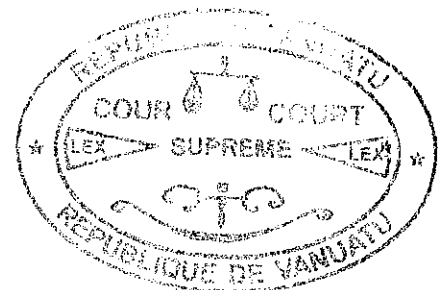
Ms Tavoia urges the Court to consider the constitutionality of the discriminatory part or effect of the "Tamat" and to make a declaration accordingly.



I have considered these submissions and I am of the view that the Court should impose custodial sentences to act as a deterrence to these defendants and others not to commit these offences. However in view of the mitigating factors raised by Mr Kausiama I will suspend the defendants' prison terms. During the period of suspension of sentences the defendants are to sort out their disputes with the victims of their actions and return to their normal lives.

I therefore impose the following prison terms:-

1. Louis Bule - In respect of Criminal Case No1 186 of 2003 – 2 years imprisonment suspended for 3 years from the date of sentence.
2. Gabriel Tabiaka - In respect of Criminal Cases -
  - (a) No. 185 – 2 years imprisonment
  - (b) No. 190 – 2 years imprisonment
  - (c) No. 191 – 2 years imprisonment
  - (d) No. 192 – 2 years imprisonmentThese terms will be served consecutively making a total of 8 years. However these are suspended for a period of 3 years from the date of sentence.
3. Misael Tabimal - In respect of Criminal Cases -
  - (a) No. 188 – 2 years imprisonment
  - (b) No. 193 – 2 years imprisonment
  - (c) No. 194 – 2 years imprisonmentThese terms will be served consecutively making a total of 6 years. However these are suspended for a period of 3 years from the date of sentence.
4. Alfredo Tabiuso - In respect of Criminal Cases –
  - (a) No. 192 – 2 years imprisonment
  - (b) No. 193 – 2 years imprisonment
  - (c) No. 194 – 2 years imprisonmentThese terms will be served consecutively making a total of 6 years. However these are suspended for a period of 3 years from the date of sentence.
5. Allain Buleuru - In respect of Criminal Cases –
  - (a) No. 188 – 2 years imprisonment



(b) No. 192 – 2 years imprisonment

(c) No. 193 - 2 years imprisonment

These terms will be served consecutively making a total of 6 years. However these are suspended for a period of 3 years from the date of sentence.

6. Hopkin Tabisal – In respect of Criminal Cases –

(a) No. 189 – 2 years imprisonment

(b) No. 190 – 2 years imprisonment

(c) No. 191 – 2 years imprisonment

These terms will be served consecutively making a total of 6 years. However these are suspended for a period of 3 years from the date of sentence.

7. Didier Buleuru - In respect of Criminal Cases –

(a) No. 188 – 2 years imprisonment

(b) No. 193 – 2 years imprisonment

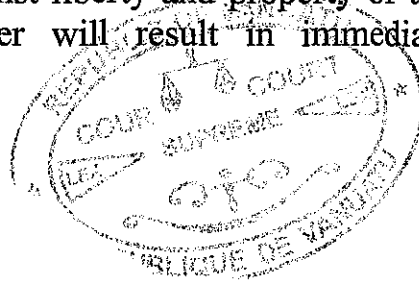
(c) No. 194 – 2 years imprisonment

These terms will be served consecutively making a total of 6 years. However these are suspended for a period of 3 years from the date of sentence.

## **CONDITIONS**

These are the conditions attached to these suspended terms of imprisonment -

1. Within the 3 years of suspension of sentences these Parties (both the defendants and the victims) are encouraged to reconcile and solve their long standing dispute in an orderly and lawful way.
2. All Parties must respect each other and allow each other freedom of movement within their respective areas or villages.
3. All defendants must keep and maintain peace and good order in the community at all times. Any breaches of these conditions by the defendants or any further commission of any Criminal Offences of a nature that is against liberty and property of the person, or against public order will result in immediate



imprisonment for the defendants) of his or their respective prison-terms.

**DECLARATION**

This Court being the guardian or upholder of the Constitution has the inherent jurisdiction to declare as follows –

The discriminatory part of the “Tamat” performed by the chiefs and the defendants which restrains the victims of the defendants’ actions is unconstitutional. It is therefore null and void, and of no legal effect.

**DATED at Bwatnapni, Central Pentecost this 20<sup>th</sup> day of July, 2004.**

**BY THE COURT**



**OLIVER A. SAKSAK**  
Judge.

