

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

Criminal Case No.129 of 2011

PUBLIC PROSECUTOR
-V-
MARK HERBLAND HUGO

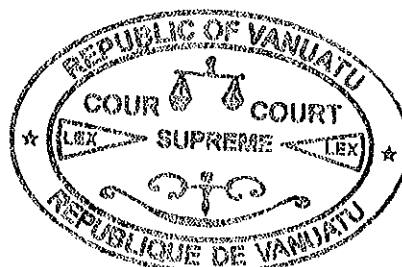
Coram: Justice D. V. Fatiaki

Counsel: Ms. T. Harrison for the State
Mr. T. J. Botleng for the Defendant

Date of Sentence: 9 December 2011

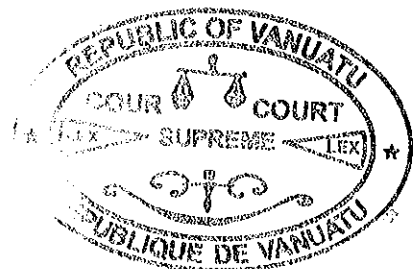
SENTENCE

1. On **4 October 2011** the defendant **Mark Herbland Hugo** and **Cindy Ben** were arraigned on an information which charged them jointly with **Arson** (in Count 1) and the defendant alone, on a second count of **Threats to Kill**.
2. The defendant pleaded guilty to **Arson** and not guilty to **Threats to Kill**. Cindy Ben pleaded not guilty to **Arson** and prosecuting counsel entered an oral nolle prosequi in respect of her and she was discharged pursuant to **Section 29** of the **Criminal Procedure Code**.
3. The brief facts of the case which is admitted by the defendant is that on **8 August 2011** he set fire to his parents' house at **Mangaliliu village** causing extensive damage to the building and its contents to the total value of **VT4,595,000**. The reason why he did that was because he was apparently upset with his parents' attitude towards his then girlfriend and co-accused Cindy Ben. Fortunately, the house was unoccupied at the time.
4. Arson is the offence committed where a person willfully and unlawfully sets fire to a building or property which the person knows belongs to another. In this latter regard defence counsel for the very first time in his sentencing submissions advances the claim that the house that was burnt belonged to the defendant. This is inconsistent with the defendant's plea

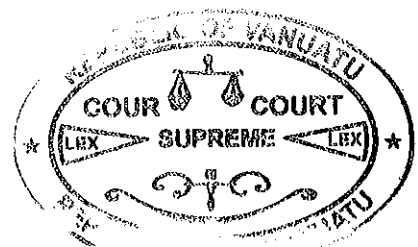


of guilty and his acceptance in Court, that the house he burnt was "*my parents' house and I lived in it too*". I reject this belated claim as a desperate attempt to minimize the seriousness of the defendant's actions and which does not address the ownership of the contents of the house which comprised the majority of property damaged by the fire.

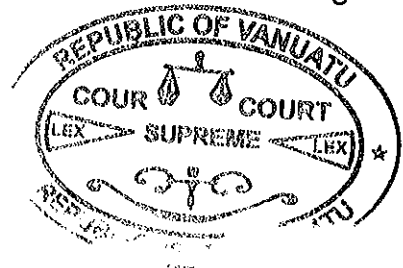
5. In this case **Mark Herbland Hugo** in a fit of anger, you set fire to your parents' home completely destroying its contents. You knew it was your parents' home and you knew what you were doing when you set it on fire. I accept that you are an immature young man and that this offence was, to an extent, committed as an over-reaction to your perception of your parents' attitude towards your girlfriend.
6. **Mark Herbland Hugo** let me tell you this. Whatever your feelings might have been for your girlfriend and however deeply they may be held, that cannot excuse or justify the wanton destruction you inflicted on your parents home and its contents which on your own admission included items belonging to your siblings.
7. I am grateful for the assistance provided in the defendant's pre-sentence report prepared by the Probation Services and for the written sentencing submissions presented by prosecuting and defence counsels.
8. From the pre-sentence report I extract the following relevant personal details of the defendant:
 - He was born on **24 February 1989** and would have been 21 years of age at the time of the commission of the offence;
 - Not unexpectedly he has been ostracized by his family since the incident and he currently resides with his legal counsel as a condition of his bail;
 - He completed primary school years 1 to 6 at **Freshwota Bilingual School** and years 7 to 10 at **Vila Central Secondary School**;
 - He attended the **Institute of National Technology Vanuatu (VIT)** and graduated with a Certificate in Information Technology (IT).
 - He undertook pilot training for a year with the **Vanuatu Air Club** until the club ceased operations;
 - He enrolled as a foundation student at USP, Emalus Campus in 2010 and has a personal ambition of becoming a qualified pilot in future;



- The defendant attributed his offending to two main contributing factors:
 - unfair treatment from his parents; and
 - his inability to deal with his anger and frustrations in an appropriate manner;
 - The defendant says that he realizes that he has done something wrong and is sorry for what he did and he promises not to offend again in future;
 - The defendant was remanded for 1 months and 6 days before he was released on bail.
9. Prosecuting counsel identifies the aggravating features in this case as follows:
- The value of the damage caused which was substantial; and
 - The consequences of the crime;
10. As already noted, the house was unoccupied when it was set on fire, but there can be no denying that this was an extremely serious fire. It completely destroyed a substantial multi-roomed structure and all its contents and left the defendant's parents and siblings homeless and without basic household goods and even clothes with which to rebuild or restart their lives.
11. Prosecuting counsel also referred to the Court of Appeal decisions in **Jackson v. PP** [2011] VUCA 13 and **PP v. Livo Worahese** [2010] VUCA 11 (both arson cases) and counsel urges the adoption of the sentencing approach in the case of **PP v. Kal Andy** [2011] VUCA 14. In the **Worahese** case the trial judge adopted a starting point of 4 years imprisonment and in the **Jackson** case the trial judge adopted an identical starting point.
12. Defence counsel for his part urges the following mitigating factors on behalf of the defendant:
- His guilty plea at the first available opportunity;
 - His previous unblemished record;
 - His sincere remorse and regret for his actions;
 - His relative youth;
 - His unsuccessful offers to perform a custom reconciliation ceremony to his parents and siblings; and



- The fact that the house was unoccupied and there was no threat to human life.
13. **Mark Herbland Hugo** in sentencing you I need to impress upon you the seriousness of your actions for which you are solely responsible. The sentence I impose should also serve as a deterrent to you and others who might resort to such extreme measures to resolve family disagreements and personal frustrations.
 14. Consistent with the sentencing precedents referred to the Court and mindful of the maximum penalty of 10 years imprisonment provided for an offence of Arson, I impose a starting sentence of 3 years imprisonment which is raised to 4 years imprisonment for aggravating features. From that high point I deduct a total of 2 years imprisonment for the mitigating factors including your early plea of guilty leaving a final sentence of 2 years imprisonment.
 15. I turn next to consider whether or not this is an appropriate case for the application of **Section 57** of the **Penal Code**.
 16. In doing so I bear in mind the defendant's offer (through his counsel) "*... to work and pay for all the expenses that his parents incurred in building the house should he receive a suspended sentence*" and, the recommendation of the probation officer, that the defendant "*... deserves a second chance of a community based sentence*". I am also required by the provisions of **Section 37** of the **Penal Code** "*... to have regard to the possibility of keeping offenders in the community so far as that is practicable and consistent with the safety of the community*".
 17. I have carefully considered the particular nature of the crime committed by the defendant which might be considered an extremely foolish action of an immature young man blinded by his feelings for his estranged girlfriend and angered by the unsupportive attitude of his parents, venting his frustrations in the only way he saw to gain his parents' attention for his plight and the intensity of his frustrations. The fact that his actions had such dire and counter-productive consequences is the sad reality that now confronts the defendant and this Court in this sentencing exercise
 18. Having said that I do **not** consider the defendant to be a danger to the community at large nor do I consider his actions render him beyond rehabilitation.
 19. I am confident that this unfortunate experience has been a salutary and a sobering lesson for the defendant and I am able to extend leniency to him in the hope that he will turn a new leaf in his life and become a law-abiding



and useful member of society. Accordingly I order that the sentence of 2 years imprisonment be wholly suspended for a period of 3 years. **Mark Herbland Hugo** you are warned that if you should re-offend in the next 3 years you will be required to serve this sentence of 2 years imprisonment in addition to any other punishment you may receive for your offending.

20. In addition I impose a sentence of compensation in the sum of **VT2,5 million** in favour of the defendant's parents **Mr. Ebland Hugo** and **Mrs. Lina Toukoa Brown** to be paid in equal monthly installments of **VT50,000** and commencing once the defendant has obtained regular paid employment and to be continued until it is fully paid up.
21. Finally, Mark Herbland Hugo you are also sentenced to supervision for a period of 12 months with the following special conditions:
 - (a) That you perform a custom reconciliation ceremony to your parents and siblings before the expiry of this supervision order if they agree to it; and
 - (b) That you undertake anger management counseling and complete the Niufala Rod Program when directed by a probation officer.
22. You have 14 days to appeal against this sentence if you do not agree with it.

DATED at Port Vila, this 9th day of December, 2011.

BY THE COURT



D. V. FATIAKI
Judge.

