

PUBLIC PROSECUTOR

V

**HUBERT KAMOYE
YIANO TELBUR
WATSON VANUALAI
KAL MORRIE**

Sentence: Thursday 20 November 2014 at 9 am, Lakatoro, Malekula
Before: Justice SM Harrop
Appearances: Tristan Garae for the Public Prosecutor
Andrew Bal and Stephen Carlo (PSO) for the Defendant

SENTENCE

1. You have all pleaded guilty at the first opportunity, which was yesterday, to a jointly-laid count of arson. I convicted you after your guilty pleas and the sentencing was deferred until today to allow Mr Garae and Mr Bal to file written submissions. I repeat what I said earlier that I am grateful to them for their efforts in doing so at very short notice.
2. This case involves a serious charge of arson; its seriousness is indicated by the fact that Parliament has set a maximum penalty of 10 years imprisonment for that offence. As suggested by counsel I will treat all of you in the same way. I understand from the prosecution submissions that you each had different roles but the reality is that you all got together and deliberately set fire to this timber which had been milled.
3. The facts as set out in the prosecution submissions are that on the 4th of September this year, you burnt a substantial pile of timber which had been milled by Mr Wapen Richard Kaitip from Litzlitz. He has a valid mobile saw mill timber licence and was given the exclusive right by the land owners of

Dickson Reef in South West Malekula to undertake the project of cutting timber in that area.

4. I understand from Mr Bal today that you were angry on behalf of the community in which you live that some of the timber cut had been close to a river which is important to your community and that there was pollution of the river as a result which meant the water was not able to be used for drinking and other purposes as you have normally used it.
5. So you made a plan to burn down the timber that had been milled. It was at a beach waiting to be shipped out in accordance with the contract that Mr Kaitip had with a purchaser of the timber. Each of you played a role in setting the fire and as I say, you were all in it together and I do not propose to distinguish between you.
6. The value of the timber which was lost I am told was a very precise figure of Vt 471,430. Obviously that is a substantial sum the victim has lost as a result of your actions. That may well have also caused him difficulties in whatever contract he had to supply that milled timber to a purchaser.
7. Whenever people involved in a dispute take the law into their own hands the Court needs to send a clear message that this is unacceptable behaviour. That is why arson is a crime. It is not acceptable under the law to deliberately set fire to any property belonging to somebody else. If you have a dispute with the person whose timber it is, destroying the timber is not the way to sort that out.
8. I proceed on the basis that you were genuinely upset by what the victim had done and Mr Bal says that he knew he was not allowed to cut the timber near the river but did so and that annoyed you. The proper way to deal with that is by talking and explaining that it is unacceptable and if necessary seeking compensation from him for what he has done. The Courts are here to help victims of all kinds and you must, rather than taking the law into your own hands, look to the Court for remedies or alternatively use custom processes to ensure that matters are put right as best they can be.

9. In terms of the attitude you now have to the offence you are all said to be remorseful and apologising to the victim and willing to make such compensation payments as you can afford, Vt 10,000 each to be paid by the end of January. You are willing with the assistance of the relevant chiefs to undertake a custom reconciliation ceremony which I understand the victim is prepared to accept.
10. You have also of course pleaded guilty at the first opportunity. The public acknowledgment of responsibility and the avoidance of a trial has real value. You are each entitled to a one-third discount from the sentence you would otherwise have got if you had pleaded not guilty and been found guilty after a trial.
11. Having considered relevant recent authorities including a case with some similarities that I dealt with on Tanna in August, *PP v Natuman* [2014] VUSC 114, I am satisfied that Mr Garae's submission of a three-year prison sentence as a starting point is appropriate in this case. As I have said there needs to be a deterrent sentence and a holding you to account so that people who may be annoyed in future at what somebody does do not behave in this way.
12. From that starting point I accept as I have said a one-third discount for your early guilty pleas must be applied and that brings it down to a sentence of two years, or 24 months. I also accept that a further reduction of around 8 months is required and appropriate because you have no previous convictions you were all prior to this incident of good character and you are willing to be involved in custom reconciliation and pay compensation. I see that as very important in a situation of an ongoing relationship between you and other members of your community and the victim in this case.
13. I would therefore come to an end sentence of 16 months imprisonment so there is a further reduction of eight months from that two years that I mention. Both Mr Garae and Mr Bal accept that this is one of the cases

where a suspension of that term of imprisonment in whole is appropriate. That is because you are first offenders and because although this is a serious case it is not one involving loss of life or even loss of sleeping houses and other valuable village property so I see it as slightly less serious than those kinds of cases.

14. I am satisfied the prison sentence of 16 months should be suspended for two years. You must understand this means that if you commit any offence during the next two years then you will be called on to serve the 16 month prison sentence together with the additional sentence imposed for the other offending but if you keep out of trouble then you will not serve any prison time.
15. Because that is a potential rather than an actual penalty, I am also going to impose community work on each of you and you will each serve 175 hours community work.
16. You should understand that if you do not comply with your community work sentence, if you breach it, that would be committing an offence and so that would trigger the suspended prison sentence. So there is a considerable incentive for you to ensure that you do everything the probation officer tells you in relation to your community work sentence.
17. \Finally I order that you pay Vt 10,000 each to the victim by 31 January 2015 and I also direct that a probation officer report to me with copies to counsel as to the outcome of the custom reconciliation ceremony which is expected to take place in the near future. I direct that that report be provided to me by 10 February 2015 because by then my expectation is that there will have been both the ceremony and in accordance with my earlier order the payment of compensation will also have been made.
18. Each of you has 14 days to appeal against this sentence if you are dissatisfied with it.

BY THE COURT