

PUBLIC PROSECUTOR VS. SAM PHILIMON

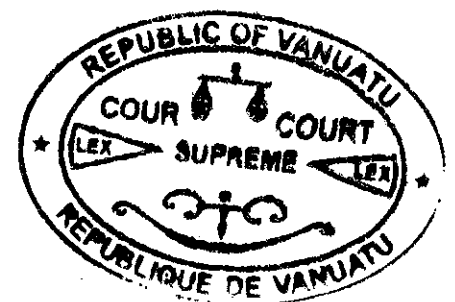
Sentence: *Tuesday 10 March 2015 at 10.00 am*

Before: *Justice S M Harrop*

Present: *Mr. Ken Massing for the Public Prosecutor
Ms Jane Tari for the Defendant*

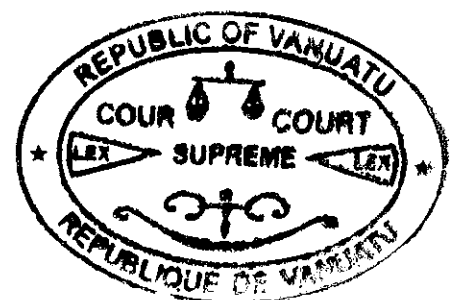
SENTENCE

1. Mr Philimon you appear for sentence today, at the age of approximately 45 years, on one count of arson committed on 7 June 2013 in the Betani area on the West Coast of Santo. This case has been delayed because you absconded on bail after the case was adjourned on the 23 of June 2014; you were recently arrested on the warrant to arrest and entered a guilty plea on 2 March. I want to emphasise that your non-compliance with bail obligations will not affect the sentence today. You have in effect been punished for that by the time you have spent in custody since you were arrested.
2. The maximum penalty for arson is 10 years imprisonment. It is an offence which is committed far too often in Vanuatu. The Court therefore needs to send a message on every occasion when sentencing for arson that it is unacceptable in a civilised society, that it is dangerous and that the usual response, particularly where lives are at risk, will be a significant unsuspended prison sentence.
3. The victim is your younger brother Aldi. There had obviously been issues between the two of you for at least a year before this incident. First, you believed that he had removed the plug from a generator although the prosecution says that is not correct. That issue was



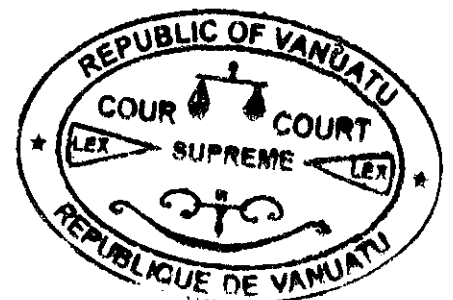
resolved by the chiefs but you and your late son Moli apparently did not pay the compensation order or fine that was imposed by the chiefs.

4. The differences between you and your brother remained. Tragically your son Moli committed suicide I think at the age of 18 and at the funeral you say that some hurtful and unpleasant words were said by your brother. This made you very angry and you wanted to take revenge against your brother. Again the prosecution says that is not correct and I am conscious that your brother is not here to comment. But I have to proceed I think on the basis that you were annoyed by something your brother said; after all you have, even after all this time, been able to quote the words he used.
5. I understand you then found out about there having been a relationship between your wife and your brother, which further incensed you. You therefore decided to take revenge on your brother and you did that by burning down a sleeping house belonging to him. You took half a litre of benzine and poured this around the house and set fire to it.
6. You were seen and others gathered but you were walking around the house with a knife in your hand, so they were not able to do anything to stop the fire because they were frightened of you. The house was completely destroyed as was all the property inside. There is no indication of the value of those items nor any request for compensation by the prosecution but obviously a sleeping house has value and no doubt there were some items inside which would have at some value, whether monetary or sentimental.
7. It is important to note that there was nobody inside the house when it was burnt so no lives were at risk; that is always an important factor in sentencing for arson cases. The fire was lit at around 6.00 am when it would have been getting light and so it is not as bad as if somebody had been sleeping in the house and the fire had been lit in the middle of the night.
8. Mr. Massing and Ms Tari have filed helpful submissions and I have also read the pre-sentence report. The latter indicates that you have had some difficulties in your

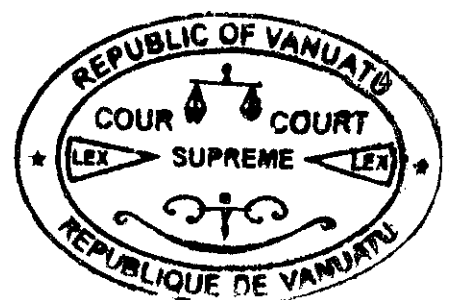


community generally. There is reference to your suffering from mental health issues though there is no medical information to support this.

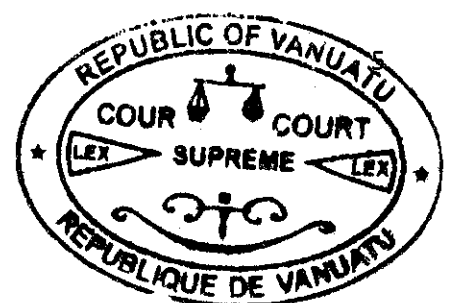
9. You have taken responsibility for the offending, you realise you should not have done this and you are a first offender. You were genuinely hurt by what your brother said at the funeral and if that is true then it was, to put it mildly, very insensitive, indeed cruel, of him to say those things. You were also in a state of mourning for your son when you decided to commit this offence. You have tried to perform a custom ceremony but your brother has refused to participate and of course that is his right. You say you are willing to rebuild your brother's house but that has not yet been done.
10. The probation officer says that there is no community work option or supervision available in the area where you live and recommends a short term of imprisonment given the seriousness of the offending.
11. Mr. Massing helpfully refers me to a number of other cases and as I say there are plenty of arson sentencing decisions on the books. He says that the starting point should be a sentence of imprisonment of 3 to 4 years and the end sentence should be a prison term which you have to serve rather than a suspended sentence. I am grateful for him to setting out the range of authorities that he has. He readily acknowledges that except for one case that are all more serious than this case.
12. I accept generally that there are the following aggravating features of the offending. First, it was done with some planning and premeditation because you had to go and get the benzine and you took a knife with you. Secondly, it was clearly done for revenge. Committing a criminal offence is not the right way to deal with words that are cruelly spoken to you. There is no doubt that arson does not just involve property damage but it causes emotional harm to the victim and family. I am satisfied that was both caused and intended by you here. The property was totally lost but I accept that there is no clear indication of value nor there is indication of the value of the contents. And finally, as I have already mentioned, you took a knife with you, wielded it and behaved in a manner which prevented the villagers from putting the fire out and reducing the damage.



13. Ms Tari in her helpful submissions says that because of the limited information about the nature and value of the building and the contents, a starting point for around 3 years imprisonment would be appropriate. She particularly relies on a judgment of Justice Fatiaki in *Public Prosecutor v Sitangtang* [2014] VUSC 184 because the facts are quite similar to this case.
14. There the end sentence was 12 months imprisonment suspended for 2 years plus VT60,000 compensation and custom reconciliation to occur within 30 days. The starting point adopted by Justice Fatiaki, after referring to the leading Court of Appeal judgment in *Worahese v Public Prosecutor* [2010] VUCA 11, was 3 years' imprisonment, not the 2 years which Ms Tari suggests.
15. I agree there are considerable similarities with the *Sitangtang* case and that adopting a 3-year starting point in this case is consistent with this and other authorities.
16. Then there is the question of reduction from that starting point for mitigating factors. I accept that you are entitled to a one-third discount for your guilty plea so that brings the sentence down to 2 years.
17. I then come to what may be seen as provocation; the words spoken at the funeral and the affair between your brother and your wife. I do not accept that either of those things is a mitigating factor. If they are true, they do provide an explanation and a basis for some sympathy, but those kinds of matters cannot be an excuse for criminal offending of this – or any - kind.
18. I do acknowledge that you have spent some 9 weeks in custody in October, November and December 2013. That is the equivalent of about a 4 and ½ month prison sentence. I think the fact that occurred is a key determinant of the appropriate outcome here. I am satisfied that any deterrent effect that a prison sentences would have will have been achieved by that time in custody; you will have got the message that what you did was clearly wrong and a serious offence.



19. I also take into account that you have acknowledged your responsibility and that you have been willing to undertake a customary reconciliation ceremony, even though your brother, as is his right, does not wish to be involved. Those factors in my view reduce the sentence down from 2 years, or 24 months, to around 15 months imprisonment.
20. The question that I then need to consider is whether or not you should serve that sentence or whether it should be suspended. Mr. Massing submits that this is too serious for suspension. Ms Tari submits that in all the circumstances suspension is appropriate.
21. In the *Sitangtang* Justice Fatiaki imposed 12 months imprisonment suspended for 2 years and ordered compensation to be paid and that a customary reconciliation ceremony occur. Here no compensation is sought and your brother does not wish to be involved in the customary reconciliation ceremony or at least he has not until this point. But I do not think those matters should change the Court's view on whether or not the sentence is to be suspended. I think the fact that you spent that time in custody means that it is appropriate wholly to suspend that sentence for 2 years.
22. What that means is that you will not go to prison today but if you should reoffend within the next two years then you will be sent to prison to serve that 15 months' sentence and whatever other sentence you receive for that offending.
23. I have already commented on the outside of this hearing that because you are the brother of the victim and because you live in the same community, customary reconciliation is highly desirable. It is not something that can be forced or which I can or would order to occur over the objection of either party. But what I am going to do is direct that a customary reconciliation ceremony take place within 30 days **if your brother wishes to have one.**
24. There is no obligation whatever on him but you are brothers and always will be. You have to live together and somehow, at some time, these various issues between you including this arson need to be addressed. The appropriate way in the Vanuatu culture is a



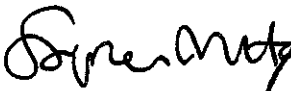
custom reconciliation ceremony. Until that happens, the issues will continue to simmer and there is a risk that there will be further problems between you.

25. If a customary reconciliation ceremony does occur, then I will expect the report from the probation officer within 28 days after that ceremony.

26. I have considered making an order for compensation in a global way even though it is not sought by the prosecutor because you do have employment and would be in a position to make some payment. But I have decided not to do that and to leave the offering of any monetary or other compensation to any customary reconciliation ceremony that may occur.

27. You have 14 days to appeal against this sentence if you disagree with it.

BY THE COURT


STEPHEN HARRO
Judge

