

PUBLIC PROSECUTOR VS- MALIU RARA

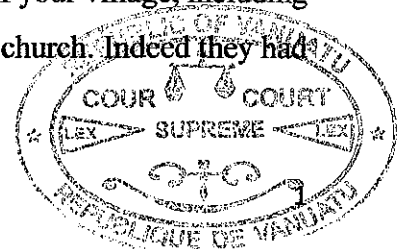
Coram: *Justice Stephen Harrop*

Date: *Wednesday 11 March 2015 at 4.00 pm*

Counsel: *Ken Massing for Public Prosecutor*
Jane Tari for the Defendants

SENTENCE

1. Mr Rara you turned 20 yesterday and are for sentence today on two serious charges, unlawful assembly and arson. Unlawful assembly carries a 3-years' prison term as a maximum sentence and arson carries 10 years' imprisonment. There were 7 other defendants involved in the unlawful assembly, although one those Harry Esea has yet to plead that charge and to the arson charge he also faces. The other six were sentenced yesterday; you were present because you had just pleaded guilty to your charges. Because of a medical issue you were not able to be here on 2 March when those other six had pleaded guilty.
2. Yesterday I delivered quite a length of sentencing decision in respect of the six defendants involved in the unlawful assembly and I do not intend to repeat the facts here or my comments on the facts; that judgment should be read alongside this one. But as well as being part of the unlawful assembly you were one of the two people who actually did some burning. You were one of the two who carried out the purpose for which everyone had gathered, that was to burn some houses at Kameto village in retaliation for the time that a number of the female members of your village, including your own partner, had been spending at the new Sacred Heart church. Indeed they had

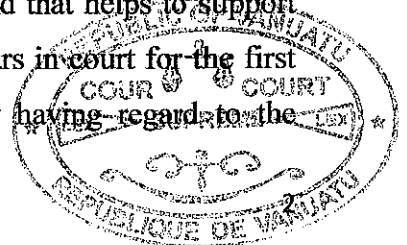


been spending not only time but money, rather than spending time with their families in their home village.

3. Your particular role in the arson was to burn down two houses, a church house and a clothes changing house. You used dry coconut leaves to facilitate the fire and these buildings were totally destroyed. There is no suggestion that lives were at risk and this certainly makes it serious than the burning of sleeping houses during the night time hours; this occurred during the afternoon. But they were buildings that were in use and as you would expect there were items of value inside which were destroyed. It is not clear whether what value these items had and there is no particular claim for compensation. The other houses that were burnt, though not by you, were a dining hall and a kitchen house.

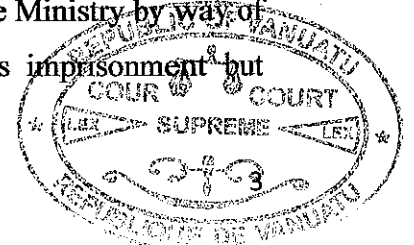
4. I have been greatly assisted by the prosecution and defence submissions prepared at short notice and also by the pre-sentence report. You live in the Volojijia village in South Santo; as I say you turned 20 yesterday so you were only 19 at the time of the offending on New Year's Day. You are in a de facto relationship and you have two young sons aged 2 years and 8 months. Significantly, you had a reason to be involved in this incident because of your partner's involvement in the church at Kameto. So it is not a case of your just tagging along with others who were aggrieved by the church but you yourself wanted to get back at them. You are the son of a Lestui Rara whom I sentenced yesterday, he is a chief and he unsurprisingly he said nice things about you to the probation officer. But I have no reason to doubt what he says and in particular I accept that you are somebody who has contributed well to the community and to church work, that you are not the sort of person to be involved in criminal activity and that you have to learned from this. It is also recorded later in the report that you did not realise that this would be a criminal act. That is certainly surprising because arson is a very serious criminal offence and one that occurs far too often in Vanuatu. Perhaps that is why you thought it was something that was culturally acceptable on some level rather than a criminal offence.

5. You earn some income through copra and kava production and that helps to support your family. You are the first offender. Everybody who appears in court for the first time is of course entitled to be treated reasonably leniently ~~having regard to the~~



circumstances. You have voluntarily suggested on your own initiative the payment of a fine of vt20,000 to compensate the people in the Kameto village whose properties you damaged. I take that as a genuine acknowledgment of your regret for what happened and of your responsibility for it. And I think vt20,000 for a young person such as yourself with family to support is a significant offer and I treat it accordingly.

6. The submission from Mr Massing is that there should be a suspended prison sentence with of course credit being given for your guilty plea and other mitigating factors. Ms Tari says that if there is to be a prison sentence it should be suspended but she suggests a fine should be imposed.
7. My view is that, having been convicted of arson as well as unlawful assembly, in principle you must be sentenced to a greater sentence than any of the people yesterday received. I repeat that you were one of the two who actually carried out the purpose of the group and unless somebody had done that there would have been no burning. You may have been directed by your father or perhaps by Malcolm Wats to do what you did, but you have to take responsibility for your own actions. In any event it seems to me you were not reluctant to do what you did because you (subjectively, if not objectively) had a personal reason for being annoyed with the people in Kameto village and in particular those associated in with the Sacred Heart church.
8. The most serious sentence I imposed yesterday was on Mr Malcolm Wats who are regarded as the ringleader of the group; he received 15 months prison but suspended for 2 years, 125 hours community work and he was directed to undertake customary reconciliation. Even though he was not involved in any arson and you were, I am inclined to regard him as being at least this culpable as you given your age and given his age and his position of responsibility.
9. I take particular account of your age and your previous good character and of the fact that there was a group egging you on. In the circumstances I am going to impose a similar but slightly less serious sentence on you than I did on Mr Wats. I am also taking into account the offer you have made of vt20,000 but I think that should be directed to the victims of the arsons rather than to the Court or the Ministry by way of a fine. The sentence I impose therefore is one of 12 months imprisonment but

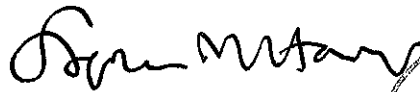


suspended for 2 years; that means that if you keep out of trouble for the next 2 years then you will not go to prison but if you commit an offence during that 2-year period you will be required to serve the 15 months prison sentence as well as the sentence for the further offending. In addition to that I impose 75 hours community work on you as this is an offence against the community generally as well as one directed at the Kameto community.

10. Finally, as I have mentioned, I order that you pay the victims compensation in the sum of vt20,000 under Section 40 of the Penal Code. I have not thought it necessary to obtain a compensation report because you have voluntarily made that offer, so your ability to pay is assumed. As to where that money goes, I will leave it to Mr Massing and the probation officer to ensure that the victims of the arson receive that money. They can then deal with it as they think fit.

11. You have 14 days to appeal against this sentence if you do not agree with it.

BY THE COURT



JUSTICE STEPHEN HARROP

