

**PUBLIC PROSECUTOR**

**-v-**

**BASIL ALLAN**

**Coram:** *V. Lunabek – CJ*

**Counsels:** *Mr. Lenry Young for Public Prosecutor*  
*Mr. Edmond Toka for Defendant*

**Date of delivery:** *21<sup>st</sup> December 2017*

**SENTENCE**

1. Mr. Basil Allan, you entered a guilty plea to one count of arson, contrary to section 134 (1) of the Penal Code Act in the Supreme Court at Dumbea on 12 December 2017.
2. The brief facts of this case are provided by the Prosecution. You do not dispute them. They are set below.
3. Sometime on or about 9 December 2015, at Unua 1 village on Malekua, you intended and unlawfully set fire to houses belonging to Family Shem. You acted following the instructions of your father Allan Basil and at the time you knew that these houses were the properties of other persons. You acted with others to commit those offences.
4. Five complainants, namely Stephen Shem, Philimon Shem, Samuel Shem, Michael Shem and Setak Shem lodged the complaints against you and other Defendants. At the time of the offending your father Allan Basil was a chief of the village and you were 17 years old and a student at Rensary Secondary School.



5. On the night before the incident your father (Allan Basil) called you and others to see him. You did so with other Defendants and one Jonah Belbong who was a prosecution witness.
6. Your father instructed you and others to burn the houses. He gave you and others an empty bag of rice and a plastic container containing benzene.
7. The offending occurred on the 9<sup>th</sup> December 2015 at Unua Village 1 at around 9:00 - 10.00pm o'clock at night.
8. The offending was believed to have occurred due to the tension between the two families, Family Basil and Family Shem. A death happened within the Basil family. Your family, (the Basil Family) believed that the death was caused by the Shem family through witchcraft. The issue was dealt with within the village court and the outcome was in favour of the Shem Family. Your family was still not happy with the result. You and your family decided to take those matters into your own hands by setting fire on the complaint's houses.
9. On the night of the incident, your father (Chief Allan Basil) had the control of the situation and directed you and others to burn the houses.
10. He first told Jonah Belbong to set fire on the houses belonging to the Shem Family. Belbong was scared to do so. Your father then called on Padjo Korty and you (Basil Allan) to carry out the plan of setting fire on those houses. Your father had to pay you and others after you had executed the offending. Your father gave you and Padjo Korty 2 litter plastic of benzene and two matches. Your father instructed you and others that you should wait, as soon as he left to drink kava then you and others run quickly and set fire on those houses. One Albert Basil and Jonah Belbong were responsible to sprinkle benzene around and on those houses. You and others set fire on them with the matches.
11. The next day, your father told you and others not to tell anyone about your and others involvement in burning down the houses.



12. Below are the details of the houses that were burnt down and their estimated values (costs).

(i) Stephen Shem's houses

- 1 dining house, a bathroom and main houses equivalent to a monetary value of VT141, 000. One of his houses that was destroyed by the fire had cement floor.

(ii) Philemon Shem's houses

- 1 sleeping house and a kitchen house. The houses are made up of local materials such as bamboos and natangura leaves.
- Other personal properties were also destroyed and the rough estimated cost is equal to a monetary vatu of VT 174,100.

(iii) Samuel Shem's houses

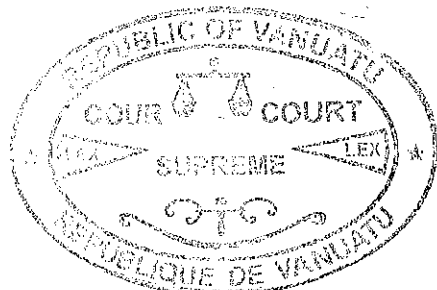
- 1 sleeping house. He was in Australia at the time of the offending. All his belongings (personal, beddings, tools, et...) that were locked in the house were burned to the ground. The estimated value was about 901,250vt.

(iv) Michael Shem's houses

- 1 sleeping house and 1 kitchen house. His personal belonging such as kitchen wares, beddings, and tools were also destroyed by the fire. The houses were made of natangura, timbers and bamboo materials.

(v) Setak Shem's houses

- Two (2) sleeping houses made up of bamboos and natangura materials were destroyed. Two cloths for decoration worth 1,000vt were destroyed also.



13. Although the offences occurred in the night, no persons in the houses were injured by the fire.
14. The other defendants in the same case pleaded guilty to the offences as charged against each of them and they are appropriately sentenced in *Public Prosecutor –v- Basil [2017] VUSC 127; Criminal Case No.3640 of 2016 (1September 2017) at Lakatoro, Malekula.*
15. Section 134 (1) of the Penal Code Act [CAP 135] is the offending section. It provides:  
  
*“No person shall willfully and unlawfully set fire to, or damage by means of any explosive, any building or other property whatsoever which to his knowledge belongs to another.*  
  
*Penalty – Imprisonment for 10 years”*
16. The offences are serious as reflected by the maximum penalty of 10 years imprisonment imposed by law.
17. The question is what is the appropriate starting point sentence?
18. The prosecution refers the Court to some case authorities as to what and how the Court should pass sentence on this type of offending. That will depend on the circumstances and your involvement in this offending. The Prosecution refers to few cases including the following:

- *Worahese –v- Public Prosecutor [2010] VUCA*, where the Court stated:  
*“It is clear to this Court that the crime of arson in this jurisdiction is becoming more prevalent .... It was quite proper therefore for the judge to give weight to the sentencing factor of deterrence to discourage this form of offending. The starting point of 4 years imprisonment and the addition of 1 further year for the aggravating factors was not unreasonable and the reduction of 3 years plus converting 1 remaining year into a suspended sentence gave substantial weight to the mitigating factors. This Court accepts that a*



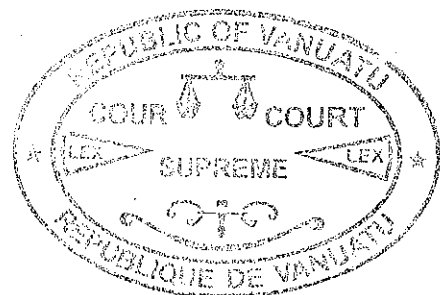
*custodial sentence must be imposed for this offence and it cannot be said that the sentence imposed by the judge was wrong in principle or manifestly excessive”.*

- In 2004, in the case of *Public Prosecutor v. Buleuru [2004] VUSCA 126*, seven defendants were jointly charged with arson. They pleaded guilty in respect of that arson charged laid against them. They gave one and only reason to the Court regarding their offending that they have 18 years of land dispute with the victims. In light of this, the Court stated:

*“That could not be a good 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.*

- In *Public Prosecutor v. Basil [2017] VUSC 127* at paragraph 21 (c) that court said that: *“You committed the crime in retaliation of a suspicious that the complainants murdered one of your relatives using witch craft. You cannot take the law into your own hands and do justice as you like. There are other peaceful ways to solve problems in the community.”* The court sentenced your father to 2 years and 9 months imprisonment. The others were sentenced to suspended imprisonment terms of 2 years and 9 months and 6 months’ probation.

19. The prosecution submitted that the end sentence of range between 2 to 2 and half years imprisonment is appropriate for you (Basil Allan) or a suspended imprisonment sentence and a sentence of probation or community work.
20. Your defence lawyer refers the Court to the same case authorities referred to by the prosecution in their submissions of (*Worahese v. Public Prosecutor [2010] VUCA* and others).
21. Your lawyer like the prosecution reminds the court of the provision of section 54(1) of the Penal Code which says:



“A person under 16 years of age is not to be sentenced to imprisonment unless o other method of punishment is appropriate.”

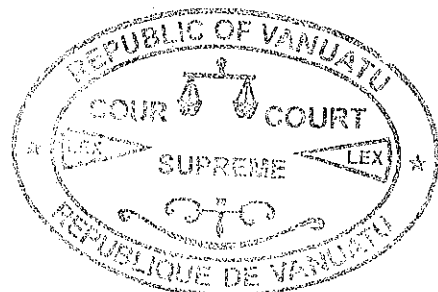
22. But I do not think that section 54 (1) of the Penal Code applies to your situation. You were 17 years of age at the time of the offending as your date of birth is 9 February 1998.

Your lawyer submitted that the appropriate end sentence for you is 2 years and 9 months imprisonment and to be suspended like other defendants dealt with earlier on at Lakatoro Malekula in *Public Prosecutor –v- Basil [2017] VUSC 127*.

23. In this case, not only you break the law by setting fire to the houses or some of them, but the circumstances under which you committed them make them aggravated by the following features:

- (a) There was a breach of trust as you were from the same village.
- (b) There were some degree of planning and premeditation.
- (c) Retaliation and taking the law into your own hands.
- (d) At the least 9 houses and kitchen destroyed with personal belongings of the complainant’s valued at more than 1 million vatu.
- (e) Criminal joint enterprise. You committed the offences together.
- (f) You committed the offences together and at night time.


24. In mitigation, you are a first time offender. You do not have any previous convictions. You were 17 years old at the time of offending. Now you are 19 years old when you are sentenced. You pleaded guilty at the first opportunity given to you by the police authorities and the Court. As a youth, you were easily under the influence of the adult members of your family and particularly your own father who is also the chief of the village. You acted under his instructions at the time of offending. The instructions included the detailed plan and execution of the offences and after the offences you were advised and directed not to tell anyone. You are continuing your studies at Vanuatu Institute of Technology (VIT).



25. Overall, this case warrants a suspended imprisonment sentence of 2 years and 9 months imprisonment like other defendants in similar situations in this case. That is the sentence I impose on you now (i.e. 2 years and 9 months) and the suspension is for a period of 2 years.
26. In addition, you are ordered to serve 6 months probation under the normal/standard conditions to be set by the probation officers.
27. You have 14 days to appeal this sentence if you are unsatisfied with it.

**DATED at Port Vila, this 21<sup>st</sup> day of December, 2017**

**BY THE COURT**



**V. LUNABEK  
Chief Justice**

