

**BETWEEN: Public Prosecutor**

**AND: Jimmy Iaruel, Andrew Iawa, Harry Kausir Junior, Lokanau Ialulu,  
Nangiatis Nakou, Lalbun Naus, Joe Charley**

**Defendants**

**Dates of Verdict: 25<sup>th</sup> April 2024**

**Date of Sentence: 30<sup>th</sup> April 2024**

**Before: Justice Oliver A Saksak**

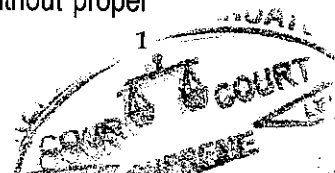
**Counsel: Ms Florence Sewen for Public Prosecutor  
Mrs Meresimani Markward for the Defendants**

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## **SENTENCE**

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1. After a trial held on 23<sup>rd</sup> and 24<sup>th</sup> April 2024, the Court found and returned verdicts of guilty on 25<sup>th</sup> April 2024 as follows-
  - a) Against Andrew Iawa- Count 6- Criminal Trespass and Count 7- Threatening Language.
  - b) Against Harry Kausir Junior for Criminal Trespass Count 6 and – Unlawful Assembly, Count 10.
  - c) Against Lokanau Ialulu for Criminal Trespass- Count 6- and Unlawful Assembly, Count 10.
  - d) Against Nangiatis Nakou for Criminal Trespass, Count 6.
  - e) Against Lalbun Naus for Unlawful Assembly, Count 10.
  - f) Against Jimmy Iaruel for Unlawful Assembly, Count 10.
  - g) Against Joe Charley for unlawful Assembly, Count 10.
2. The defendants are for sentence today.
3. The facts of the defendants' offendings are set out under paragraph 2 of the Judgment dated 25<sup>th</sup> April 2024 and I need not restate them here.
4. It is sufficient for the purposes of sentencing that the unfortunate result and consequences of the defendants offendings on 21<sup>st</sup> July and 24<sup>th</sup> July 2023 has left the complainants of this case displaced, without proper homes and personal possessions and their children without proper



schooling and education from then to date. And this has caused them great mental harm, suffering and distress.

5. The offendings on 21<sup>st</sup> July 2023 involved serious verbal threats accompanied by the defendants holding knives and spades issued for planting crops on that date. And further on 24<sup>th</sup> July 2023, the defendants who assembled and went to Bethel village had knives on their persons. They were disorderly and inciting or instigating trouble.
6. The defendants had taken the law into their own hands and have shown no remorse whatsoever.
7. These are the aggravating features of the offences committed by the defendants on 21<sup>st</sup> and 24<sup>th</sup> July 2023. All they have offered in their defence at trial was that they were acting on the orders of their nakamal.
8. It is essential to revisit some past cases- involving criminal trespass, Unlawful assembly and threatening language. First in 2012 in PP v Loupas [2012] VUSC 25 the judge said:

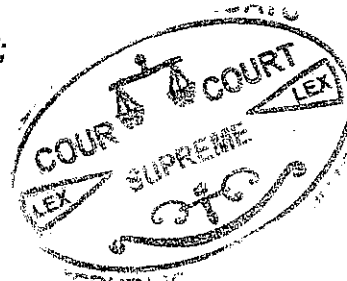
***“Land disputes are also equally capable of being resolved by lawful processes available in land tribunals and the Courts and although these processes may not function as quickly and desired, nevertheless, these are the processes that the government in its wisdom has seen fit to establish for dealing with land disputes and the parties are urged to utilize them rather than the illegal “ self- help” that has marked the past actions of both sides to the underlying land dispute in this case.”***

9. In PP v Philip [2013] VUSC 24 the Chief Justice said:

***“ ..... Retaliation or revenge is against the law as it is motivate by your personal vendetta and... you end up breaking the law by committing offences yourselves. You must stop offending individually and/or group together as you did. In this case the victims of your crimes are innocent persons. This is not the first time the Courts have had to deal with this type offending on the Island of Tanna.”***

***The common trend that is emerged from the analysis of these cases reflects common custom practices used- in that:***

- ***Chiefs called and held meetings in nakamal;***
- ***Persons assembled together in the nakamal;***



- *Persons so assembled in nakamal are not necessarily from the same nakamal,. They may be from various nakamals, villages or areas. They were called to join through the custom process of “ custom roads” or “ custom linkages”.*
- *Chiefs informed persons so assembled in the nakamal of the purpose of the meetings.*
- *The above cases show that the purposes of the meetings were to commit crimes.*
- *Chiefs solicited and incited the persons so assembled to carry out criminal activities jointly and together.*
- *Persons so assembled planned and carried out the joint criminal activities as ordered and directed in the nakamal.*

*The above common custom practices described are used against the law. They could not be part of accepted custom practices. They are abuses of custom practices in the manner they were used to commit criminal activities.”*

Later the Chief Justice said concerning the relationship between custom and statute law:

*“ All persons living in Vanuatu including Tanna Island, are protected by the laws of Vanuatu and the properties of all persons in Vanuatu including Tanna Island are so protected by laws of Vanuatu. Your customs and/or practices are also subject to the laws of Vanuatu. This means that if your customs or practices are against the law, you cannot apply them anymore. If your customs or practices are not against the law, you cannot apply them anymore. If your customs or practices are not against the law but you use them to achieve unlawful purpose such as committing criminal offence, then, you have abused your customs or practices. Such abuses of customs or practices are condemned as they are not acceptable customs or practices. They are against the law.”*

10. In PP v Natuman and 6 others [2014] VUSC 114 which involved the burning of 5 houses the sentencing judge said:

*“ I understand that underlying this incident is a form of land dispute. If that is correct, It would not be the first time in Vanuatu where a dispute has spilled over into violence against property or people and I am sure it will not be the last. That is no excuse though and the Court must treat as an aggravating factor the point that you decided to take the law into our own hands to teach the victim a lesson as you thought he should be because of the dispute”*

11. Finally in PP v Kaper [2018] VUSC 169 the Chief Justice in sentencing 31 defendants for criminal trespass, threats to kill and similar offences said:

*“ In sentencing each and all of you, the Court must inform you that Vanuatu as an independent and sovereign nation has laws for everyone including each and all of you.*

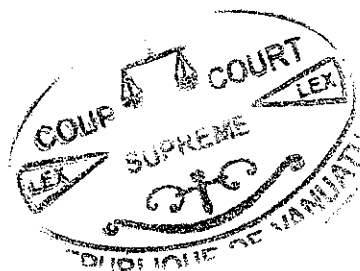


***As citizens of Vanuatu, each and all of you including your chiefs, are subject to the laws of Vanuatu. Each and all of you must understand that you cannot take the law into your own hands to do justice to yourselves out of frustrations, reactions, misunderstanding and lack and/ or poor communications.***

***Your custom motives or custom rational may be the basis of your actions. However, your custom and traditional practices are not excuses for each and all of you to commit criminal offences as you did....***

***Custom chiefs and leaders shall refrain from soliciting and inciting their people to commit criminal offences out of frustrations and reactions using the custom and traditional practices as justifications for the breaking of the Criminal laws of the Republic of Vanuatu.***

12. In this case I can do no more than restate and remind the defendants and your chiefs and leaders of the sentiments and warnings of the Chief Justice and Judges expressed in those past cases.
13. Sadly the commission of these offences in 2023, some 5 years after PP v Kaper in 2018 shows that those sentiments and warnings have fallen either on deaf ears or they are being deliberately ignored. And that reveals a trend that if allowed to continue would in my view lead to anarchy.
14. Having said all that, I now come to sentencing these defendants. For the reasons given, it is my view that the appropriate sentences the Court will impose will be custodial sentences to serve a deterrence to the defendants and others.
  - To mark the seriousness of their offendings.
  - To condemn and mark disapproval of the public of the defendants unlawful actions.
  - To protect the public and the vulnerable members of the community.
  - To ensure that customs and usages which are not consistent and compatible with the Constitution and the laws of Vanuatu, and which are repugnant to the general principles of humanity must no longer be used and applied by chiefs, custom Nakamals and Community leaders.
  - To encourage and ensure compliance with the Constitution and the rule of law in Vanuatu at all times, and
  - To punish the defendants appropriately.



15. I therefore sentence the defendants as follows-

- a) ✓ Andrew Iawa- For Criminal Trespass- Count 6, 1 year or 12 months imprisonment. For threatening language- Count 7, 10 months imprisonment. These are to be served concurrently for 12 months.
- b) ✓ Jimmy Iaruel for Unlawful assembly, 18 months imprisonment.
- c) ✓ Harry Kausir Junior- for Criminal trespass, Count 6, - 12 months imprisonment. For unlawful assembly- Count 10, 18 months imprisonment. These sentences are to be served concurrently for 18 months imprisonment.
- d) ✓ Lokanau Ialulu- For Criminal Trespass- Count 6, - 12 months imprisonment.
- e) ✓ Nangiatis Nakou- For Criminal Trespass- Count 6, 12 months imprisonment.
- f) ✓ Lalbun Naus- For Criminal trespass- Count 6, 12 months imprisonment.
- g) ✓ Joe Charley- For Criminal trespass- Count 6, 12 months imprisonment.

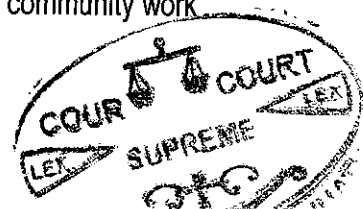
16. In mitigation, I consider the personal histories and characters of the defendants in their pre-sentence reports ( Same Day) as submitted by Probation Service. I have also considered their submissions filed by Mrs Markward. These are their previous clean records, their contributions to their community, their ages, their remorse and the time they have all spent in custody being 1 month and 15 days and their families. I make a general reduction of all their sentences by 4 months to have their end sentences as follows-

- a) ✓ Andrew Iawa- End Sentence of 8 months imprisonment.
- b) ✓ Jimmy Iaruel- End sentence of 14 months imprisonment.
- c) ✓ Harry Kausir Junior- End sentence of 14 months imprisonment.
- d) ✓ Lokanau Ialulu- End sentence of 8 months imprisonment.
- e) ✓ Nangiatis Nakou- End sentence of 8 months imprisonment.
- f) ✓ Lalbun Naus- End sentence of 8 months imprisonment.
- g) ✓ Joe Charley- End sentence of 8 months imprisonment.

17. ✓ Order that the sentences be suspended under section 57 of the Penal Code Act for a period of 2 years on good behaviour. If any of them commit any criminal offences within 2 years, they will go to prison to serve their sentences.

18. In addition I sentence the defendants to community work under section 58G of the Penal Code Act as follows:-

- ✓ a) For Jimmy Iaruel and Harry Kausir Junior to 150 hours of community work



✓  
b) For Andrew IawaLokanau Ialulu, Nangiatis Nakou, Lalbun Naus and Joe Charley to 100 hours of Community work.

19. The defendants shall perform their respective hours of community work within 12 months from the date of this sentence.

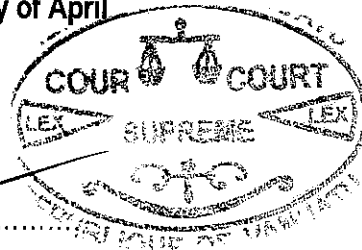
20. The defendants shall report to the Probation Officer within 72 hours from the date of sentence to supervise the performance of their community work order.

21. The defendants have a right of appeal against this sentence within 14 days if they so choose.

DATED at Isangel this 30<sup>th</sup> day of April

2024

BY THE COURT



.....  
Hon. Oliver A Saksak  
Judge