

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL NO. AAU0043 OF 2007S

BETWEEN : KELEPI LEDUA Appellant/Applicant

AND : THE STATE Respondent

BEFORE THE HONOURABLE JUDGE OF APPEAL MR
JUSTICE JOHN E. BYRNE

Counsel : Appellant - In Person
: Mr A. Rayawa for the Respondent

Dates of Hearing: 27th November 2007, 11th December
2007, 23rd January 2008

Date of Ruling : 23rd January 2008

R U L I N G

[1] The Applicant seeks ***Leave to Appeal*** against the severity of a sentence of 3 years and 9 months imposed on him by Shameem J. in the High Court on the 4th of April 2007.

[2] The Applicant had pleaded guilty in two cases of being in unlawful possession of illicit drugs. In one of these cases, HAC12 of 2006 Labasa he was found in possession

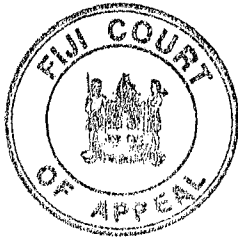
of 1765.8gms of cannabis sativa on the 29th of June 2006 at Taveuni and in HAC44 of 2007 he was found in possession of 36.4gms of cannabis sativa on the 11th of March 2007 in Suva. He has 58 previous convictions a number of which are for being in possession of dangerous drugs.

- [2] In relation to the possession of 36.4gms of cannabis the learned Judge treated this case as one of possession for use rather than sale, despite the suspicious circumstances in which the Applicant was carrying the drug. For this offence she took the tariff as being from 9 to 12 months imprisonment. She took into account his guilty plea, his remorse and his declared intention to be a farmer and imposed a sentence of 9 months.
- [3] On the second charge relating to the 1765.8gms the Judge considered that this was obviously meant for sale and was a far more serious charge and she took as her tariff 2 to 5 years imprisonment. On this she sentenced the Applicant to 3 years imprisonment.
- [4] She then held that the two offences were separate and distinct and warranted consecutive sentences. She therefore sentenced the Applicant to a total of 3 years

and 9 months imprisonment which she said did not offend the totality principle.

- [5] Bearing in mind that the maximum penalty for being in illegal possession of drugs is either a fine of one million dollars and/or imprisonment for life, in my judgment Shameem J. committed no error of law. She took into account all relevant mitigating factors and in my view could not have been more sympathetic or merciful to the Applicant than she was.
- [6] In the last two days I have heard three applications for leave to appeal against sentences imposed by the High Court on illegal possession of drugs. Despite the efforts of the Courts over the last twenty to thirty years to control the incidence of such offences, more and more cases are coming to the Courts on drug charges. It is to be hoped that the maximum penalty now fixed by statute in the Illicit Drugs Control Act of 2004 will have some deterrent effect on those minded to deal in drugs. I have said, and I know I have the support of my Judicial colleagues, that drug offences are the scourge of the community. Their harmful effect on those who use dangerous drugs is well known but they also constitute a threat to society as a whole. It may well be that the time has come for the appropriate authorities to embark on a

drug education programme in the hope of making those minded to take drugs realise the serious effects not only to their own health but to that of others to whom they sell. I can see no error in the judgment of Shameem J., and I therefore refuse leave to appeal in this case.



A handwritten signature in cursive script, which appears to read "John E. Byrne". The signature is written in black ink and is positioned above a horizontal dotted line.

[John E. Byrne]

JUDGE OF APPEAL

At Suva

23rd January 2008