IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CRIMINAL APPEAL NO.AAU 115 of 2017
[High Court at Labasa Criminal Case No. HAC 006 of 2016 LAB]

BETWEEN	:	**JONE SERU**
		Appellant
AND	:	**THE STATE**
		Respondent
Coram	:	**Prematilaka, RJA** **Mataitoga, JA** **Qetaki, JA**
Counsel	:	**Ms. L. Manulevu for Appellant**
	:	**Dr. A. Jack for the Respondent**
Date of Hearing	:	**02 May 2023**
Date of Judgment	:	**25 May 2023**

JUDGMENT

Prematilaka, RJA

[1] The appellant had been charged in the High Court at Labasa on a single count of Cultivation of Illicit Drugs i.e. 5500 grams or 5.5 kilograms of illicit drugs namely cannabis sativa without lawful authority between 01 October 2011 and 08 February 2012 at Savusavu in the Northern Division contrary to section 5(a) of the Illegal Drugs Control Act of 2004.

[2] The assessors unanimously opined that the appellant was guilty as charged. The appellant was convicted and sentenced on 25 July 2017 to 09 years of imprisonment subject to a non-prole period of 08 years.

[3] A single Judge of this court allowed leave to appeal against sentence but refused leave to appeal against conviction. The appellant had renewed his appeal before the full

court and sought leave to appeal against conviction as well. However, on the day of hearing of the appeal, the appellant through his counsel tendered to court an application to abandon his conviction appeal in From 3 under Rule 39 of the Court of Appeal Rules and the court having followed ***Masirewa*** guidelines (**Masirewa v State** [2010] FJSC 5; CAV 14 of 2008 (17 August 2010) allowed the application. Accordingly, the appeal against conviction stands dismissed.

[4] However, leave to appeal ruling had identified the main issue to be resolved with regard to the sentence as follows:

> *'Whether sentencing in offences involving cultivation should be based on weight of cannabis or the number of plants or a combination of both, cultivated in any given extent of land where cannabis plants are found with all other factors being considered as aggravating or mitigating the offence, would be a vital question to answer.*

[5] The State had made an application for a guideline judgment with regard to cultivation of cannabis sativa also known as marijuana. Both the Director of Public Prosecutions (DPP) and the Legal Aid Commission (LAC) have filed written submissions on the possible guidelines to be given by this court.

[6] It is clear from the sentencing order that the trial judge had treated the appellant's case under the forth category identified in **Sulua v State** [2012] FJCA 33; AAU0093.2008 (31 May 2012) where the tariff had been set at 07-14 years of imprisonment for possession of cannabis sativa of 4000g or above. ***Sulua*** was a case concerning possession; not cultivation. However, the majority of judges of the Court of Appeal in ***Sulua*** had determined that the sentencing guidelines for possession of cannabis sativa should apply to offending verbs of *"acquire, supplies, produces, manufactures, **cultivates**, uses or administers"* in section 5(a) of the Illicit Drugs Control Act 2004. ***Sulua*** guidelines were based only on the weight of the illicit drug but were made applicable to other acts too namely '*transfer, transport, supply, use, manufacture, offer, sale, import, or export'* of an illicit drug as set out in section 5(b).

[7] Nevertheless, it appears that the sentencing judges have not always applied ***Sulua*** guidelines when it comes to offences involving cultivation. It is well documented that

while some High Court judges and Magistrates apply sentencing guidelines in **Sulua v State** *(supra)* in respect of cultivation as well, some other High Court judges apply different or modified sentencing regimes on the premise that ***Sulua*** cannot be applied to cultivation as it is only based on the weight of the illicit drugs and there is no guideline judgment especially for cultivation of marijuana[1]**.** The sentences not following ***Sulua*** guidelines have been based by and large on the number of plants and scale and purpose of cultivation[2].

[8] For example, in **State v Tuidama** [2021] FJCA 73; AAU0003.2017 (16 March 2021) the State demonstrated with 08 examples that while some High Court judges follow ***Sulua*** guidelines, others rely on **Tuidama v State** [2016] FJHC 1027; HAA29.2016 (14 November 2016)**, Dibi v State** [2018] FJHC 86; HAA96.2017 (19 February 2018) and **State v Nabenu** [2018] FJHC 539; HAA10.2018 (25 June 2018) and stated that this inconsistency has resulted in lack of uniformity in the sentencing in cases involving cultivation of illicit drugs. State did recognize in **State v Tuidama** (supra) that there are difficulties in applying ***Sulua*** guidelines to cultivation of illicit drugs.

[9] Legal Aid Commission has submitted in its written submissions to this court a table of 33 cases from 2019 to 2022 (attached herewith marked **A** as an addendum) which shows that not only have different judges of the High Court, deviating from ***Sulua*** guidelines, applied different sentencing tariffs for cultivation of cannabis cases but also that it had resulted in serious lack of uniformity in the sentences. Needless to say that this undermines the integrity of the criminal justice system.

[10] For example, the High Court judge's reasons in **Tuidama v State** (supra) for deviating from the sentencing tariff set in ***Sulua*** can be summarised as follows:

> *(i) Sentencing tariff in **Sulua** was based on the weight of dried cannabis sativa leaves whereas the accused's case concerned 'green' plants.*

[1] See for example **State v Bati** [2018] FJCA 762; HAC 04 of 2018 (21 August 2018) which still referred to ***Sulua***.

[2] **Tuidama v State** [2016] FJHC 1027; HAA29.2016 (14 November 2016), **State v Matakorovatu** [2017] FJHC 742; HAC355.2016 (29 September 2017), **Dibi v State** [2018] FJHC 86; HAA96.2017 (19 February 2018) and **State v Nabenu** [2018] FJHC 539; HAA10.2018 (25 June 2018)

(ii) The weight of 2.68 kg of 13 'green' plants would include the weight of stems and the water content in the fresh plants.

(iii) It is not mentioned by the Govt. Analyst whether the roots had been excluded in specifying the weight of those plants.

*(iv) Thus, the sentencing guidelines based on **Sulua** cannot be applied and it is unlikely that the dry weight of the 13 fresh plants would fall into the third category of **Sulua** guideline (i.e. 03-07 years of imprisonment).*

[11] In **Bavesi v State** [2004] FJHC 93; HAA 0027 of 2004 the High Court divided cultivation of cannabis into 3 broad categories based on the number of cannabis plants, the purpose of cultivation (small number of plants & non-commercial/personal, small scale cultivation/ for profits & commercial, large scale cultivation & commercial) and prescribed sentences accordingly. However, they were to apply to starting points before aggravating features or mitigating features were applied, not forgetting the quantities of drugs involved and the disproportionality test.

> *'**Category 1** – The growing of a small number of cannabis plants for personal use by an offender or possession of small amount of cannabis coupled with "technical" supply of the drug to others on a non-commercial basis. First offender a short prison term, perhaps served in the community. Sentencing point 1 to 2 years.*
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> ***Category 2** – Small scale cultivation of cannabis plants or possession for a commercial purpose with the object of deriving profit, circumstantial evidence of sale even on small scale commercial basis. The starting point for sentencing should generally be between 2 to 4 years. However, where sales are limited and infrequent and lowest starting point might be justified.*
>
> ***Category 3** – Reserved for the most serious classes of offending involving large scale commercial growing or possession of large amounts of drug usually with a considerable degree of sophistication, large numbers of sales, circumstantial or direct evidence of commercial involvement the starting point would generally be 5 to 6 years.'*

[12] The High Court modified ***Bavesi*** in **Tuidama v State** (supra) and came out with the following tariff based on the number of cannabis plants for the offence of unlawful cultivation of illicit drugs.

a. The growing of a small number of plants for personal use by an offender on a non-commercial basis - 1 to 2 years imprisonment;

b. Small scale cultivation for a commercial purpose with the objective of deriving a profit - 3 to 7 years imprisonment;
c. Large scale commercial cultivation - 7 to 14 years imprisonment.

[13] However, the scope of the terms such as '*small number of plants', 'small scale cultivation'* and *'large scale commercial cultivation'* suggested in ***Bavesi*** and **Tuidama v State** (supra) also could be subjective and inconclusive in its application. The same was true with *'personal use'*, *'commercial purpose'* and *'commercial cultivation'*. In **State v Matakorovatu** [2017] FJHC 742; HAC355.2016 (29 September 2017) the High Court tried to overcome this problem by stating that cultivating up to 10 plants can be considered as non-commercial cultivation if there is no other evidence to the contrary and cultivating more than 10 plants up to 100 plants can be considered as a small scale commercial cultivation and cultivating more than 100 plants can be considered as a large scale commercial cultivation.

[14] In **Dibi v State** [2018] FJHC 86; HAA96.2017 (19 February 2018) the High Court had referred to **In re Koroi** [2012] FJHC 1029; HAR002-006.2012 (20 April 2012) and tariffs as suggested by the U.K. Sentencing Council and the following tariff for possession and cultivation (based on number of plants) had been adopted.

> *'19.] For ease of reference those tariffs as suggested by the U.K. Sentencing Council and adopted by this Court in Koroi are:*
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> *(i) Possession of up to 100 grammes or cultivation of no more than 5 plants, non-custodial sentences at the discretion of the Court*
> *(ii) Possession of 100-1000 grammes and cultivation of 5-50 plants; custodial sentences in the range of one year to six years*
> *(iii) Possession of more than 1000 grammes and cultivation of more than 50 plants, custodial sentences of six years or more*
> *(iv) Possession of very large quantities (5kg or more) custodial sentences in the range of 10 to 15 year*
>
> *20.] There will be times when the plants are many, but small, yielding a minimal weight (as in the present appeal) and a balance will have to be struck between use of the above categories.'*

[15] ***Tuidama*** had been criticized in ***Dibi*** on the ground that it had failed to consider ***Koroi*** and instead had followed ***Bavesi.***

[16] There has been an attempt to reconcile the approaches in ***Tuidama*** and ***Dibi*** in **State v Nabenu** [2018] FJHC 539; HAA10 of 2018 (25 June 2018) by specifying the number of plants belonging to each category of cultivation coupled with the purpose of cultivation and assumed yield per plant. ***Nabenu*** adopted ***Tuidama*** and sought to accommodate concerns expressed in ***Dibi.***

[17] Thus, in ***Nabenu*** the High Court suggested the following tariff after considering a number of previous decisions including ***Tuidama*** *and* ***Dibi***:

> *a. The growing of a small number of plants (less than 9 plants with assumed yield of 40g per plant) for personal use by a first offender - non- custodial sentence or a fine at the discretion of the court.*
> *b. Small scale cultivation (10 to 30 plants with assumed yield of 40g per plant) for a commercial purpose with the objective of deriving a profit - 1 to 3 years imprisonment, with or without a fine at the discretion of the court.*
> *c. Medium scale commercial cultivation (30 -100 plants) - 3 to 7 years imprisonment with or without a fine at the discretion of the court.*
> *d. Large scale cultivation capable of producing industrial quantities for commercial use (more than 100 plants) 7 - 14 years imprisonment with or without a fine at the discretion of the court.*

[18] ***Nabenu*** *inter alia* had equated the number of plants to a corresponding assumed yield. Both ***Tuidama*** and ***Nabenu*** had also considered the purpose of cultivation (*i.e.* personal or commercial) and scale of the cultivation to determine the sentence. ***Nabenu*** (and ***Tuidama*****)** have been followed by some High Court judges subsequently[3]. Yet, some other High Court judges continued to follow and apply ***Sulua*** guidelines[4].

[19] Thus, it is at this stage useful to compare the main schools of thought on sentencing tariff for cultivation of cannabis sativa. ***Sulua*** guidelines are as follows:

> *(i)* ***Category 1:*** *possession of 0 to 100 grams of cannabis sativa - a non-custodial sentence to be given, for example, fines, community service,*

[3] **State v Koro – Sentence** [2019] FJHC 730; HAC 48 of 2019Ltk (25 July 2019), **State v Kaitani – Sentence** [2018] FJHC 605; HAC 355 of 2016 (16 July 2018). [**State v Dukubure** [2017] FJHC 310; HAC076 of 2017 (28 April 2017) followed ***Tuidama.*****]**

[4] **State v Koroitamana – Sentence** [2018] FJHC 798; HAC69 of 2017 (27 August 2018), **State v Salevuwai** [2018] FJHC 11; HAC 02 of 2018 (19 January 2018), **State v Ravia – Sentence** [2019] FJHC 381; HAC 255 of 2017S (30 April 2019), **State v Tobua – Sentence** [2019] FJHC 97; HAC 140 of 2018 (19 February 2019).

counselling, discharge with a strong warning, etc. Only in the worst cases, should a suspended prison sentence or a short sharp prison sentence be considered.

(ii) ***Category 2****: possession of 100 to 1,000 gram of cannabis sativa. Tariff should be a sentence between 1 to 3 years imprisonment, with those possessing below 500 grams, being sentenced to less than 2 years, and those possessing more than 500 grams, be sentenced to more than 2 years imprisonment.*

(iii) ***Category 3:*** *possessing 1,000 to 4,000 grams of cannabis sativa. Tariff should be a sentence between 3 to 7 years, with those possessing less than 2,500 grams, be sentenced to less than 4 years imprisonment, and those possessing more than 2,500 grams, be sentenced to more than 4 years.*

(iv) ***Category 4:*** *possessing 4,000 grams and above of cannabis sativa. Tariff should be a sentence between 7 to 14 years imprisonment.*

[20] The rest is as follows:

1.	**Bavesi v State**	[2004] FJHC 93; HAA 0027.2004).	Decided before ***Sulua*** (supra) and proposed the following tariff: *d. The growing of a small number of plants for personal use by an offender on a non-commercial basis - 1 to 2 years imprisonment;* *e. Small scale cultivation for a commercial purpose with the objective of deriving a profit - 3 to 7 years imprisonment;* *f. Large scale commercial cultivation - 7 to 14 years imprisonment*
2.	**Tuidama v State**	[2016] FJHC 1027; HAA29.2016 (14 November 2016)	Did not agree with the tariff in ***Sulua*** and followed the proposed tariff in ***Bavesi*** with a few modifications**:** *a. The growing of a small number of plants for personal use by an offender on a non-commercial basis - 1 to 2 years imprisonment;* *b. Small scale cultivation for a commercial purpose with the objective of deriving a profit - 3 to 7 years imprisonment;* c. *Large scale commercial cultivation - 7 to 14 years imprisonment.*
3.	**Dibi v State**	**[**2018] FJHC 86; HAA96.2017 (19 February 2018)	A tariff similar to the UK Sentencing Council and adopted in **In re Koroi** [2012] FJHC 1029**;** *(i) Possession of up to 100 grammes or cultivation of no more than 5 plants, non-custodial sentences at the discretion of the Court.* *(ii) Possession of 100-1000 grammes and cultivation of 5-50 plants; custodial sentences in the range of one year to six years.*

			(iii) Possession of more than 1000 grammes and cultivation of more than 50 plants, custodial sentences of six years or more (iv) Possession of very large quantities (5kg or more) custodial sentences in the range of 10 to 15 year.
4.	**State v Nabenu**	[2018] FJHC 539; HAA10.2018 (25 June 2018)	Proposed the following tariff after analyzing a number of previous decisions a. *The growing of a small number of plants (less than 9 plants with assumed yield of 40g per plant) for personal use by a first offender - non- custodial sentence or a fine at the discretion of the court.* b. *Small-scale cultivation (10 to 30 plants with assumed yield of 40g per plant) for a commercial purpose with the objective of deriving a profit - 1 to 3 years imprisonment, with or without a fine at the discretion of the court.* c. *Medium scale commercial cultivation (30 -100 plants) - 3 to 7 years imprisonment with or without a fine at the discretion of the court.* d. *Large scale cultivation capable of producing industrial quantities for commercial use (more than 100 plants) 7 - 14 years imprisonment with or without a fine at the discretion of the court.*

[21] However, the disconcerting disparity in actual sentences between different schools of sentencing regimes (i.e. ***Suluva*** and the rest) could be best highlighted by the examples of **State v Koro – Sentence** [2019] FJHC 730; HAC 48 of 2019Ltk (25 July 2019) where applying ***Nabenu*** guidelines the accused on a plea of guilty for cultivating 40.17 kg (196 plants) of cannabis sativa received a sentence of 07 years and 07 months of imprisonment while in **State v Tobua – Sentence** [2019] FJHC 97; HAC 140 of 2018 (19 February 2019) applying ***Sulua*** guidelines the accused on a plea of guilty for cultivating 08 kg (46 plants) of cannabis sativa received a sentence of 11 years and 4 ½ months of imprisonment. Lack of uniformity in sentencing for cultivation of cannabis is further demonstrated by the 33 cases in the High Court cited by the LAC as well.

[22] Section 8(2) of the Sentencing and Penalties Act 2009 provides that a court considering issuing a guideline judgment as permitted under section 6 must have

regard to the need to promote consistency of approach in sentencing offenders and the need to promote public confidence in the criminal justice system. The DPP in his written submissions has submitted that reviewing the existing guideline judgment in ***Sulua*** is necessary in order to achieve those objectives.

[23] The State has suggested that this court may consider a sentencing model for cannabis offences focusing on culpability and harm consistent with the Supreme Court's endorsement of the methodology based on the Sentencing Council Guidelines in the UK and adopted in **State v Tawake** [2022] FJSC 22; CAV0025.2019 (28 April 2022). It has further submitted that culpability could be determined by nature of the offending for which the offender was convicted, specifically whether it was for possession, cultivation/manufacture, or supplying/ dealing/importing/exporting and that fresh guidelines ought to acknowledge the differing levels of culpability in cannabis offending.

[24] On the aspect of harm, the State has submitted that much of the inconsistency in sentencing is because plant weighs much less when it has dried out and although there does not appear to be much scientific data available, scientists and commercial growers appear to conclude that a dried plant weighs only between 20% and 40% of the same plant fresh from the ground[5], yet the amount of THC, the substance in cannabis which actually causes the harm on which criminal sanction is premised, remains more or less constant. THC or tetrahydrocannabinol is the primary psychoactive cannabinoid (a type of chemical that causes drug-like effects all through the body, including the central nervous system and the immune system) extracted from the cannabis (marijuana) plant which is the principal psychoactive constituent of cannabis.

[25] The State has submitted further that the best way to ensure consistency in sentencing for cannabis offences is to retain weight as the proxy for harm, but base the

[5] https://www.sciencedirect.com/science/article/abs/pii/S2468170916300868; https://www.happyvalley.org/resources/dry-cannabis-vs-sticky-cannabis/#:~:text=Moist%20cannabis%20is%20heavy%3A%20Water,the%20wet%20weight%20at%20harvest; https://www.royalqueenseeds.com/blog-how-much-weed-can-you-really-produce-per-plant-n1246#what-is-cannabis-plant-yield; https://support.ilovegrowingmarijuana.com/t/wet-vs-dry-weight/40039.

sentencing 'weight' of freshly seized plants on the dried weight that they would likely have become but for being seized. Issues relating to the number of plants, and their maturity, sometimes challenge sentencing courts, and this approach would eliminate those issues. The number of plants and their maturity would be subsumed into weight, and weight would be adjusted on a sound basis to reflect the difference between fresh and dried material. According to the State, the existing ***Sulua*** sentencing guidelines could be applied without much change. Recasting the existing guidelines adjusted to reflect the impact of the drying process on the weight of the cannabis and therefore the level of harm the product but for its seizure by Police would have had on the community would maintain relevance of existing tariff, and allow consistent comparison between dried product and live plants. Thus, it has been submitted that the best proxy for harm is total weight involved in the offending, adjusted to recognize the loss of weight which occurs in drying.

[26] The LAC in its written submissions admits that the issue of lack of uniformity in sentencing for the offence of unlawful cultivation of illicit drugs stems from using the tariff in ***Sulua*** against the weight of green cannabis plants, which tend to weigh more because of its water content as exemplified by the comments made by the sentencing judges in High Court, for example the comments in ***Tuidama*** on using ***Sulua*** tariff especially when ***Sulua*** dealt with dried plants. However, LAC does do not agree with the submission made by State that the court should retain weight as the proxy for harm and base the sentencing on the weight of freshly seized plants on the assumed weight of the plants if they are dried, the reason being that the assumed weight of the dried plants had been taken from the research referred to by State done in a controlled environment and the same had not been challenged or endorsed by other institutions or even courts. LAC submits that if the courts in Fiji are to consider the weight of the dried cannabis plants then Fiji government analyst should be involved to assist in determining the weight of the dried plants or the percentage of water in the green plants to assist the sentencing courts.

[27] While it is logical to consider the weight of dried plants for the purpose of sentencing, particularly if ***Sulua*** guidelines are to be applied to cultivation of cannabis as well, the scientific research findings do not appear to be consistent with regard to the

percentage of the weight loss of freshly harvested cannabis plants over a period of time. For example, the abstract of the research cited by the State shows that weight of the freshly harvested cannabis plants changes over time as a consequence of drying, the most significant loss in weight occurring in 1-3 days of the drying process and weights plateau after one week. It further states that cannabis lost between 25% and 77% of its original weight stored at an average of 22.2 Celsius and 49% relative humidity. Further, it states that the environmental conditions are expected to alter weight loss and time of the drying process. Referring to curing and drying process of cannabis flower, another article submitted by the State opines that depending on the cultivar, wet weight of cannabis (pre-dried) is anywhere from 60-67% heavier than fully dried and cured cannabis. In other words, properly dried and cured cannabis weighs 33-40% of the wet weight at harvest. The third article cited by the State shows that when bud is first harvested from a cannabis plant, water accounts for 75-80% of its weight and to estimate dry harvest, wet harvest should be multiplied by 0.25. The State's last piece of literature indicates that the dried weight is 33 to 40% of the wet weight at harvest. Therefore, I am inclined to think that at this stage scientific findings are not consistent and conclusive enough to accept a particular formula to determine the loss of weight of freshly removed cannabis plants due to natural process of drying in the humidity and environmental conditions prevalent in Fiji. Whether such information could be provided to trial courts in each case by the Fiji Government Analyst is also not assured for, it appears that such a finding could be arrived at only after a proper research taking into account all variables in each and every case which is a time and resource consuming exercise with the availability of required expertise and research tools being a *sine quo non*. This court has not been provided with any information of these matters by either party.

[28] Given that uncertainty over how to arrive at the dry weight of cannabis for the sentencing purpose, taking only weight as a proxy for harm seems to be unfair on an accused who has cultivated a small number of plants which are mature when detected as against another accused who has cultivated a large number plants which are still very young when seized. The former is likely to receive a much higher sentence than the latter if sentenced on weight alone even after making allowance for the water content. Culpability of the latter as well as potential harm of the large number of

plants are obviously higher in the second scenario and the second offender should receive a higher sentence compared to the first offender. Taking weight as a proxy for harm is further complicated as no information has been provided to this court as to which parts of the uprooted cannabis plants are to be taken for the purpose of calculating the assumed weight of dried cannabis.

[29] Therefore, rather than using an assumed weight of dried cannabis as a proxy for the harm caused by the offending, I think that it is safer to consider a sentencing model for cannabis offences based on two grid matrix namely culpability demonstrated by the offender's role and harm assessed by the number of plants/scale of operation as in sentencing guideline model based on the UK Sentencing Council Guidelines with suitable modifications. Assumed yield or the weight of dried cannabis (if available) may be considered relevantly as part of aggravating or mitigating factors as the case may be. State too had earlier submitted to this court the scale of operation measured by the number of plants (incorporating potential yield) and the role of the accused as a measure of his responsibility as the basis for possible guidelines in 'cultivation' cases deviating from ***Sulua*** guidelines[6].

[30] The UK Sentencing Council guidelines[7] provides for sentencing offenders under section 6(2) the Misuse of Drugs Act 1971 and and cannabis resin are classified as Class B drugs under the Misuse of Drugs Act 1971. The maximum sentence for cultivation of cannabis plants on indictment is 14 years imprisonment or a fine or both. A table of sentencing is attached herewith as an addendum marked **B**.

[31] In New Zealand the Misuse of Drugs Act 1975 classifies cannabis plant (whether fresh, dried, or otherwise-that is, any part of any plant of the genus *Cannabis* except a part from which all the resin has been extracted) as a Class C drug and section 9 of the Misuse of Drugs Act outlines the offence of cultivation of prohibited plants. The offence of cultivation of prohibited plants carries a maximum sentence of 7 years imprisonment and it is classified as follows:

[6] **Raivasi v State** [2020] FJCA 176; AAU119.2017 (22 September 2020) and **Bola v State** [2020] FJCA 177; AAU132.2017 (22 September 2020).
[7] https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/production-of-a-controlled-drug-cultivation-of-cannabis-plant-2/

> ***Category 1*** *consists of the growing of a small number of cannabis plants for personal use by the offender without any sale to another party occurring or being intended. Offending in this category is almost invariably dealt with by a fine or other non-custodial sentence. Where there have been supplies to others on a non-commercial basis the monetary penalty will be greater and in more serious cases or for persistent offending a term of periodic detention or even a short prison term may be merited. (It is to be noted in this connection that there is no separate offence in relation to a class C drug of supplying or possession for supply, as opposed to selling or offering for sale or possession for sale (s6(1)(e) and (f)).*
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> ***Category 2*** *encompasses small-scale cultivation of cannabis plants for a commercial purpose, i.e. with the object of deriving profit. The starting point for sentencing is generally between two and four years but where sales are infrequent and of very limited extent a lower starting point may be justified.*
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> ***Category 3*** *is the most serious class of such offending. It involves large-scale commercial growing, usually with a considerable degree of sophistication and organisation. The starting point will generally be four years or more.*

[32] In the State of New South Wales (Australia) section 23 and 23A of the Drug Misuse and Trafficking Act 1985 No 226 deal with offences with respect to prohibited plants. Penalties for Cultivation of Prohibited Plants in Local Courts and District Courts are regulated by the table attached as an addendum marked **C**. As per schedule 1, for cultivation of cannabis plants other than by enhanced indoor means, large commercial quantity is 1000 plants, commercial quantity is 250 plants, indictable quantity is 50 plants and small quantity is 05 plants. For cannabis plants cultivated by enhanced indoor means, large commercial quantity is 200 plants, commercial quantity is 50 plants, indictable quantity is 50 plants and small quantity is 05 plants.

Sentencing guidelines (Cultivation of cannabis sativa/marijuana) in Fiji

[33] Therefore, considering the offending of cultivation of cannabis sativa/marijuana and sentencing regimes in other jurisdictions, the sentencing guidelines in UK appear most suitable for assistance in formulating sentencing tariff for cultivation of cannabis sativa/marijuana in Fiji as approved by the Supreme Court in ***Tawake***. Under the Illicit Drugs Control Act 2004, the maximum punishment for Unlawful Cultivation is a fine not exceeding $1,000,000 or imprisonment for life or both.

[34] In **Zhang v R** [2019] NZCA 507 the Court of Appeal of New Zealand made the following remarks on the importance of the role played by the offender in the matter of sentence.

> *'Sentencing must achieve justice in individual cases. That requires flexibility and discretion in setting a sentence notwithstanding the guidelines expressed*
>
> *'...the role played by the offender is an important consideration in the stage one sentence starting point. Due regard to role enables sentencing judges to properly assess the seriousness of the conduct and the criminality involved, and thereby the culpability inherent in the offending*
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> *Although we do not adopt the two grid matrix (involving quantity bands and role categories) devised by the United Kingdom Sentencing Council, we record that, in assessing role, sentencing judges may find it helpful to have regard to the Council's categorizations of role (into "leading", "significant" and "lesser"). In considering the individual appeals before us, we make use of those categorizations.'*

[35] Firstly, the court should determine the offender's culpability (role) and then the harm caused (output or potential output). Then, the court should use the starting point given in the Sentencing Table below to reach a sentence corresponding to the role and category identified. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm could merit upward adjustment from the starting point. After further adjustment for aggravating or mitigating features a sentence within the range in the **Sentencing Table** below should be arrived at. Thereafter, reduction for guilty pleas, time in remand, totality principle etc. would complete the sentencing process.

[36] **CULPABILITY.** Culpability is demonstrated by the offender's role as given below. In assessing culpability, the sentencer should weigh up all the factors of the case to determine role (***leading role, significant role*** *or* ***lesser role***). Where there are characteristics present which fall under different role categories, or where the level of the offender's role is affected by the scale of the operation, the court should balance these characteristics to reach a fair assessment of the offender's culpability. Thus, it must be borne in mind that these roles may overlap or a single offender may have more than one role in any given situation. The demarcation of roles may blur at times. The sentencers should use their best judgment and discretion in such situations.

Leading role:

- *Owner, organizer, initiator or principal party in the venture. Involved in setting-up of the operation, for example obtaining the lands, premises, workers and equipment with which to carry out the cultivation. May have one or more such ventures.*
- *Directing or organizing production/cultivation on a commercial scale*
- *Substantial links to, and influence on, others in a chain*
- *Close links to original source*
- *Expectation of substantial financial or other advantage*
- *Uses business as cover*
- *Abuses a position of trust or responsibility*

Significant role:

- *Play a greater or dominant part. Running the operation.*
- *Operational or management function within a chain. May make arrangements for the plants to be brought in, and the crop to be distributed. They may help to run more than one operation and be involved in making payments, such as rental payments, albeit again on instructions from those running the operation.*
- *Involves others in the operation whether by pressure, influence, intimidation or reward*
- *Expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender's own habit), whether or not operating alone*
- *Some awareness and understanding of scale of operation*

Lesser role:

- *Secondary party. Sometimes as "gardeners" tending the plants and carrying out what might be described as the ordinary tasks involved in growing and harvesting the cannabis. Simply be doing their tasks on the instructions of above in the hierarchy. May get paid for the work or subsistence.*
- *Performs a limited function under direction*
- *Engaged by pressure, coercion, intimidation, grooming and/ or control*
- *Involvement through naivety, immaturity or exploitation*
- *No influence on those above in a chain*
- *Very little, if any, awareness or understanding of the scale of operation*
- *If own operation, solely for own use (considering reasonableness of account in all the circumstances)*
- *Expectation of limited, if any, financial advantage, (including meeting the offender's own habit)*

[37] **HARM**. In assessing harm, output or potential output are determined by the number of plants/scale of operation (category 01, 02, 03 or 04). The court should determine the offence category from among 01- 04 given below:

- ***Category 1*** *– Large scale cultivation capable of producing industrial quantities for commercial use with a considerable degree of sophistication and organization. Large commercial quantities. Elaborate projects designed to last over an extensive period of time. High degree of sophistication and organization. 100 or more plants.*

- ***Category 2*** *– Medium scale cultivation capable of producing significant quantities for commercial use i.e. with the object of deriving profits. Commercial quantities. Over 50 but less than 100 plants.*

- ***Category 3*** *– Small scale cultivation for profits capable of producing quantities for commercial use. 10 to 50 plants (with an assumed yield of 55g per plant).*

- ***Category 4*** *– Cultivation of small number of plants for personal use without sale to another party occurring or being intended. Less than 10 plants (with an assumed yield of 55g per plant).*

[38] **SENTENCING TABLE** (cultivation of cannabis sativa).

Culpability / **Harm**	***LEADING ROLE***	***SIGNIFICANT ROLE***	***LESSER ROLE***
Category 1	***Starting point*** *18 years' custody*	***Starting point*** *14 years' custody*	***Starting point*** *9 years' custody*
	Category range *16 – 20 years' custody*	***Category range*** *12 – 16 years' custody*	***Category range*** *7 years' – 12 years' custody*
Category 2	***Starting point*** *14 years' custody*	***Starting point*** *9 years' custody*	***Starting point*** *5 years' custody*
	Category range *12 years– 16 years' custody*	***Category range*** *7 years'– 12 years' custody*	***Category range*** *3 years– 7 years' custody*
Category 3	***Starting point*** *9 years' custody*	***Starting point*** *5 years' custody*	***Starting point*** *18 months' custody*
	Category range *7 years'– 12 years' custody*	***Category range*** *3 years'– 7 years' custody*	***Category range*** *1 year – 3 years' custody*
Category 4	***Starting point*** *5 years' custody*	***Starting point*** *18 months' custody*	***Starting point***
	Category range *3 years' – 7 years' custody*	***Category range*** *1 year – 3 years' custody*	***Category range*** *Non-custodial – suspended sentence*

[39] Aggravating and mitigating features. This is not an exhaustive list.

Statutory aggravating factors:

- *Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since conviction (see **Naureure v State** [2022] FJCA 149; AAU151.2020 (12 December 2022) at [32] –[39] for a detailed discussion on this aspect)*
- *Offence committed on bail*

Other aggravating factors include:

- *Exploitation of children and/or vulnerable persons to assist in drug-related activity*
- *Exercising control over the home of another person for drug-related activity*
- *Nature of any likely supply*
- *Level of any profit element*
- *Use of premises accompanied by unlawful access to electricity/other utility supply of others, where not charged separately*
- *Ongoing/large scale operation as evidenced by presence and nature of specialist equipment*
- *Exposure of drug user to the risk of serious harm over and above that expected by the user, for example, through the method of production or subsequent adulteration of the drug*
- *Exposure of those involved in drug production/cultivation to the risk of serious harm, for example through method of production/cultivation*
- *Exposure of third parties to the risk of serious harm, for example, through the location of the drug-related activity*
- *Attempts to conceal or dispose of evidence, where not charged separately*
- *Presence of others, especially children and/or non-users*
- *Presence of weapons, where not charged separately*
- *Use of violence (where not charged as separate offence or taken into account at step one)*
- *Failure to comply with current court orders*
- *Offence committed on licence or post sentence supervision*
- *Offending took place in prison (unless already taken into consideration at step 1)*
- *Established evidence of community impact*
- *Use of sophisticated methods or technologies in order to avoid or impede detection*
- *Use of indoor growing system (hydroponic method) to increase the growth and harvesting period and THC in the plants*
- *Growing for personal use but supplying to others on a non-commercial basis*
- *Period over which the offending has continued.*
- *Estimated value of the crop, if available.*
- *Assumed yield or the weight of dried cannabis*
- *Supply to others on a non-commercial basis in category 4.*

Factors reducing seriousness or reflecting personal mitigation

- *Involvement due to pressure, intimidation or coercion falling short of duress (as opposed to being a wiling party), except where already taken into account at step one. Acting under duress or undue influence.*
- *Isolated incident*
- *No previous convictions or no relevant or recent convictions*
- *Offender's vulnerability was exploited*
- *Remorse*
- *Good character and/or exemplary conduct*
- *Determination and/or demonstration of steps having been taken to address addiction (whose offending sits at the lower end of the scale in terms of seriousness) or offending behavior*
- *Serious medical conditions requiring urgent, intensive or long-term treatment*
- *Age and/or lack of maturity*
- *Mental disorder, impairment or diminished responsibility short of insanity or learning disability*
- *Personal circumstances, sole or primary carer for dependent relatives only in relation to category 4.*
- *Assumed yield or the weight of dried cannabis*
- *Sales are infrequent and of limited extent in category 3.*

[40] Cultivation of illicit drugs has been held to be a more serious offence than mere possession in that the latent risk to consumers and potential consumers is dramatically increased. It was held by the English Court of Appeal in ***Auton*** [2011] EWCACrim76:

> *"Cultivation is further widening and socializing the use of an illegal drug and making it available in the circumstances where the risk of detection is reduced."*

[41] In ***Zhang*** it was held that:

> *'Deterrence, denunciation and accountability are likely to be at the forefront of decisions in drug cases….'*

[42] Again in **R v Xiong Xu** [2007] EWCA Crim 3129 the Court of Appeal (Criminal Division) in UK it was said that:

> *'3. ….The fact that these operations are so remunerative means that the court is bound to consider deterrent sentences. Clearly the value of a deterrent sentence may be less in relation to those at the bottom end of the hierarchy,….. But for those with greater involvement, the length of sentence must reflect the fact that they stand to make a substantial profit from their criminal activities….'*

[43] In **R v Terewi** [1999] 3 NZLR 62, the Court of Appeal of New Zealand held:

> *'[15] The paramount consideration, is, we repeat, the deterrence of others, and by that means to reduce the prevalence of cannabis use and dependence in this country…'*

[44] In following this guideline judgment the sentencers should also remember the remarks in ***Zhang*** where New Zealand Court of Appeal further stated:

> *'[47] The prime justification and function of the guideline judgment is to promote consistency in sentencing levels nationwide. Like cases should be treated in like manner, similarly situated offenders should receive similar sentences and outcomes should not turn on the identity of the particular judge.*
>
> *[48] Consistency is not of course an absolute and in the guideline judgments, this Court has been careful to emphasise that sentencing is still an evaluative exercise. The guideline judgments are just that, "guidelines", and must not be applied in a mechanistic way. The bands themselves typically allow a significant overlap at the margins. Sentencing outside the bands is also not forbidden, although it must be justified.'*

[45] Sentencing is founded upon two premises that are in perennial conflict: individualized justice and consistency. The first holds that courts should impose sentences that are just and appropriate according to all of the circumstances of each particular case. The second holds that similarly situated offenders should receive similar sentencing outcomes. The result is an ambivalent jurisprudence that challenges sentencers as they attempt to meet the conflicting demands of each premise[8].

[46] Sentencing guidelines are designed to find the correct equilibrium between giving a sentencing magistrates or judges sufficient discretion to tailor a sentence that is appropriate in the circumstances of the individual case, yet limiting discretion enough to achieve consistency between cases. Justice O'Regan in **R v Taueki** [2005] 3 NZLR 372 (CA) went to significant lengths to highlight the need to avoid a 'rigid or mathematical approach'.

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8 Sarah Krasnostein and Arie Freiberg "Pursuing Consistency in an Individualist Sentencing Framework: If You Know Where You're Going, How Do You Know When You've Got There?" (2013) 76 Law and Contemp Probs 265 at 265.

Appellant's appeal against sentence

[47] ***Zhang*** also dealt with the vexed question as to whether a guideline judgment applies retrospectively. As I stated in **Kumar v State** [2022] FJCA 164; AAU117.2019 (24 November 2022), this debate continues still unresolved by the Supreme Court. Therefore, I find that the manner in which the Court of Appeal in New Zealand in ***Zhang*** approached the same issue is a useful piece of legal literature of persuasive value to consider at this stage.

> *[187] This judgment is to be issued on 21 October 2019. It applies to all sentencing that takes place after that date regardless of when the offending took place. The more difficult issue is whether it should also apply to those who have already been sentenced and if so in what circumstances. (emphasis added)*
>
> *[188] The approach that has consistently been taken by this Court in previous guideline judgments is that the judgment only applies to sentences that have already been imposed, if and only if two conditions are satisfied: (a) that an appeal against the sentence has been filed before the date the judgment is delivered; and (b) the application of the judgment would result in a more favourable outcome to the appellant. (emphasis added)*
>
> *[189] We have considered whether this approach is consistent with s 25(g) of the New Zealand Bill of Rights Act and s 6 of the Sentencing Act. Section 6 states that an offender has the right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty. Section 25(g) is to similar effect.*
>
> *[190] However, we have concluded that neither section is engaged in the current context. That is because a change in sentencing practice does not alter the penalty provided by the legislation creating the offence but is an exercise of the sentencing discretion in an individual case. To put it another way, a change in guideline does not amount to a change of penalty for the purposes of those two provisions.*
>
> *[191] We are satisfied that the approach adopted in the past should also be applied to this judgment. It is a principled approach that preserves the integrity of the criminal justice system.'*

[48] This judgment will be delivered on 25 May 2023. Based on ***Zhang,*** I could apply this guideline judgment to the appellant's case as he had filed his appeal in 2017 but I am not sure whether the application of this guideline judgment is likely to result in a more favourable outcome to the appellant and if not, I would not apply it to the appellant.

[49] The appellant argues against his sentence on the premise that the trial judge in selecting the starting point at 09 years and added 02 years for aggravating factors which included the quantity of 5.5 kg and the fact that he had cultivated cannabis sativa 100 meters away from the magistrates' court.

[50] There is a lurking doubt whether there had been an error of double counting (see **Senilolokula v State** [2017] FJCA 100; AAU0095 of 2013 (14 September 2017); **Nadan v State** [2019] FJSC 29; CAV0007.2019 (31 October 2019), unwittingly though, for the trial judge may have already incorporated the weight of 5.5 kg in selecting the starting point of 09 years.

[51] Nevertheless, this court will see whether the ultimate sentence of 09 years of imprisonment is justified. I am reminded of the well- established legal position that when a sentence is reviewed on appeal, again it is the ultimate sentence rather than each step in the reasoning process that must be considered (vide **Koroicakau v The State** [2006] FJSC 5; CAV0006U.2005S (4 May 2006). In determining whether the sentencing discretion has miscarried the appellate courts do not rely upon the same methodology used by the sentencing judge. The approach taken by courts is to assess whether in all the circumstances of the case the sentence is one that could reasonably be imposed by a sentencing judge or, in other words, that the sentence imposed lies within the permissible range (**Sharma v State** [2015] FJCA 178; AAU48.2011 (3 December 2015).

Facts in brief

[52] Between 01 October 2011 and 08 February 2012, the appellant had been allegedly cultivating cannabis sativa plants at Savusavu in a farm situated about 100 meters away from Savusavu Magistrates' Court. On 08 February 2012, PC 4799 Peter Pickering (PW1) and another had come to the farm to check on its owner and saw the appellant hiding behind a tree log. PW1 had chased and arrested the appellant. PW1 had called reinforcements and three other police officers arrived and all of them uprooted 20 cannabis sativa plants from the farm. The plants had been later taken to Koronivia Research Station for analysis. The Government Analyst had confirmed that

the plants were cannabis sativa and weighed 5.5 kilograms. The appellant had been interviewed by police on 08 and 09 February 2012 and he had admitted the offence. The appellant remained silent at the trial. He had been tried and convicted on his confessional statement and other evidence.

[53] From the facts of the case, it is clear that the appellant's case comes under category 3 in terms of harm. Although, it had been a small scale operation, the appellant had played the leading role in it. In his cautioned interview led in evidence he had revealed that he was also a farmer planting cassava, pineapple, passion fruit, banana, vudi, bele, dalo and yaqona, baigan etc. and used to do part time landscaping. He was farming on another's land since he left school. He had bought a pack of cannabis seedlings at $50 from Lambasa and planted 20 and cultivated them for 04 months on his farm cleaning cannabis plantation every two weeks. According to him, this was the first time he had done it. However, he had admitted that he knew that planting cannabis was not allowed and he could be taken to court for that. Thus, it is very clear that he was cultivating cannabis by and for himself with a view to obtaining profits despite having had a steady livelihood as a farmer and a part time landscaper. He also knew that what he was doing was unlawful. Given all the circumstances, the appellant's sentence would fall in the range of 07-12 years with 08 years as the starting point as per the Sentencing Table.

[54] The learned trial judge applying ***Sulua*** guidelines for cultivation had selected a starting point of 09 years and ended up with the final sentence of 09 years after adjusting for aggravating and mitigating factors. There is a concern whether there had been double counting as well, for aggravating factors for which 02 more years were added may have been unwittingly counted in selecting the starting point of 09 years. No other reasons had been given for picking 09 years as the starting point. Nevertheless, if the appellant is to be sentenced according to the Sentencing Table he may not be likely to receive a sentence less than 09 years. Therefore, I would not apply the guidelines given here but would not disturb the existing sentence as in all circumstances of the case it appears to fit the gravity of the appellant's offending.

Mataitoga, JA

[55] I have reviewed and I agree with your reasoning and conclusions.

Qetaki, JA

[56] I have considered the judgment in draft. I agree with the judgment and the reasoning.

The Orders of Court are:

1. Appeal against conviction is dismissed (upon the abandonment).
2. Appeal against sentence is dismissed.

.....
Hon. Mr. Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL

COURT OF APPEAL FIJI

.....
Hon. Mr. Justice I. Mataitoga
JUSTICE OF APPEAL

.....
Hon. Mr. Justice A. Qetaki
JUSTICE OF APPEAL

Solicitors:

Legal Aid Commission for the Appellant
Office for the Director of Public Prosecutions for the Respondent

Annexure A

No.	Case Name	Citation	Date of Offending	Date of Sentencing	Tariff Applied	Number of plants	Weight	Sentence
1	State v Koro - Sentence	[2019] FJHC 730	*1st day of November 2018 and the 21st day of February 2019*	25th July 2019	Tarrif in the case of State v Nabenu	196 plants	40.17 kilograms	7 years and 7 months of imprisonment period, with 5 years and 7 months of non-parole period.
2	State v Dreduadua - Sentence	[2010] FJHC 62	1st day of December 2014 to the 6th day of January 2015	26 May 2016	Tariff in Sulua (supra)	41 plants	10 kg	12 years and 8 months imprisonment with 12 years non- parole.
3	State v Vitukawalu	[2016] FJHC 607	1st day of July 2011 and the 3rd day of January 2012	8 July, 2016	Tariff in Sulua(supra)	32 plants	11 kg	13 years imprisonment , with a non-parole period of 11 years imprisonment

4	State v Ratu	[2016] FJHC 754	1st day of December 2014 and 7th day of January 2015	25 August 2016	Tariff in Sulua(supra)	228 plants	26.4kg	13 years imprisonment, with a non-parole period of 12 years imprisonment
5	State v Koli	[2016] FJHC 1015	October 2015 to the 27th day of January 2016	09 November 2016	Tariff in Sulua (supra)	103 plants	18.3 kg	6 years and 11 months imprisonment, with a non-parole period of 5 years and 11 months imprisonment
6	Tuidama v State (Appeal matter from MC to HC)	[2016] FJHC 1027	11th day of November, 2015	14thNovember 2016.	Did not agree with the tariff in Kini Sulua and had followed the proposed tariff in Bavesi v State with modifications:	13 plants	2.68kg	Initial sentence of 4 years and 6 months with a non-parole period of 4 years reduced to 17 months imprisonment.

7	State v Tavailagi	[2016] FJHC 1039	14/11/2015	18 November 2016	Tariff in Tuidama v State	264 plants	43.9kg	06 years, 07 months imprisonment with a non-parole period of 04 years, 05 months
8	State v Kuboutawa	Sentence [2016] FJHC 1062	Between 1 January 2015 and 21 March 2015	23 November 2016	Tariff in Sulua(supra)	147 plants	10.9 kg	8 years imprisonment with a non parole period of 6 years and 6 months .
9	State v Dukubure	[2017] FJHC 310	13 January 2017	28/04/2017	Tariff in Tuidama v State	74 plants	4.34 kg	3 years and 8 months imprisonment with a non parole period of 1 years and 8 months .

10	State v Tabusoi -	Sentence [2017] FJHC 400	13 July 2016	01 June 2017	Tariff in Sulua(supra)	128 plants	4960grams	7 years 4 months imprisonment with a non-parole period of 6 years imprisonment
11	State v Qaranivalu	Sentence [2017] FJHC 414	30/03/18	15/06/18	Tariff in Sulua(supra)	32 plants	11 kilograms	12 years imprisonment, with a non-parole period of 10 years imprisonment
12	State v Matakorovatu	[2017] FJHC 742	15/09/2016	29/09/ 2017	Tariff in Tuidama v State	*824 plants*	7975.7 grams	08 years and 11 months imprisonment with a non-parole period of 06 years and 11 months

13	State v Tabusoi -	Sentence [2017] FJHC 785	26/08/2014	23/10/ 2017	Tariff in Sulua (supra)	*127 plants*	8.6 kg	10 years' imprisonment to be served concurrently with the existing prison term with a non-parole period of 8 years
14	State v Salevuwai	[2018] FJHC 11	16/01/2018	19/01/ 2018	Disagreed with Sulua and did not use either tariff from Bavesi or Tuidama	17 plants	12 kg	3 years' imprisonment with a non-parole period of 2 years
15	State v Vuicakau	[2018] FJHC 12	22/12/2017	19/01/2018	Disagreed with Sulua and did not use either tariff from Bavesi or Tuidama	*21 plants*	17.1kg	4 years' imprisonment with a non-parole period of 3 years

16	Dibi v State (Appeal matter from MC to HC)	[2018] FJHC 86	12th January 2017	19th February 2018	Disagreed with Sulua and did not use either tariff from Bavesi or Tuidama. Tariff adopted from the case *In re Koroi et al* HAR002-006.2012 (20 April 2012)	*23 plants and some loose seeds*	23 plants - 29.7 grammes Seeds -2.7 grammes TOTAL: 32.4 grammes.	Initial sentence was 3 years imprisonment with no minimum term reduced to 14 months imprisonment with no minimum term.
17	State v Ratokabula -	Sentence [2018] FJHC 163	26/09/ 2016	9/3/2018	Tariff from Sulua (Supra)	170 plants	21.95kg	12 years imprisonment, with a non-parole period of 11 years imprisonment

18	State v Nabenu (appeal from MC to HC)	[2018] FJHC 539	24/03/2017	25/06/2018	Proposed another tariff as per table 1	*34 plants*	10kg	Initial sentence of 18 months imprisonment increased to 2 years', 11 months and 2 weeks imprisonment with a non-parole of 2 years.
19	State v Kaitani	Sentence [2018] FJHC 605	15/09/2016	16/07/2018	Tariff from Nabenu	*824 plants*	7975.7 grams	14 years and 2 months imprisonment with a non-parole period of 12 years and 2 months.
20	State v Bati	[2018] FJHC 762	22 June 2010	21 August 2018	Made references to Sulua and Koroivuki v State [2013] FJCA 15	71 plants and dried leaves	Plants – 4kg Dried leaves - 274.8 grams	3 ½ years' imprisonment with a non-parole period of 2 years

21	State v Koroitamana	Sentence [2018] FJHC 798	Between 01 August 2017 and 09 October 2017	27 August 2018	Tariff in Sulua	462 plants	7.6 kilograms (7636.5grams)	7 years imprisonment with a minimum term of 5 years
22	State v Tobua	Sentence [2019] FJHC 97	Between the 1st day of November, 2016 and the 31st day of March, 2017	19 February, 2019	Tariff in Sulua	46 plants	8 kg	11 years and 4 ½ months imprisonment with a non-parole period of 9 years imprisonment
23	State v Ravia	Sentence [2019] FJHC 381	*9th day of June 2017*	30 April, 2019	Tariff in Sulua	87 plants	34.2kg	12 years imprisonment, with a non-parole period of 10 years imprisonment.
24	State v Koro	Sentence [2019] FJHC 730	*Between the 1st day of November 2018 and the 21st day of February 2019*	25th July 2019	Tariff in Nabenu	*196 plants*	40.17 kg	*7* years and 7 months of imprisonment period, with 5 years and 7 months of non-parole period

25	State v Kurinacoba	Sentence [2019] FJHC 1103	Between 1 October 2016 and 6 March 2017	20 November, 2019	Tariff in Sulua	*1589 plants*	*198 kilograms*	17 years imprisonment, with a non-parole period of 15 years imprisonment
26	State v Nasila	[2020] FJHC 195	*18th day of November, 2013*	06 March, 2020	Tariff in Sulua and Nabenu	3,085 plants	9,105.9 grams	16 years imprisonment with a non-parole period of 14 years
27	State v Kawa -	Sentence [2020] FJHC 218	*12/01/2018*	16/03/2020	Tariff in Sulua	*37 plants*	15kg	8 years imprisonment. No non-parole fixed
28	State v Calevu	Sentence [2020] FJHC 450	*6/3/2017*	26/06/2020	Tariff in Sulua	*1206 plants*	6.2kg	7 years imprisonment, with a non-parole period of 5 years

29	Vatuwaliwali v State (Appeal from MC to HC)	[2020] FJHC 549	*25/06/2019*	23 July, 2020.	Tariff in Sulua	No mention of number of plants	*111.5 grams*	Initial sentence of 75 months imprisonment with a non parole of 65 months reduced to 12 months imprisonment .
30	State v Yabakidrau	[2021] FJHC 110	*15/12/2018*	19/2/2021	Tariff in Sulua	*2447 plants*	369 kilograms	10 years imprisonment , with a non-parole period of 5 years imprisonment
31	Toga v State (Appeal from MC to HC)	[2021] FJHC 243	*21/08/ 2020*	1/10/2021	Tariff in Nabenu	*172 plants*	962 grams	3 years and 6 months imprisonment , with a non-parole period of 2 years and 6 months affirmed in HC after appeal.

32	Naqiolevu v State	[2022] FJHC 47	*11/02/2022*	08/06/2018	Tariff in Sulua	*445 plants plus some materials.*	16.353 kg	Initial sentence of 7 years 7 months 17 days imprisonment with a non-parole of 6 years is substituted with a sentence of 6 years 6 months with a non-parole period of 5 years
33	State v Wasawasa -	Sentence [2022] FJHC 66	*13/10/2020*	18/02/2022	Tariff in Sulua	*227 plants*	10.73 kg	4 years imprisonment , with a non-parole period of 2 years imprisonment

Annexure B

CLASS B	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	**Starting point** 8 years' custody	**Starting point** 5 years 6 months' custody	**Starting point** 3 years' custody
	Category range 7 – 10 years' custody	**Category range** 5 – 7 years' custody	**Category range** 2 years 6 months' – 5 years' custody
Category 2	**Starting point** 6 years' custody	**Starting point** 4 years' custody	**Starting point** 1 year's custody
	Category range 4 years 6 months' – 8 years' custody	**Category range** 2 years 6 months' – 5 years' custody	**Category range** 26 weeks' – 3 years' custody
Category 3	**Starting point** 4 years' custody	**Starting point** 1 year's custody	**Starting point** High level community order
	Category range 2 years 6 months' – 5 years' custody	**Category range** 26 weeks' – 3 years' custody	**Category range** Low level community order – 26 weeks' custody
Category 4	**Starting point** 18 months' custody	**Starting point** High level community order	**Starting point** Low level community order
	Category range 26 weeks' – 3 years' custody	**Category range** Medium level community order – 26 weeks' custody	**Category range** Band B fine – Medium level community order

Annexure C

Penalties for Cultivation, Supply or Possess Prohibited Plants		
Quantity	If Local Court	If District Court
Small Quantity	2 years imprisonment and/or $5,500 fine	10 years imprisonment and/or $220,000 fine
Indictable Quantity	2 years imprisonment and/or $11,000 fine	10 years imprisonment and/or $220,000 fine
Commercial Quantity	Cannot be dealt with in Local Court	15 years imprisonment and/or $385,000 fine
Large Commercial Quantity	Cannot be dealt with in Local Court	20 years imprisonment and/or $550,000 fine

Penalties for Cultivating Prohibited Plants by Enhanced Indoor Means		
Quantity	If Local Court	If District Court
Small Quantity	2 years imprisonment and/or $5,500 fine	10 years imprisonment and/or $220,000 fine
Indictable Quantity	2 years imprisonment and/or $11,000 fine	10 years imprisonment and/or $220,000 fine
Commercial Quantity	Cannot be dealt with in Local Court	15 years imprisonment and/or $385,000 fine
Large Commercial Quantity	Cannot be dealt with in Local Court	20 years imprisonment and/or $550,000 fine

Penalties for Cultivating Prohibited Plants by Enhanced Indoor Means for Commercial Purpose		
Quantity	If Local Court	If District Court
Small Quantity	Cannot be dealt with in Local Court	15 years imprisonment and/or $385,000 fine
Indictable Quantity	Cannot be dealt with in Local Court	15 years imprisonment and/or $385,000 fine
Commercial Quantity	Cannot be dealt with in Local Court	15 years imprisonment and/or $385,000 fine
Large Commercial Quantity	Cannot be dealt with in Local Court	20 years imprisonment and/or $550,000 fine

Penalties for Cultivating Prohibited Plants by Enhanced Indoor Means in Presence of Child			
Quantity	If Local Court	If District Court	For Commercial Purpose in District Court
Small Quantity	2 years imprisonment and/or $5,500 fine	12 years imprisonment and/or $264,000 fine	18 years imprisonment and/or $462,000 fine

Indictable Quantity	2 years imprisonment and/or $11,000 fine	12 years imprisonment and/or $264,000 fine	18 years imprisonment and/or $462,000 fine
Commercial Quantity	Cannot be dealt with in Local Court	18 years imprisonment and/or $462,000 fine	18-years imprisonment and/or $462,00 fine
Large Commercial Quantity	Cannot be dealt with in Local Court	24 years imprisonment and/or $660,000 fine	24 years imprisonment and/or $660,000 fine