

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

**CRIMINAL APPEAL NO. AAU 013 of 2022**  
**[High Court of Suva Criminal Case No. HAC 151 of 2019S]**

**BETWEEN** : **MOHAMMED RAMZAN**

***Appellant***

**AND** : **THE STATE**

***Respondent***

**Coram** : **Prematilaka, RJA**

**Counsel** : **Appellant in person**  
: **Mr. R. Kumar for the Respondent**

**Date of Hearing** : **03 January 2024**

**Date of Ruling** : **05 January 2024**

**RULING**

[1] The appellant had been charged at High Court of Suva on a single count of Unlawful Possession of Illicit Drugs contrary to section 5(a) of the Illegal Drugs Control Act. The information reads as follows.

***Statement of Offence***

***UNLAWFUL POSSESSION OF ILLICIT DRUGS***: *Contrary to Section 5(a) of the Illicit Drugs Control Act 2004.*

***Particulars of Offence***

***MOHAMMED RAMZAN on the 27<sup>th</sup> day of November 2017 at Sigatoka in the Western Division, without lawful authority had in his possession 5.5 kg of Illicit Drugs known as Cannabis Sativa.***

[2] After trial, the appellant was found guilty and on 18 February 2022 he was sentenced to 05 years of imprisonment subject to a non-parole period of 03 years. The appellant's appeal against conviction and sentence is timely.

[3] The brief summary of facts is as follows.

*'2. The brief facts were as follows. On 27 November 2017, at about 11.30 pm, you were driving a rental vehicle registration number LR 4303 from Suva to Nadi. It was a black Honda vehicle. No one else, but you were in the vehicle. The police were conducting a road block operation at Korolevu Community Police Post. The police stopped your car, searched the same and found two bags in the boot containing dried leaves. The same was later analysed by a government analyst, and it was confirmed that the dried leaves were cannabis sativa, weighing 5.5 kg. You were caution interviewed by police on 28 and 29 November 2017, and you admitted carrying the dried leaves in your rental car at the material time, but denied knowledge of the same. You had been tried and the court had found that you physically possessed the illicit cannabis sativa drug at the material time in your car, and you knew at the time it was an illicit drug.'*

[4] In terms of section 21(1) (b) and (c) of the Court of Appeal Act, the appellant could appeal against conviction and sentence only with leave of court. For a timely appeal, the test for leave to appeal against conviction and sentence is 'reasonable prospect of success' [see Caucau v State [2018] FJCA 171; AAU0029 of 2016 (04 October 2018), Navuki v State [2018] FJCA 172; AAU0038 of 2016 (04 October 2018) and State v Vakarau [2018] FJCA 173; AAU0052 of 2017 (04 October 2018), Sadrugu v The State [2019] FJCA 87; AAU 0057 of 2015 (06 June 2019) and Waqasaqa v State [2019] FJCA 144; AAU83 of 2015 (12 July 2019) that will distinguish arguable grounds [see Chand v State [2008] FJCA 53; AAU0035 of 2007 (19 September 2008), Chaudry v State [2014] FJCA 106; AAU10 of 2014 (15 July 2014) and Naisua v State [2013] FJSC 14; CAV 10 of 2013 (20 November 2013)] from non-arguable grounds [see Nasila v State [2019] FJCA 84; AAU0004 of 2011 (06 June 2019)].

[5] Further guidelines to be followed when a sentence is challenged in appeal are whether the sentencing judge (i) acted upon a wrong principle; (ii) allowed extraneous or irrelevant matters to guide or affect him (iii) mistook the facts and (iv) failed to take into account some relevant considerations [vide Naisua v State [2013] FJSC 14;

CAV0010 of 2013 (20 November 2013); **House v The King** [1936] HCA 40; (1936) 55 CLR 499, **Kim Nam Bae v The State** Criminal Appeal No.AAU0015].

[6] The grounds of appeal urged by the appellant are as follows.

**'Conviction**

**Ground A**

*THAT the Learned Trial Judge erred in law and fail to define the elements of the offence Illicit Drugs under the Crimes Act in the Judgment:*

- a) *First element*
- b) *Second element*
- c) *Third element*
- d) *Forth element*

**Ground B**

*THAT the Learned Trial Judge erred in law and failed to consider that the prosecution failed to prove the elements of the case beyond reasonable doubt that the photographs of the vehicle was not tendered in trial to confirm evidence of the investigation team from which part of the vehicle the Illegal Drugs was found.*

**Ground C**

*THAT the Learned Trial Judge erred in law in not considering the evidence of defence witness no. 2 where he stated that the two [2] bags were put inside the car at Flagstaff by one junior.*

**Ground D**

*THAT the Judgment is unfair, unbalance not giving accurate direction regards to the law.*

**Ground E**

*THAT the Learned Trial Judge erred in law thus failed to consider and give accurate warning in his Judgment regards to inconsistent nature of the prosecution witnesses evidence.*

**Ground F - Sentence**

*The Sentencing Judge erred in law in sentencing the appellant with the higher tariff thus failed to impose a fine or suspended sentence on the first time offender under section 15(1) (b) and section 26 (1) (5) of the Sentencing and Penalties Act 2019.*

**Ground A**

[7] This ground of appeal is misconceived in that the trial judge had clearly analyzed the elements of the offending at paragraph 08 of the judgment.

**Ground B**

[8] The appellant was not in denial of the fact that he had physical possession of the illicit drugs. His defence was lack of knowledge of the contents of the two bags he was transporting in the vehicle. Thus, the photographs of the vehicle to confirm as to which part of the vehicle the illegal drugs was found was of little value to the prosecution case. In any event, it was not a trial issue. Paragraphs 16-17 of the judgment deal with the fallacy of the appellant's defense.

**Ground C**

[9] The trial judge was quite mindful of DW2's evidence as stated at paragraph 15 of the judgment and considered the same.

**Ground D**

[10] This ground of appeal is vague and lacks specificity. In any event, the trial judge had not erred with regard to the evidential burden on the appellant as adverted to in **Kumar v State** [2023] FJCA 125; AAU132 of 2018 (27 July 2023).

**Ground E**

[11] The trial judge had not found any inconsistencies in the prosecution case.

**Ground F (sentence)**

[12] The final sentence is well below the sentencing tariff of ***Kini Sulua*** for possession of 5.5 kg of illicit drugs known as Cannabis Sativa.


[13] 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)]. The approach taken by the appellate court in an appeal against sentence 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)].

### **Orders**

1. Leave to appeal against conviction is refused.
2. Leave to appeal against sentence is refused



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