

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NO. HAM 152 OF 2013S

STATE

VS

ANASA TOLOI

**Counsels : Ms. M. Fong for State
Mr. T. Muloilagi for Accused**

Hearing : 25th June, 2013

Ruling : 27th June, 2013

Written Reasons: 5th July, 2013

**WRITTEN REASONS FOR REFUSAL OF STATE'S APPLICATION
TO VACATE TRIAL DATE**

1. In Suva High Court Criminal Case No. HAC 048 of 2013, the accused faced the following information:

FIRST COUNT

Statement of Offence

UNLAWFUL CULTIVATION OF ILLICIT DRUGS:

Contrary to Section 5 (a) of the Illicit Drugs Control Act
2004.

Particulars of Offence

ANASA TOLOI on the 14th day of February, 2012, at Muaidule Farm, Kadavu, in the Southern Division, without lawful authority, cultivated 30 plants of cannabis sativa, and illicit drug, weighing a total of 692.2 grams.

SECOND COUNT

Statement of Offence

UNLAWFUL CULTIVATION OF ILLICIT DRUGS:

Contrary to Section 5 (a) of the Illicit Drugs Control Act 2004.

Particulars of Offence

ANASA TOLOI on the 14th day of February, 2012, at Luvuluvu Farm, Kadavu, in the Southern Division, without lawful authority, cultivated 37 plants of cannabis sativa, an illicit drug, weighing a total of 23.5 kilograms.

2. On his first appearance in the Suva Magistrate Court on 18th February, 2012, the accused appeared to waive his right to counsel, and pleaded guilty to the above charges. He admitted the summary of facts, which were similar to the particulars of offence. He was found guilty as charged and convicted accordingly. He made his plea in mitigation, and on 20th March, 2012, he was sentenced to 2 years 1 month and 11 days imprisonment, on both counts. This sentence, with respect, had no regard to two High Court binding authorities, at the time, when an accused possessing 5.2 kg of marijuana, was given a sentence of 8 years imprisonment, in **State v Kini Sulua**, HAC 023 of 2008, High Court, Lautoka, and in **State v Sheik Mohammed**, HAC 033 of 2009, High Court, Labasa, where the accused was given a sentence of 10 years imprisonment for possessing 4.8 kg of marijuana.

3. This was a case of unlawful cultivation of 23.5 kg of marijuana, more than 4 times the amount involved in the above High Court cases. In Criminal Review Case No. HAM 010 of 2012S, Mr. Anasa Toloi's conviction and sentence in the Suva Magistrate Court in 2012 was quashed and set aside by the Suva High Court on 19th October, 2012, on the ground that the Magistrate Court lacked jurisdiction to try illicit drug cases above 4 kg, as a result of the majority Court of Appeal decision in **Kini Sulua, Michaela Ashley Chandra v State**, Criminal Appeal No. AAU 0093 of 2008 and 0074 of 2008. A High Court trial was ordered.
4. On 8th February, 2013, Mr. Anasa Toloi's case first came before the High Court. The prosecution was given 4 weeks to file and serve the information and disclosures. The accused was given the right to look for counsel. The prosecution filed the information and disclosures on time, on 8th March, 2013. The accused asked for further time to look for counsel. He found Mr. T. Muloilagi on 19th April, 2013. The parties were given the 10th May 2013 to agree to a trial date. On 10th May, 2013, both parties agreed to trial between the 8th and 12th July, 2013, and the same was set accordingly.
5. On 24th June, 2013, the prosecution filed a notice of motion and an affidavit in support asking for the 8th to 12th July 2013 trial to be vacated. A copy of the application was served on the defence, and they replied with an affidavit on 25th June, 2013. I heard the parties on 25th June 2013, and adjourned to 27th June, 2013 for a ruling. The prosecution filed written submissions on 27th June 2013. On the same date, I ruled against the State's application, and said I would give my reasons later. Below are my reasons.
6. The Suva High Court has a busy schedule. At the moment, I have 27 cases with trial dates set between July 2013 to July 2014; in most cases, cases are tried week in and week out. At the moment, I have 62 cases awaiting trials, with no trial date fixed. Cases are often "slotted in", when time are available. In HAC No. 139 of 2012, a murder case, 8 weeks trial time was set between 6th May to 28th June 2013. Unexpectedly, the accuseds pleaded guilty on 6th May 2013, leaving 7 weeks "free time". Cases had to be rescheduled to fill in the above "free time". Given that Anasa Toloi had been in custody since 18th February, 2012, and the parties agreed to trial between 8th to 12th July 2013, it was prudent to conduct the trial as previously agreed to. The accused also had

his right to be tried within a reasonable time, and is presumed innocent until proven guilty beyond reasonable doubt in a court of law. The fact that the original police docket had been misplaced and/or lost by the prosecution in other related drug cases, was no reason to hold up this case. Previously, in Fiji's criminal justice system, lost police files had not prevented the prosecution of pending criminal cases. According to disclosure documents, police officers allegedly went to the crime scene, uprooted illicit drug plants and had them examined by the government analyst. The State's affidavit did not state that all these witnesses had died, and cannot be produced in court. Furthermore, "the error of law" allegedly made by the High Court in reviewing this case in HAM 010 of 2012S, was not clearly spelt out by the State, in their appeal papers to the Court of Appeal, leading to a strong possible inference that they are trying to derail the trial in this case, as an excuse to "buy time" to resolve the "missing police docket" episode in the other drug cases. In any event, as highlighted in paragraph 2 hereof, the sentence in the Magistrate Court, in this case, flew in the face of the binding High Court authorities, mentioned therein, and thus, it is not proper in law, to ask the Court of Appeal, to re-instate sentences that violate binding precedents. Vacating the trial in this case, will add to the backlog of the 62 cases already awaiting trial dates. The defence is demanding trial as arranged, and strongly objected to the State's application. In my view, given the above, it is in the public interest, and the interest of justice that, the trial of this case, proceed as previously arranged. Consequently, because of the above, I dismissed the State's application on 27th June, 2013.

Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva**
Solicitor for the Accused : **Muloilagi & Associates, Suva.**