

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
CRIMINAL JURISDICTION

Criminal Case No. HAC 84 of 2015

BETWEEN : STATE

AND : JOSEVA VONOKULA  
ILIAVI SAULEDECI

Counsel : Ms. J. Fatiaki for the State  
Ms. S. Ratu for both Accused Persons

Date of Hearing : 24th of September 2015

Date of Sentence : 30th of September 2015

SENTENCE

1. You, Joseva Vonokula and Iliavi Sauledeci, stand convicted for one count of Unlawful Cultivation of Illicit Drugs, contrary to Section 5(a) of the Illicit Drugs Control Act, 2004. which carries a maximum penalty of life imprisonment or fine not exceeding \$ 1,000,000 or both.
2. Both of you pleaded guilty for this offence on your own free will on the 24th of September 2015. Having satisfied that you have fully comprehended the legal effect of your pleas and that your pleas were voluntary and free from influence, I convicted both of you for this offence of Unlawful Cultivation of Illicit Drugs.
3. It was revealed in the summery of fact, which you admitted in open court, that both of you have cultivated marijuana in the highlands of Navosa. The Police has found and uplifted 9 plants and 320 plants respectively from two places near the stream in the jungle. The distance between the two places were only 30 meters. The plants that were uprooted from the farm were sent to the

Government Analyst and it was confirmed that the Plants are known as Indian Hemp botanically known as Cannabis Sativa and contains 119.2 Kilograms.

4. Cannabis sativa, commonly known as marijuana is an addictive illicit drug, which carries wide spectrum of adverse personal and social effects. The provisions of the Illicit Drugs Control Act, 2004, reflects the serious social consideration of the prevention of cultivation of such drugs in Fiji. Accordingly, the Sentencing of offenders for such offences, must reflect the intention of the legislature, which is mainly founded on the principles of prevention and deference of offenders of committing such offences.
  
5. Justice Temo in **Kini Sulua and Michael Ashley Chandra v The State ( 2012) FJCA 33; AAU0093.2008 (31 May 2012)** has set down guidelines for tariff for the offences under section 5(a) and 5 (b) of the Illicit Drugs Control Act in respect of cannabis sativa, where his lordship held that;
  - I. **Category 1:** *possession of 0 to 100 grams of cannabis sativa - a non-custodial sentence to be given, for example, fines, community service, 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.*
  
6. Having articulated four sets of categories of tariff for the possession of cannabis sativa based on the weight, Justice Temo has then extended the application to other categories of offending actions as stipulated under Section 5(a) and (b) of the Act, where His Lordship held that;

*“Section 5(a) of the Illicit Drugs Control Act 2004 treated the verbs "acquires, supplies, possesses, produces, manufactures, cultivates, uses or administers an illicit drug" equally. All the verbs are treated equally. In other words, all the offending verbs or offending actions are treated equally. "Supplies, possesses, manufactures and cultivates" are treated equally, and none of the offending actions are given any higher or lower standing, as far as section 5(a) of the Illicit Drugs Control Act 2004 was concerned. It follows that the penalties applicable to possession, must also apply to the offending verbs of "acquire, supplies, produces, manufactures, cultivates, uses or administers". That is the will of Parliament, as expressed in the words of section 5(a) of the Illicit Drugs Control Act 2004. Consequently, the four categories mentioned above, apply to each of the verbs mentioned in section 5(a) of the 2004 Act mentioned above. The weight of the particular illicit drug will determine which category the case falls under, and the applicable penalty that will apply”.*

7. Accordingly, it appears that the determination of the applicable tariff limit is mainly founded on the quantity of the illicit drugs concerned. In this case, the weight of the Cannabis cultivated by the two accused persons are 119.2 kilograms, which is significantly higher than the starting point of weight considered in category 4 as stipulated in Kini Sulva ( supra). Both of you admitted in your respective caution interviews that the purpose of cultivation was not for recreational, but for commercial. Having considered the weight and purpose of the cultivation, I select 14 years as the starting point for each of you.
8. The Summery of Fact does not reveal any other specific aggravating facts. Hence, I now turn onto the mitigating factors.
9. It was submitted by the learned counsel of the defence, that the first accused is 31 years old and has a young family. His son is 5 years old. The second accused is the younger brother of the first accused and 20 years old. Both of them expressed their remorsefulness and pleaded guilty at the first available opportunity. Both of them are first offenders and have spent 42 days in remand prior to this sentence. The prosecution informed the court that both the accused cooperated with the police during the course of investigation.

10. Having considered the early pleas of guilty I reduce 3 years and for other mitigating factors, I reduce one year and reach the final sentence of 10 years of imprisonment.
11. Mr. Joseva Vonokula, I accordingly sentence you for a period of 10 years of imprisonment for the offence of Unlawful Cultivation of Illicit Drugs, contrary to Section 5(a) of the Illicit Drugs Control Act.
12. Mr. Iliavi Saulebeci, I sentence you for a period of 10 years of imprisonment for the offence of Unlawful Cultivation of Illicit Drugs, contrary to Section 5(a) of the Illicit Drugs Control Act.
13. Both of you are not eligible for parole for a period of 8 years pursuant to Section 18 (1) of the Sentencing and Penalties Decree.
14. Thirty days (30) to appeal to Court of Appeal.



**R.D. R. Thushara Rajasinghe**

**Judge**

**At Lautoka**

**30th of September 2015.**

**Office of the Director of Public Prosecution for the State**

**Office of the Legal Aid Commission for the Accused**