

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 17 OF 2015

STATE

V

AKUILA KUBOUTAWA

Counsels : Ms. W. Elo for State  
Mr. P. Lomaloma for Accused

Hearing : 16 and 17 November, 2016

Summing Up : 18 November, 2016

Judgment : 21 November, 2016

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## JUDGMENT

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- [1] The accused, **Akuila Kuboutawa** was charged with a co-accused **Tomasi Rabuka** under section 5 (a) of the Illicit Drugs Control Act 2004 for Unlawful Cultivation of Illicit Drugs. It is alleged that they have cultivated 10.9 kgs of *Cannabis Sativa* between 1<sup>st</sup> day of January 2015 and the 21<sup>st</sup> day of March 2015 at Viani Village, Savusavu.
- [2] The co-accused **Tomasi Rabuka** pleaded guilty to the charge and is already dealt with. The accused pleaded not guilty to the charge. The ensuing trial lasted for 3 days. The prosecution presented evidence of three Police Officers, who were involved with the arrest of the accused and also of the officer who interviewed the accused.



- [3] At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused guilty to the charge of Unlawful Cultivation of Illicit Drugs.
- [4] I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
- [5] Prosecution case against the accused was solely based on the admissions made by him in the caution interview statement. The prosecution alleged that upon raid of three houses in the Viani village, the accused and his co-accused were arrested on 21<sup>st</sup> March 2015, and they have uprooted 147 plants of *Cannabis Sativa* from the farm of the co-accused on the same day. It was the co-accused who led the Police team to his farm; located in a hilly area, while the accused remained in the Police vehicle with two officers.
- [6] The plants uprooted from the farm, were then sent to Principal Scientific Officer of the Forensic Chemistry Unit of the Fiji Police Force, for identification and analysis. The Principal Scientific Officer, in her evidence, confirmed that the 147 plants were of the height ranging from 15 cm to 240 cm, with a total weight of 10.9 Kg, after removing its roots. Extracts taken from these plants were tested with two chemical tests and based on their results; she certified that the 147 plants as *Cannabis Sativa* plants. Her report was tendered to Court marked as **D.E. No. 1A** and **1B**.
- [7] The accused was interviewed by DC Saiyasi after caution, and at the conclusion of the interview, having read the record of the interview, he signed it. The statement was recorded voluntarily and the interview was not held under oppressive conditions. The iTaukei handwritten original statement was marked as **P.E. No. 2A** and its English translation was marked as **P.E. No. 2B**.
- [8] The accused did not dispute the claim of the prosecution that it was made voluntarily. However he opted to challenge some of the answers on the basis that they were not his answers and therefore these answers were fabricated by the interviewing officer. He also stated in his evidence that the statement was not read back to him and he also did not read it. The accused also disputed the English translations of some of the answers and called a former Court officer to provide an alternative translation of these answers. He also highlighted mistakes, errors in translation, insertion of certain words and deletion of certain other words in the English translation of the caution interview.
- [9] The assessors have found the evidence of prosecution acceptable and reliable, as they unanimously found the accused guilty as charged. They were directed in the summing up to evaluate the probability of the version of events as spoken to by the accused in his caution interview. The inconsistencies of the prosecution were also



highlighted along with that of the accused's evidence. The assessors were also directed to decide whether the caution statement was in fact made by the accused, as per the claim of fabrication and whether it was voluntarily made by him.

- [10] In my view, the assessor's opinion was not perverse. It was open for them to reach such a conclusion on the available evidence. I concur with the opinion of the assessors for the reasons given below.
- [11] The accused challenged to the validity of the caution interview, based on the allegation of fabrication. He did not challenge the entirety of the caution interview on that ground but limited his objection only to the admissions relied upon by the prosecution. In his answer to Q 34 in **P.E. No. 2B**, the accused has said "Tomasi Rabuka took me to the said farm to identify which ones of them are matured and also for cleaning the farm."
- [12] During cross examination, the accused stated that he was to go with the co-accused to his farm to show him how to identify the mature plants and also to show him how to clean his farm. He claimed that before they could go as planned the Police raided them. He also stated that when marijuana plants mature their leaves turn in to yellow colour. His position is that he only had to provide advice and that was also to be a future event, which is yet to take place.
- [13] These claims by the accused are clearly an afterthought in order to negate criminal liability. He admitted that he had a very close relationship with the co-accused whom he referred to as his "brother". They were cousins and the accused was the one who had more experience in farming. They farmed in close proximity and had regularly interacted. He knew how to identify the mature plants of marijuana.
- [14] Considering the evidence available, it is the considered view of this Court that the prosecution has proved beyond a reasonable doubt that the caution interview statement of the accused was made voluntarily and there was no oppression, ill treatment or inducements by the Police. This Court also finds that it was this accused who made the caution interview statements marked as **P.E. No. 2A**, and the contents of the statement is true. There is no reason to hold a different view to the Ruling on voir dire dated 16<sup>th</sup> November 2016.
- [15] This Court therefore, rejects the claim of the accused, that there were fabrications in his caution interview statement. The assessors must have also considered this position when they decided to reject the version of events advanced by the accused in his evidence.
- [16] When the accused showed his cousin how to clean the farm and to identify the mature plants of marijuana, the accused had "nurtured and tendered" these plants



and had therefore "cultivated" an illicit drug, as per the definition provided by the section 2 of the Illicit Drug Control Act. He knew its illegal to cultivate marijuana.

[17] There was no dispute whether the plants were *Cannabis Sativa* or marijuana, an illicit drug, and that it weighs 10.9 kg. There was no dispute as to the identity of the accused. Considering the nature of all the evidence before the Court, it is my considered opinion that the prosecution has proved its case beyond a reasonable doubt by adducing truthful and reliable evidence, satisfying all elements of the offence with which the accused was charged.

[18] In the circumstances, I convict the accused, **Akuila Kuboutawa** to the count of Unlawful Cultivation of Illicit Drugs, contrary to section 5 (a) of the Illicit Drugs Control Act 2004.

[19] This is the Judgment of the Court.



ACHALA WENGAPPULI

JUDGE



At Labasa

21 November, 2016

Solicitor for the State : Office of the Director of Public Prosecution, Labasa  
Solicitor for the Accused : Office of P. Lomaloma Esq., Barrister & Solicitor,  
Labasa