

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

Sentence : 23 November, 2016

SENTENCE

- [1] **AKUILA KUBOUTAWA**; after being convicted on a count of Unlawful Cultivation of Illicit Drugs, contrary to section 5 (a) of the Illicit Drugs Control Act 2004, you are to be sentenced by this Court.
- [2] You pleaded not guilty to above charge. The ensuing trial lasted for 3 days in this Court; during which, three Police officers who were involved with your arrest and the officer who interviewed you under caution gave evidence for the prosecution while you offered evidence under oath.

[3] At the conclusion of trial; having reviewed the evidence and its summing up to the assessors, this Court decided to accept their unanimous opinion and found you guilty and convicted you as charged.

[4] The following facts were proved during the trial:

(i) *You were arrested with your cousin brother Tomasi Rabuka during a raid conducted by Police on 21st March 2015. The co-accused led a Police team to the place where his farm is located. The Police team had uprooted 147 Cannabis Sativa plants weighing 10.9 kg and after analysis, the Principal Scientific Officer from the Forensic Chemistry Unit of the Fiji Police, confirmed that the plants were in fact Cannabis Sativa.*

(ii) *You were caution interviewed and you admitted voluntarily that "Tomasi Rabuka took me to the said farm to identify which ones of them are matured and also for cleaning the farm."*

(iii) *In giving evidence you said when marijuana plants mature their leaves turn yellow.*

[5] According to section 5 (a) of the Illicit Drugs Control Act 2004 , the punishment for Unlawful Cultivation of Illicit Drugs is imprisonment for life, a fine not exceeding \$ 1,000,000 or both. It is a serious offence.

[6] The 10.9 kg of marijuana is category 4 as per the judgment of Court of Appeal in ***Sulua and another v The State*** [2012] FJCA 33. The applicable tariff for category 4 for the offence of Unlawful Cultivation of Illicit Drugs is a term of imprisonment ranging from 7 years to 14 years.

[7] In determining the starting point within the said tariff, Goundar J, in ***Koroivuki v The State*** [2013] FJCA 15 has formulated the following guiding principles:

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting

point should be picked from the lower or middle range of the tariff."

- [8] Considering the nature of offending, and in the light of the above guiding principles, I commence the sentence of the accused at 10 years and 6 months of imprisonment for the count of Unlawful Cultivation of Illicit Drugs.
- [9] The aggravating factors that are highlighted by the prosecution are that:
- a. *lack of remorse,*
 - b. *role played by the accused in the cultivation of the illicit drugs,*
 - c. *weight of the illicit drugs.*
- [10] Of these aggravating factors, particularly lack of remorse could not be attributed to the accused for pleading not guilty to the charge. His role played in the cultivation as a joint enterprise already subsumed as his basis of liability. The weight of the illicit drug was already utilised to determine the category. In the circumstances, there are no aggravating factors in sentencing the accused.
- [11] The mitigating factors of the accused are:
- (i) *You are a first offender;*
 - (ii) *You co-operated with the Police during investigations.*
- [12] The accused claim that the plants were weighed as green plants and their water content is added to the weight. Therefore he moves that in determining the applicable category, its dried weight ought to be considered. This Court had to rely on the weight given by the Principal Scientific Officer at the time of her analysis. The only concession she has given in weighing is the removal of the roots of the plants. This Court is bound by the judgment of the Court of Appeal and it had not created a sub category on this aspect in sentencing an offender. Therefore, I do not take this ground as a mitigatory factor in favour of the accused.
- [13] I deduct 2 years for the above mitigating factors. Now the sentence of the accused is 8 years and 6 months.
- [14] The accused says that he was in remand for this case for about four months. I consider it as a six months period.

[15] I deduct that six months from your sentence as already spent remand period from the sentence and now the head sentence is 8 years.

[16] Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 6 years 6 months of non-parole period on the accused.

[17] Your final sentence is as follows:

Head Sentence - 8 years

Non parole period - 6 years and 6 months

[18] You have 30 days to appeal to the Court of Appeal.



ACHALA WENGAPPULI

JUDGE



At Labasa

23 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