

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 288 OF 2015S

STATE

vs

APAKUKI KAUYACA VITUKAWALU

Counsels : **Ms. S. Navia and Ms. B. Kantharia for State**
Mr. K. Maisamoa for Accused
Hearings : **13, 14, 15, 16, 17 and 20 June, 2016**
Summing Up : **22 June, 2016**
Judgment : **22 June, 2016**
Sentence : **8 July, 2016**

SENTENCE

1. In a judgment delivered on 22 June 2016, the court found you guilty and convicted you on the following information:

Statement of Offence

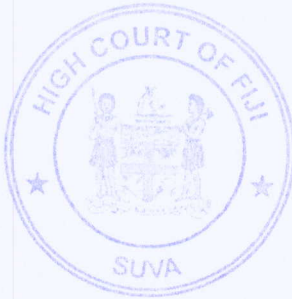
UNLAWFUL CULTIVATION OF ILLICIT DRUGS: Contrary to section 5 (a) of the
Illicit Drugs Control Act 2004.

Particulars of Offence

APAKUKI KAUYACA VITUKAWALU between the 1st day of July 2011 and the 3rd day of January 2012 at Kadavu in the Eastern Division, without lawful authority, cultivated 32 plants of Cannabis Sativa, an illicit drug, weighing 11.0 kg.

2. The brief facts were as follows. On 3 January 2012, on a tip off from your fellow villagers, the police raided your home and farm at Vuravu Settlement near Nasele Village, Kadavu. The police managed to uproot 154 marijuana plants from your farm and the same was taken to Kadavu Police Station for safe keeping. The same was later taken to Nabua Police Station for safe keeping. A sample of 32 plants from the total 154 marijuana plants were taken by the police to Koronivia Research Station for testing.
3. The government analyst (PW11) later confirmed that the 32 plants sample were in fact cannabis sativa plants, and were illicit drugs. The sample weighed a total of 11 kilograms. The balance of 122 marijuana plants were not tested and weighed. The accused was caution interviewed by police and he admitted cultivating 32 plants of cannabis sativa plants between 1 July 2011 and 3 January 2012 at Kadavu in the Eastern Division.
4. The maximum sentence for "Unlawful Cultivation of cannabis sativa plants, an illicit drug", is a fine of \$1,000,000 or life imprisonment or both (section 5 (a) of the Illicit Drugs Control Act 2004). Society, through Parliament, viewed the offence seriously. In **Kini Sulua, Michael Ashley Chandra v State** [2012] Fiji Law Reports, Volume 2, page 111, at paragraph 115 on page 143, the majority in the Court of Appeal laid down the following sentence guideline:
 - (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.
5. Although the above sentence guidelines apply to possession of cannabis sativa drugs, they also apply to unlawful cultivation of cannabis sativa plants. Please, refer to paragraph 116 and 117 of **Kini Sulua, Michael Ashley Chandra v State** (supra) in pages 143 and 144. The weight of the drugs in this case being 11 kilograms, it makes the case a Category 4 case. The tariff is therefore a sentence between 7 to 14 years imprisonment. However, the final sentence will depend on the aggravating and mitigating factors.
6. In this case, the aggravating factor, was as follows:
- (i) The amount of illicit drugs that you cultivated were huge, that is, it weighed 11 kilogram. This was about double the amount of drugs found on Kini Sulua in the case mentioned above. Kini Sulua got a sentence of 8 years imprisonment for possessing 5.2 kilograms of cannabis sativa.
7. The mitigating factors were as follows:
- (i) At the age of 38 years old, this was your first offence;
- (ii) You were remanded in custody for approximately 10 months.
8. I start with a sentence of 12 years imprisonment. I add 3 years for the aggravating factors, making a total of 15 years imprisonment. I deduct 10 months for time already served while remanded in custody, leaving a balance of 14 years 2 months imprisonment. For being a first offender, I deduct 1 years 2 months, leaving a balance of 13 years imprisonment. You were lucky that the police did not analyse and weight the balance of 122 marijuana plants seized from your farm. Had these being weighted and analysed, your sentence would have gone up.
9. Mr. Apakuki Kauyaca Vitukawalu, for unlawfully cultivating 11 kilograms of cannabis sativa in your farm at Kadavu between 1 July 2011 and 3 January 2012, I sentence you to 13 years imprisonment, with a non-parole period of 11 years imprisonment, effective forthwith.
10. The drugs are to be destroyed at the end of the appeal period to the Court of Appeal, or as the Court of Appeal directs. 30 days to appeal.



Salesi Temo
JUDGE

Solicitor for State : Office of the Director of Public Prosecution, Suva.
Solicitor for Accused : Maisamoa, Barrister and Solicitor, Suva.