

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No: HAC 093 of 2017

STATE

V

LEMEKI TABUSOI

Counsel : Ms. L. Latu for the State.
: Ms. S. Hazelman for the Accused.

Sentence Hearing : 26 May, 2017
Date of Sentence : 1 June, 2017

SENTENCE

[1] The Accused Lemeki Tabusoi was charged in the Magistrate's Court as follows:-

Statement of Offence

UNLAWFUL CULTIVATION OF AN ILLICIT DRUG: Contrary to Section 5 (a) of the Drug Control Act 2004.

Particulars of Offence

LEMEKI TABUSOI, on the 13th day of July, 2016 at Wainiviti, Nalawa, Ra in the Western Division without lawful authority, cultivated 128 plants of Cannabis or Indian hemp, an Illicit Drug weighed 4960grams.

- [2] On 22 March, 2017 the Accused pleaded guilty in the Magistrate's Court to the charge after the charge was read and explained to the Accused in the presence of his counsel.

SUMMARY OF FACTS

- [3] The following summary of facts was admitted by the Accused:-

"Briefly, on the 13th of July 2016 at about 3.30pm at Wainiviti Settlement, Nalawa, Ra, CPL 2319 Levani Dalivalu (hereinafter referred to as "PW1"), Police Officer of Nalawa Police Station, PC 3921 Ulaiasi Rabune (hereinafter referred to as "PW 2"), 30 years, Police Officer of Rakiraki Police Station and SC 543 Sainivalati Ratu (hereinafter referred to as "PW 3"), Police Officer of Namarai Community Post uprooted 128 plants believed to be marijuana from the farm of Lemeki Tabusoi (hereinafter referred to as the "Accused"), 50 years of Wainiviti settlement, Nalawa, Ra.

On the above date, PW1, PW2, and PW3 were at Rakiraki Police Station when they received information that the accused was cultivating illicit drugs in his farm at Wainiviti Settlement. Accused was also present at Rakiraki town and then he was brought to the Rakiraki Police Station for questioning about this information. The accused then escorted these Police Officers to his farm at Wainiviti settlement on the same date and they reached his farm at about 3pm.

In the accused farm, the accused was showed the search warrant and he was informed about the reason for the search by the Police. PW2 and PW3 then searched in the farm and managed to uproot 128 plants believed to be marijuana. All the marijuana plants were seized by the Police was taken to Rakiraki Police Station and was later taken to the Fiji Police Forensic Chemistry Laboratory for analysis. The drugs was then analysed by the analyst, Ms Miliana Werebauinona, which was tested positive for Indian hemp botanically known as cannabis sativa with a total weight of 5kg (attached is a copy of the Analyst Report dated 19/7/16).

The accused was later arrested, cautioned interviewed and charged”

- [4] Upon being satisfied that the Accused had entered an unequivocal plea the learned Magistrate convicted the Accused as charged and after hearing mitigation transferred the file to the High Court for sentencing.
- [5] Both Counsel filed helpful written sentencing submissions for which the court is grateful.
- [6] The maximum punishment for Unlawful Cultivation of Illicit Drugs under section 5 (a) of the Illicit Drugs Control Act 2004 is a fine not exceeding \$1,000,000.00 or imprisonment for life or both.
- [7] The Court of Appeal in *Kini Sulua and Michael Ashley Chandra vs. The State, Criminal Appeal No. AAU 0093 of 2008 and AAU 0074 of 2008 (31 May, 2012)* by majority decision formulated the following sentencing guidelines for offences committed under section 5 (a) and 5 (b) of the Illicit Drugs Control Act:

“Category 1: possession of 0 to 100 grams of cannabis sativa - a non-custodial sentence to be given, for example, fines, community service,

counseling, discharge with a strong warning, etc. Only in the worst cases, should a suspended prison sentence or a short sharp prison sentence be considered.

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.

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.

Category 4: possessing 4,000 grams and above of cannabis sativa. Tariff should be a sentence between 7 to 14 years imprisonment”.

- [8] It is apparent from the *Kini Sulua* case, that the quantity of the illicit drugs will determine the tariff applicable to a particular case. In this case the weight of the cannabis cultivated by the Accused is 5kg which comes within category 4 of *Kini Sulua*'s case.
- [9] The applicable sentencing tariff in this case is a sentence between 7 and 14 years imprisonment.

AGGRAVATING FACTORS

- [10] The amount of cannabis uprooted from the farm of the Accused is 5kg which is significant, however, the weight of the drugs in my view is

already part of the tariff accordingly, on the facts presented there does not appear to be any aggravating factors.

MITIGATING FACTORS

- [11] The learned Counsel for the Accused presented the following mitigation at the Magistrate's Court:
- (a) *The accused was 50 years of age, 5 children, Farmer*
 - (b) *Earns \$100.00 per month*
 - (c) *Lives at Wainiviti, Nalawa, Ra*
 - (d) *Two Children schooling*
 - (e) *His remorseful for his actions*
 - (f) *Promise not to reoffend*
 - (g) *Ask for leniency and another chance*
 - (h) *Ask for suspended sentence*
- [12] The accused has spent about 1 month and 2 weeks in remand. In exercise of my discretion I deduct 2 months for the remand period in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served.
- [13] Cannabis sativa, commonly known as marijuana is an addictive illicit drugs which has many adverse effects both socially and personally. The punishment prescribed under the Illicit Drugs Control Act 2004 reflects the serious consideration towards prevention of the cultivation of such drugs. The law makers had viewed cultivation of illicit drugs as a very serious crime which is reflected in the punishment.
- [14] I do take into consideration that the Accused has pleaded guilty at the earliest opportunity which is a sign of remorse on his part. I also accept

the accused to be a person of good character disregarding his unrelated previous convictions the last one dated 4 November, 2010. For 7 years he has led a life free from any wrongdoings.

[15] Having considered the seriousness of the offending I select a middle range of the tariff starting point of 11 years imprisonment.

[16] There are no aggravating factors and for the mitigating factors and good character I deduct 1 year leaving a balance of 10 years imprisonment for early guilty plea I further deduct 2 ½ years. The sentence of the accused is now 7½ years imprisonment. For the remand period I further deduct 2 months.

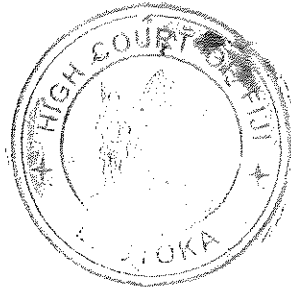
[17] Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed I am compelled to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.


[18] Under section 18 (1) of the Sentencing and Penalties Act, I impose 6 years imprisonment as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused which is just in the circumstances of this case.

CONCLUSION

[19] The Accused is sentenced to 7 years 4 months imprisonment with a non-parole period of 6 years imprisonment with immediate effect.

[20] 30 days to appeal to the Court of Appeal.




Sunil Sharma
Judge

At Lautoka

1 June, 2017

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission, Rakiraki for the Accused.