

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 064 OF 2015S

STATE

vs

1. WAISAKE KALOULIA
2. KAMINIELI NAQELECA

Counsels : Mr. Y. Prasad, Ms. S. Serukai and Mr. T. Tuenuku for State
Ms. N. Karan for Accused No. 1
Mr. L. Qetaki for Accused No. 2

Hearings : 23 to 27 January, 2017

Summing Up : 30 January, 2017

Judgment : 30 January, 2017

Written reasons for
Judgment & Sentence: 31 January, 2017

WRITTEN REASONS FOR JUDGMENT AND SENTENCE

1. In a judgment delivered yesterday, the court found you guilty and convicted you both 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

WAISAKE KALOULIA and **KAMINIELI NAQELECA**, on the 21st day of January 2015, at Davecadra farm, Wainibuka, Tailevu, in the Central Division, without lawful authority, cultivated 160.6 kilograms of Cannabis Sativa or Indian Hemp, being illicit drugs

2. The three assessors unanimously found the two of you guilty as charged. The court agreed with the assessors and found you guilty as charged. The court said it would give it's reasons today. Below are the court's reasons.
3. Before making it's decision yesterday, the court reviewed the evidence called in the trial and directed itself to the summing up it delivered to the assessors yesterday.
4. As far as Accused No. 1 was concerned, the main evidence against him was his alleged confession to the police when caution interviewed on 22 January 2015. His caution interview statements were tendered as Prosecution Exhibit No. 1(A) and 1(B). In his interview statements, he admitted cultivating the 160.6 kg of Indian hemp tendered in court as Prosecution Exhibit No. 3. As sole judge of fact as to guilt or innocence, I accept that Accused No. 1 made the above admissions and they were true. For this reason, I agree with the assessors and found him guilty as charged.
5. For Accused No. 2, the main evidence against him was his alleged confession when caution interviewed by police on 3 February 2015. His caution interview statements were tendered as Prosecution Exhibit No. 2(A) and 2(B). In his caution interview statement, he admitted cultivating cannabis sativa at Davecadra farm in Wainibuka, Tailevu. Furthermore, on 21 January 2015, DC 4206 Akuila Waibuta (PW3) saw Accused No. 2 at the cannabis sativa farm. He fled when confronted by PW3. Because of Accused No. 2's alleged confession and the fact that he was sighted at the marijuana farm on 21 January 2015, I found Accused No. 2 guilty as charged. I accept that he made the admission abovementioned and they were true. I also accept PW3's identification evidence against Accused No. 2 at the crime scene on 21 January 2015.
6. Finally, after considering all the prosecution's witnesses' evidence, the circumstantial evidences stemming therefrom were such that the irresistible conclusion were that both accuseds were guilty as charged. It was for the above reasons, the court found both accused guilty as charged.

7. The facts were straightforward. On informations received from police informers, the police raided Accused No. 1's house at Nabulini Village, and found dried cannabis sativa leaves on him, on 21 January 2015 at 3.30 am. Accused No. 1 admitted to police he had a marijuana farm in Davecadra, Wainibuka, Tailevu. The police proceeded to the farm, which was 7 hours walk from Nabulini Village through thick bushes, a river and various streams. At the farm, the police saw Accused No. 2. He fled after seeing the police. The police uprooted 484 cannabis sativa plants, and took the same to Korovou Police Station. The plants were later confirmed as cannabis sativa and weighed 160.6 kilograms. Both accuseds were later caution interviewed by police. They both admitted the above drugs were theirs. They were later charged and convicted for cultivating the same.
8. 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.
9. 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 160.6 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.

10. In this case, the aggravating factor, was as follows:
 - (i) For both of you, the amount of illicit drugs that you two cultivated were huge, that is, 31 times the amount of drugs found on Kini Sulua in the case abovementioned. Kini Sulua got a sentence of 8 years imprisonment for possessing 5.2 kilograms of cannabis sativa

11. The mitigating factors, were as follows:
 - (i) The only mitigating factor I find for both of you, was the time you were remanded in custody awaiting trial. For Accused No. 1, you spent a total of approximately 10 months in custody. For Accused No. 2, you had spent approximately 2 years while remanded in custody.

12. I start with a sentence of 12 years imprisonment. Because of the large amount of drugs you two cultivated, that is, 160.6 kilograms, I add 8 years, making a total of 20 years imprisonment. For time already served while remanded in custody, for Accused No. 1, I deduct 1 year, leaving a balance of 19 years imprisonment; for Accused No. 2, I deduct 2 years, leaving a balance of 18 years imprisonment.

13. Mr. Waisake Kaloulia (Accused No. 1) and Mr. Kaminieli Karusia Naqeleca (Accused No. 2), for unlawfully cultivating 160.6 kilograms of cannabis sativa at Davecadra farm, Wainibuka, Tailevu in the Central Division on 21 January 2015, I sentence both of you in the following way:
 - (i) Waisake Kaloulia (Accused No. 1) 19 years imprisonment, with a non-parole period of 15 years imprisonment, effective forthwith;
 - (ii) Kaminieli Karusia Naqeleca (Accused No. 2) 18 years imprisonment, with a non-parole period of 15 years imprisonment, effective forthwith.

14. Pursuant to section 4(1) of the Sentencing and Penalties Decree 2009, the purpose of the above sentence is to punish people who cultivate huge amount of cannabis sativa, in this case, 160.6 kilograms; these are the people who start the evils of the drug trade. The sentence is also designed to protect the community by imposing a deterrent sentence to warn would-be offenders that they will also get a similar sentence if found guilty as charged. The sentence is also to signify that the court and the community denounce the cultivation of illicit drugs in our community.
15. Pursuant to Section 155(1)(b) and (3) of the Criminal Procedure Decree 2009, I order the destruction of the 484 marijuana plants which were tendered as Prosecution Exhibit No. 3, because the same had decayed and deteriorated to such an extent that it may be dangerous to human health. The destruction is to be carried out by the Office of the Chief Registrar, with the assistance of the Police.
16. You have 30 days to appeal to the Court of Appeal.




Salesi Temo
JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for Accused No. 1 : **Legal Aid Commission, Suva.**
Solicitor for Accused No. 2 : **Legal Aid Commission, Suva.**