

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 037 OF 2018S

STATE

vs

VILIAME KAWA

**Counsels : Mr. M. Vosawale and Mr. N. Sharma for State
Mr. M. Young for Accused**

Hearings : 9, 10, 11 and 12 March, 2020.

Summing Up: 13 March, 2020.

Judgment : 13 March, 2020.

Sentence : 16 March, 2020.

SENTENCE

1. In a judgment delivered on 13 March 2020, 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

VILIAME KAWA, on the 12th day of January, 2018 at Nakasaleka, Kadavu in the Southern Division, without lawful authority cultivated 37 plants of illicit drugs known as Cannabis Sativa with a total weight of 15 kg.”

2. The brief facts were as follows. On 11 January 2018, the crime officer, Sergeant 3642 Josua (PW1) received information that you were cultivating cannabis sativa (marijuana) at Nakorovou, Nakasaleka, Kadavu. A police raiding team was formed to investigate the information. On 12 January 2018, the team came to your house at Nakorovou Village. They asked you about the information they received. You admitted to them verbally that you were cultivating marijuana at your farm at Yakota.
3. You led the police to your farm. They saw marijuana growing on your farm. They uprooted the same. There were 37 plants of marijuana altogether. The same was taken to Kadavu Police Station. They were analyzed by government analyst. The plants were confirmed to be cannabis sativa and weighed 15 kilograms. When interviewed by police, you admitted unlawfully cultivating cannabis sativa. On 18 January 2018, you were taken to Suva Magistrate Court charged with unlawful cultivation of illicit drugs. You had been tried and convicted of the same in the High Court.
4. The maximum sentence for “Unlawful Cultivation of cannabis sativa, 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. The weight of the drugs in this case being 15 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, there appears to be only one aggravating factor, that is, the drugs you cultivated were huge.
7. The mitigating factors were as follows:
 - (i) At the age of 41 years, this is your first offence;
 - (ii) The accused had been remanded in custody, awaiting trial for approximately 1 month 2 weeks;
 - (iii) Although the accused exercised his right to defend himself in court, he nevertheless co-operated with police during the investigation by admitting the offence to them verbally and in writing, and showing them his farm, when he led them there on 12 January 2018.
8. I start with a sentence of 8 years imprisonment. I add 2 years for the aggravating factor, making a total of 10 years imprisonment. I deduct 2 months for time already served while remanded in custody, leaving a balance of 9 years 10 months. For being a first offender, I deduct 10 months, leaving a balance of 9 years imprisonment. For co-operating with police, as mentioned above, I deduct 1 year, leaving a balance of 8 years imprisonment.
9. Mr. Viliame Kawa, for unlawfully cultivating 15 kilograms of cannabis sativa on 12 January 2018, at Nakasaleka, Kadavu in the Southern Division, I sentence you to 8 years imprisonment, effective forthwith. I will not impose a non-parole period.
10. The Illicit Drugs, which had been tendered at the trial as Prosecution Exhibit Nos. 2 (A) & 2 (B), are to be destroyed by the Chief Registrar's Office, with the assistance of the police, as soon as possible. Before the destruction, the drugs are to be photographed, and the photos to be part of the record. The above is done, as the exhibit is deteriorating.

11. You have 30 days to appeal to the Court of Appeal.



A handwritten signature in blue ink, appearing to be "Salesi Temo".

Salesi Temo
JUDGE

Solicitor for the State : Office of the Director of Public Prosecution, Suva.
Solicitor for the Accused : Legal Aid Commission, Suva.