

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

LAUTOKA CRIMINAL CASE NO. HAC 211 OF 2018L

STATE

vs

1. ILAISA CALEVU

2. SEMISI TANIMANAGE

Counsels : Mr. M. Vosawale for State
Ms. V. Narara and Mr. K. Skiba for Accused No. 1
Ms. E. Radrole for Accused No. 2

Hearings : 19, 21, 22 and 25 May, 2020.

Ruling : 26 May 2020.

Written Reasons : 29 June 2020.

WRITTEN REASONS FOR VOIR DIRE RULING

1. On 27 March 2020, the following information was read and explained to the two accused, in the presence of their counsels:

“Count 1

Statement of Offence

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

Particulars of Offence

ILAISA CALEVU and SEMISI TANIMANAQE on the 15th day of June, 2016 at Navosa in the Western Division, without lawful authority, cultivated one thousand two hundred and six (1206) plants of illicit drugs known as Cannabis Sativa, weighing 6.2 kilograms.

Count 2

Statement of Offence

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

Particulars of Offence

ILAISA CALEVU between the 1st day of November 2016 and the 7th day of March, 2017 at Navosa in the Western Division, without lawful authority cultivated one thousand four hundred and twenty eight (1428) plants of illicit drugs known as Cannabis Sativa, weighing 128 kilograms.

Count 3

Statement of Offence

RESISTING ARREST: Contrary to Section 277 (b) of the Crimes Act 2009.

Particulars of Offence

ILAISA CALEVU on the 6th day of March, 2017 at Navosa in the Western Division, resisted POLICE CONSTABLE 5240 ESALA KAMUNAGA whilst the said POLICE CONSTABLE 5240 ESALA KAMUNAGA was effecting arrest in the due execution of his duty.

Count 4

Statement of Offence

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

Particulars of Offence

ILAISA CALEVU between the 1st day of November 2017 and the 13th day of March, 2018 at Navosa in the Western Division, without lawful authority

cultivated one thousand and seventy nine (1079) plants of illicit drugs known as Cannabis Sativa, weighing 43.5 kilograms.

Count 5

Statement of Offence

CRIMINAL INTIMIDATION: Contrary to Section 375 (1) (a) (iv) of the Crimes Act 2009.

Particulars of Offence

ILAISA CALEVU on the 13th day of March, 2018 at Navosa in the Western Division, without lawful excuse, threatened to kill POLICE CONSTABLE 4482 URAIA LIQORIO with a cane knife with intent to cause alarm to the said POLICE CONSTABLE 4482 URAIA LIQORIO.

2. Both accuseds pleaded not guilty to the offences. They denied the allegations against them. In the course of police investigations, both accuseds were caution interviewed by police. For count no. 1, Accused No. 1 was caution interviewed at Navosa Police Station on 15 June 2016. Accused No. 2 was caution interviewed at the same station on 26 July 2016. During the interview both accuseds allegedly admitted count no. 1 to police.
3. On count no. 2 and 3, Accused No. 1 was caution interviewed at Navosa Police Station on 11 March 2017. He allegedly admitted counts no. 2 and 3 to police during the interview. On counts no. 4 and 5, Accused No. 1 was caution interviewed by police at Navosa Police Station on 16 March 2018. During the interview, Accused No. 1 allegedly admitted counts no. 4 and 5 to police.
4. On 19, 21, 22 and 25 May 2020, both accuseds challenged the admissibility of their caution interview statements in a voir dire hearing. Both accuseds alleged they were assaulted and threatened by police to admit the allegations against them. They also argued that their constitutional rights of being brought before the courts within 48 hours of arrest were breached, and as a result, are asking the court to declare their caution interview statements inadmissible in law on the grounds of police unfairness and breach of their constitutional rights.

5. Ten witnesses were called by the prosecution, all police officers. Both accuseds gave sworn evidence in their defence. Altogether, there were 12 witnesses, on whose evidence, the court will have to make a decision. I heard the parties on 19, 21, 22 and 25 May 2020. After listening to the evidence, and after carefully considering their closing submissions, I ruled all the accuseds' caution interview statements as admissible evidence. I said, I would give my reasons later. Below are my reasons.

6. The law in this area is well settled. On 13th July 1984, the Fiji Court of Appeal in **Ganga Ram & Shiu Charan v Reginam, Criminal Appeal No. 46 of 1983**, said the following. **"...it will be remembered that there are two matters each of which requires consideration in this area. First, it must be established affirmatively by the crown beyond reasonable doubt that the statements were voluntary in the sense that they were not procured by improper practices such as the use of force, threats of prejudice or inducement by offer of some advantage – what has been picturesquely described as the "flattery of hope or the tyranny of fear" Ibrahim v R (1941) AC 599, DPP V Ping Lin (1976) AC 574. Secondly even if such voluntariness is established there is also need to consider whether the more general ground of unfairness exists in the way in which the police behaved, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. Regina v Sang (1980) AC 402, 436 @ C-E. This is a matter of overriding discretion and one cannot specifically categorize the matters which might be taken into account..."**

7. In addition to the above, section 13 (1)(f) of the 2013 Fiji Constitution reads as follows:

"...Every person who is arrested or detained has the right – to be brought before a court as soon as reasonably possible, but in any case not later than 48 hours after the time of arrest or if that is not reasonably possible, as soon as possible thereafter..."

8. I have carefully listened to and considered the evidence of all the prosecution and defence's witnesses. I have carefully examined their demeanors when they were giving evidence in court. I have carefully considered the parties' closing submissions.
9. The voluntariness of both accuseds' caution interview statements were disputed by the parties. The accuseds said, the police assaulted and threatened them while they were in their custody. They appear to say that their caution interview statements were not given voluntarily and were not given out of their own free will. The police witnesses said otherwise. They said, both accuseds were not assaulted nor threatened, while they were in their custody. The police said, both accuseds gave their caution interview statements voluntarily, and both accuseds voluntarily signed their interview notes to acknowledge they were giving the same voluntarily.
10. Both accuseds also argued they were not brought to court within 48 hours of their arrest, and as a result, police had violated their constitutional rights, as enshrined in section 13 (1)(f) of the 2013 Fiji Constitution. They asked that their caution interview statements be ruled as inadmissible evidence, as a result of the above alleged violation. The police argued they had not violated section 13(1)(f) of the 2013 Constitution, since after arrest, they had to travel rough terrain in Navosa to get to the accuseds' alleged marijuana farm. Accused No. 1, on some occasions, accompanied police to point out his alleged marijuana farm. The police said, going to and from the accuseds' marijuana farm took days, because the farms were hidden in the interior hills of Navosa. The police said, when they returned to Navosa Police Station, both accuseds were taken before the courts as soon as possible thereafter.
11. After carefully considering both parties' evidence and positions, I have come to the conclusion that both accuseds gave their caution statements voluntarily and out of their own freewill. On the evidence, I find the police were not unfair on the accuseds, while they were in their custody. Also, they did not breach section 13 (1)(f) of the 2013 Fiji Constitution because, after arrest, they had to go into the interior of Navosa, climbing hills and mountains and crossing rivers, to locate the accuseds' alleged marijuana farms. On return to Navosa Police Station, or Sigatoka Police Station,

police took both accuseds to the Sigatoka Magistrate Court as soon as reasonably possible.

12. It was for the above reasons that I ruled both accuseds' caution interview statements as admissible evidence on 26 May 2020. However, the acceptance or otherwise of the accuseds' caution interview statements, at the trial proper, will be a matter for the assessors. I rule so accordingly.



Salesi Temo
JUDGE

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