

1. **THAT** the learned trial Magistrate erred in law and fact for not dismissing the charge and acquitted the Appellant when there was no evidence produced by the Prosecution to suggest that the Drugs cultivated and the Drugs found in possession were Cannabis Sativa.
2. **THAT** the learned trial Magistrate erred in law and in fact for not taking into account that the Illicit Drugs Act 2004 mandated that Certificate of analysis of drugs report is prima facie evidence, but in the absence of the Certificate of analysis of drugs would suggest that the cultivated drugs and the drugs found in possession were not drugs therefore the charge should have been dismissed and acquitted the Appellant.
3. **THAT** the learned Magistrate erred in law and fact for taking into account that the Appellant was charged for the wrong weight of the illicit as per the count 2 of the charge when there is no drugs exhibited before the court to justify the weight as per count 2 in the charge.
4. **THAT** the learned trial Magistrate erred in law and fact for not taking into account that there were only 2 clear plastics of dried leaves tendered as exhibits 1 & 2, which the prosecution relied upon as evidence, but their weight was range from 4.00 grams to 26.4 grams and the weight of the 21 plants was 1426.5 grams but it was not tendered as exhibit because it went missing therefore the Appellant should not have been charged with and there was no weight of 31.3 appear in the evidence tendered and having that inconsistency in the weight the charged should have been dismissed and acquitted the Appellant.
5. **THAT** the learned trial Magistrate erred in law and fact for not taking into account that Prosecution witnesses failed to produce evidence as to the ownership of the house and also failed to produce evidence as to the ownership of the jacket found in the vicinity of the house.

6. *THAT the learned trial Magistrate erred in law and in fact when he did not take into account that the Prosecution witnesses failed to produce evidence that the Appellant was cultivating the illicit drugs.*

7. *THAT the trial Magistrate erred in law and fact for not taking into account that the raid was illegal and the Prosecution failed to produce evidence to suggest that the raid was legal as per the Criminal Procedure Act 2009.*

2. In view of the grounds of appeal, they are mainly founded on the contention that the learned Magistrate erred in evaluating the evidence presented before him and also failed to consider the non-production of the analyst reports in his judgment. Therefore, I shall deal with all these appeal grounds together.
3. The Appellant's house was raided by a team of Police Officers who searched it. During the search, the Police found dried leaves believed to be Marijuana in the pocket of a jacket and then another parcel of dried leaves wrapped in a newspaper. The Appellant then volunteered to lead the Police team to his farm, where the Police found the Appellant had cultivated 21 plants of Marijuana. The drugs were later tested and confirmed to be Cannabis Sativa. The Appellant was arrested and interviewed. During the caution interview, the Appellant admitted that he had these drugs in his possession and planted the 21 plants on his farm.
4. During the hearing, the Appellant did not challenge the admissibility and truthfulness of the caution interview and tendered it in evidence by consent. The Prosecution presented the evidence of six witnesses, explaining the raid and how they found the drugs in his house and then later his cultivation. The learned Magistrate found the photocopies of the drug analyst reports inadmissible in evidence. However, the Prosecution presented the drugs found in his possession and the copy of the caution interview of the Appellant as Prosecution's exhibits.
5. The Appellant, in his evidence, did not dispute the Police raid and searched at his house. He admitted that the Police found these drugs in his place; one set was in the pocket of the jacket, and the other set was wrapped in a newspaper. The Appellant stated that he volunteered and

led the Police team to his farm and showed them the 21 plants of Marijuana. The Appellant said that his deceased brother used to reside in this house and was at home only on a short visit. He further claimed that his dead brother did the cultivation of drugs. However, he accepted in his evidence that he admitted the possession of drugs and cultivation as he was unaware of the law and wanted the Police to destroy them.

6. In an appeal like this, the Court is very reluctant to intervene in the judgment delivered by the lower Court. The Appellate Court must recognize and indeed must remember the advantage that the learned Magistrate had in seeing and hearing the witnesses before him. This Court had no such advantage of seeing the witnesses and observing their demeanour and deportment in giving evidence. Hence, this Court must not lightly intervene unless it has scrutinized the impugned Judgment of the learned Magistrate in order to determine whether the learned Magistrate had erred in fact and law in evaluating the evidence and concluding that the Appellant was guilty in line with the evidence presented before the Court. In doing that, the Appellate Court must not substitute its own view about the evidence presented in the trial.
7. Section 142 (1) of the Criminal Procedure Act states that every judgment delivered by a Judge or a Magistrate must contain the point or points required to determine the decision and the reasons for such decision. The Supreme Court of Fiji in **Pal v Reginam [1974] FJLawRp 1; [1974] 20 FLR 1 (17 January 1974)** has given a descriptive and precise guideline in formulating the judgments in the Magistrates' Court, which I find great assistance. Grant CJ in **Pal v Reginam (supra)** had outlined that:

“As a general rule, the judgment should commence with a description of the charge, followed by the relevant events and the material evidence set out in correct sequence in narrative form, the identifying number of each pertinent witness being incorporated at the appropriate places, after which the Magistrate should state what witnesses he believes and whose evidence he accepts or rejects, and should proceed to make his findings of fact, apply the appropriate law to those facts, and give his reasoned decision; bearing in

mind throughout the provisions of Section 154 (1) of the Criminal Procedure Code.

If these considerations are kept in view, not only will it make the task of an appellate court easier, it might well lead to fewer decisions being upset."

8. In view of the guideline expounded in Pal v Reginam (supra), the Magistrate must state what witnesses he believes and what evidence he accepts or rejects. In doing that, he should give reasons for believing the witness and accepting or rejecting the evidence. To do that, the Learned Magistrate must adequately evaluate the evidence and the witnesses presented in the hearing. Determination of the reliability and credibility of the evidence is one of the main factors in this process. It would help the Court finally determine which evidence to accept or what part of the evidence to refuse.
9. In this matter, the learned Magistrate had discussed the evidence presented before the Court in detail and given his reasons for his conclusion, thus making the work of this Court much easier.
10. The Appellant did not challenge the admissibility and the truthfulness of the confession made in his caution interview and thus tendered it in evidence with his consent. Accordingly, the learned Magistrate had correctly considered the confession made in his caution interview as a truth of facts that he admitted. Furthermore, the learned Magistrate considered all other evidence presented by the Prosecution to evaluate the truthfulness of the admission made by the Appellant in his caution interview and found it affirmative.
11. One of the Appellant's main contention is that the learned Magistrate should have dropped charges against the Appellant when he ruled out the admission of copies of the drug analyst reports. I do not wish to engage in a lengthy legal discussion about the scope of Section 36 of the Illicit Drugs Control Act. Still, I must state that the Section has only provided the procedure of tendering the analyst certificate in evidence. Therefore, the contention of the

learned Counsel for the Appellant that the learned Magistrate should have dropped the charges against the Appellant has no merits.

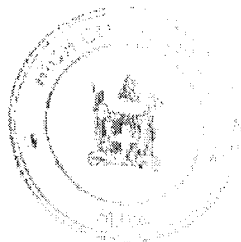
12. The learned Counsel for the Appellant submitted that the scientific analyst report is a mandatory requirement to prove charges of this nature. The Court of law determines disputes based on legal proof rather than scientific proof. (*vide*: *State v Ratuwaqa [2021] FJHC 180; HAC135.2019 (10 March 2021)*). It is a human judgment based on facts and evidence presented before the Court. The Court of Appeal of England in *R v Turner (1975) 1 All ER 70* explained the relevancy and admissibility of evidence of expert opinion by quoting the view expounded by Lord Mansfield CJ in *Folkes v Chadd (1782) 3 Dug KB 157*, where Lowton LJ said that:

"The foundation of these rules was laid by Lord Mansfield CJ in Folkes v Chadd ((1782) 3 Doug KB 157 at 159) and was well laid: 'The opinion of scientific men upon proven facts', he said, 'may be given by men of science within in their own science.' An expert's opinion is admissible to furnish the court with scientific information which is likely to be outside the experience and knowledge of a judge or jury. If on the proven facts a judge or jury can form their own conclusions without help then the opinion of an expert is unnecessary. In such a case if it is given dressed up in scientific jargon it may make judgment more difficult. The fact that an expert witness has impressive scientific qualifications does not by that fact alone make his opinion on matters of human nature and behaviour within the limits of normality any more helpful than that of the jurors themselves; but there is a danger that they may think it does."

13. Accordingly, scientific evidence or expert opinions should be evaluated, taking into consideration the whole of the evidence presented during the hearing. In this matter, the Appellant admitted the truthfulness of the confession he made in his caution interview. Hence, the Appellant's admission in the caution interview that he possessed the illicit drugs found in his home and then the cultivation of 21 plants of marijuana must be considered as

sufficiently proven facts. (vide Section 135 of the Criminal Procedure Act). The evidence of the Prosecution's witnesses regarding the recovery of the illicit drugs at the Appellant's house and the finding of 21 plants of marijuana on his farm was not challenged or suggested otherwise.

14. The Appellant's defence was that the drugs and the plants belonged to his deceased brother. The learned Magistrate had not accepted his defence. The learned Magistrate explained sufficiently, giving reasons for not accepting the Appellant's defence. Hence, I do not find any merits in any of the appeal grounds raised by the Appellant in this Appeal.
15. I find the last ground of Appeal that the raid of the Police was illegal is irrelevant, and no need to discuss it.
16. In conclusion, I make the following order:
 - 1) The Appeal is dismissed.
17. Thirty (30) days to appeal to the Fiji Court of Appeal.




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Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva
21st December 2022

Solicitors
Maisamoa & Associate for the Appellant.
Office of the Director of Public Prosecutions for the Respondent.