

IN THE MAGISTRATES' COURT OF FIJI

AT NAUSORI

Criminal Case : 150/2019

STATE

V

KAUTANAGUNA SEAQAQA

For the Prosecution: WPC Siteri

The accused: In person

Date of Hearing: 11th of March 2019

Date of Sentence : 12th of March 2019

SENTENCE

1. **KAUTANAGUNA SEAQAQA**, you were charged with one count of Unlawful Cultivation of Illicit Drugs contrary to section 5(a) of the Illicit Drugs Control Act No 09 of 2004(" Illicit Drugs Control Act").
2. You pleaded guilty and admitted that on 18th February 2019 at Draubuta village, Nausori you cultivated 22 green plants of Cannabis Sativa commonly known as Indian Hemp. The height of these plants were from 36cm -179cm with a total weight of 1.4kg. After receiving information the police raided your farm and found these plants. You admitted to the police about cultivating the drugs.
3. I am satisfied that your plea was made voluntary after understanding the legal consequences and convict you for this charge.
4. The maximum penalty for Cultivation of Drugs is a fine not exceeding \$1,000,000 or imprisonment for life or both.
5. It appears that presently there are various decisions suggesting different tariffs for Cultivation of Drugs.
6. In State v Ratokabula - Sentence [2018] FJHC 163; HAC360.2016S (9 March 2018) his Lordship Justice Temo said :

“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.

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.”

7. In *State v Dukubure* [2017] FJHC 310; HAC076.2017 (28 April 2017) his Lordship Justice Perera observed :

“ In the case of Tuidama v State [2016] FJHC 1027; HAA29.2016 (14 November 2016) this court decided to apply the following tariff for the offence of unlawful cultivation of illicit drugs;

- a. The growing of a small number of plants for personal use by an offender on a non-commercial basis - 1 to 2 years imprisonment;
- b. Small scale cultivation for a commercial purpose with the objective of deriving a profit - 3 to 7 years imprisonment;
- c. Large scale commercial cultivation - 7 to 14 years imprisonment.

Cultivating up to 10 plants can be considered as non-commercial cultivation if there is no other evidence to the contrary. Cultivating more than 10 plants up to 100 plants can be considered as a small scale commercial cultivation and cultivating more than 100 plants can be considered as a large scale commercial cultivation.”

8. In Dibi v State [2018] FJHC 86; HAA96.2017 (19 February 2018) his Lordship Justice Madigan said :

“For ease of reference those tariffs as suggested by the U.K. Sentencing Council and adopted by this Court in Koroï are:

(i) Possession of up to 100 grammes or cultivation of no more than 5 plants, non custodial sentences at the discretion of the Court

(ii) Possession of 100-1000 grammes and cultivation of 5-50 plants; custodial sentences in the range of one year to six years

(iii) Possession of more than 1000 grammes and cultivation of more than 50 plants, custodial sentences of six years or more

(iv) Possession of very large quantities (5kg or more) custodial sentences in the range of 10 to 15 year

20.] There will be times when the plants are many, but small, yielding a minimal weight (as in the present appeal) and a balance will have to be struck between use of the above categories.

9. In **State v Nabenu** [2018] FJHC 539; HAA10.2018 (25 June 2018) His Lordship Justice Aluthge suggested the following tariff after considering a number of case including **Tuidama** (supra);

a. The growing of a small number of plants (less than 9 plants with assumed yield of 40g per plant) for personal use by a first offender - non- custodial sentence or a fine at the discretion of the court.

b. Small scale cultivation (10 to 30 plants with assumed yield of 40g per plant) for a commercial purpose with the objective of deriving a profit - 1 to 3 years imprisonment, with or without a fine at the discretion of the court.

c. Medium scale commercial cultivation (30 -100 plants) - 3 to 7 years imprisonment with or without a fine at the discretion of the court.

d. Large scale cultivation capable of producing industrial quantities for commercial use (more than 100 plants) 7 - 14 years imprisonment with or without a fine at the discretion of the court.

10. In **State v Vuicakau** [2018] FJHC 12; HAC01.2018 (19 January 2018) his Lordship Justice Goundar said:


“Weight of Cannabis Sativa plants can be affected by whether the plants are in green or dried state and whether the stems and roots were detached before the weight was determined. In the case of cultivation, it is not the weight but the number of plants and maturity of the plants that are relevant.”

11. In **State v Vuicakau**(supra) the court sentenced the accused to 04 years imprisonment for unlawfully cultivating 21 Cannabis Sativa plants. The total weight of the plants in that case was 17.1kg.

12. In **State v Kaitani** - Sentence [2018] FJHC 605; HAC355.2016 (16 July 2018) Justice Perera recommend the judgment in **Nabenu** (supra) to be regarded as the guideline judgment by the Magistrate Court in terms of section 6(3) of the Sentencing and Penalties Act 2009 with regard to sentencing offenders for the offence of cultivation of cannabis sativa.

13. Hence I would apply the tariff as enunciated in Nabenu (supra) for this sentence.
14. There are no aggravating factors and in mitigation you submitted the following :
 - a. You are 39 years old;
 - b. Married with 3 children ;
 - c. Farmer ;
 - d. Seeking forgiveness;
15. In State v Vuicakau(supra) the court further held that in Drug cases personal circumstances of the offender carry little value in sentencing . Accordingly I disregard the above personal mitigating factors.
16. You are not a first offender.
17. You admitted to the police about this offence and also pleaded guilty early. This is the only valid mitigating factor in your favor for this sentence.
18. Considering all these circumstances, I sentenced you to 02 years imprisonment for this charge.
19. Now I would consider whether to suspend your sentence.
20. You are neither a young offender nor a first offender. Also even though you submitted in mitigation that you were cultivating these drugs for your personal consumption, the number of plants and the weight would be suggesting that these were for some commercial purpose. As I said earlier your personal mitigating factors carry little weight for this sentence. Hence I do not find any compelling reasons to suspend your sentence.
21. KAUTANAGUNA SEAQAQA, accordingly you are sentenced to 02 years imprisonment for this charge with a non-parole period of 01 year.
22. The plants to be photographed and destroyed at the end of the appeal period.
23. 28 days to appeal.




Shageeth Somaratne
Resident Magistrate