



**IN THE SUPREME COURT OF NAURU  
AT YAREN  
[CRIMINAL JURISDICTION]**

**Criminal Case No. 02 of 2025**

**BETWEEN:** THE REPUBLIC

**PROSECUTION**

NATHAN GADARAOA

**ACCUSED**

**BEFORE:** Keteca J

**Date of Hearing:** 28<sup>th</sup> March 2025

**Date of Sentence:** 10<sup>th</sup> April 2025

**Catchwords:** Unlawful cultivation of an illicit drug: Contrary to Section 6(a) of the Illicit Drugs Control Act 2004; 141 cannabis plants weighing 7.61 kilograms; A finding of guilty in the District Court and transfer to the Supreme Court for Sentencing under Section 161 Criminal Procedure Act 1972

**Appearances:**

Counsel for the Prosecution: **Wenona Deiye**

Counsel for the Accused: **Shantel Hazelman**

**SENTENCE**

**BACKGROUND**

1. On 27<sup>th</sup> January 2025, the accused was found guilty by Resident Magistrate Vinay Sharma on a charge of – Unlawful Cultivation of an Illicit Drug: Contrary to Section 6(a) of the Illicit Drugs Act 2004. The charge related to 141 cannabis plants that weighed 7.61 kilograms.

2. On 04<sup>th</sup> February 2025, the matter was referred to the Supreme Court for Sentencing under Section 162(1)(2) of the Criminal Procedure Code 2016. ***The correct provision is Section 161 and not 162.***

### **SUBMISSION BY THE PROSECUTION**

3. Ms Deiye submitted the following:
  - i. The accused is 35 years old and has no previous convictions.
  - ii. He has been in remand since 06<sup>th</sup> May 24.
  - iii. Aggravating features- 141 cannabis plants grown at the back of his house. They were nurtured in different types of pots. They ranged from seedlings to mature plants.
  - iv. In mitigation, the accused cooperated with the police and this is his first offence.
  - v. The maximum penalty for this offence is 10 years imprisonment and a fine of \$50,000.00. These indicate the seriousness of the offence.
4. On deterrence, Counsel submits that the sentence here should remind would be offenders in Nauru that this is a very serious offence and our laws frown upon such conduct.
5. Counsel refers to:
  - i. *R v Lukeson Scotty & Diong Gadeanang*, Criminal Case No. 17 of 2024. The case involved the cultivation of 4 cannabis plants weighing 0.940 kg. The Magistrate took a sentence of 3 years 6 months as the starting point. For their mitigation, the sentence was reduced to 3 years. This was further reduced to 2 years imprisonment because of their early guilty pleas. The accused persons were to serve 3 months of their sentence and the remainder was suspended for 3 years. They were also fined a sum of \$1500. In default of paying the fine, the accused were to serve an additional 6 months in prison.
  - ii. *State v Draunidalo* [2024] FJHC 200- this involved the cultivation of 211 cannabis plants that weighed 278.064 kilograms. The accused pleaded guilty five days before the trial date. He was sentenced to a custodial term of 9 years 7 days with a non- parole period of 8 years imprisonment.
6. On the mental state of the accused, Ms Deiye raises a valid point that this was not raised during the trial. She further submits that the mental Health Report of the accused that is filed before the Court now, 'confirms the defendant's stable mental state at the time of the alleged incident.'
7. Counsel then refers to the following provisions of the Crimes Act 2016:
  - i. Section 277- Sentencing Principles;
  - ii. Section 278- Purpose of Sentencing;
  - iii. Section 279- Sentencing Considerations;
  - iv. Section 280- Imprisonment Considerations;
  - v. Section 281- Fine Considerations.

8. Counsel concludes with the following:
- i. A country like Nauru, with small communities make this offending more serious and warrants a 'harsher punishment;
  - ii. The deterrence factor and the protection of the public are to be considered;
  - iii. Likeminded persons are to be reminded that these types of offending will not be tolerated by the Courts; and
  - iv. The court must consider the 'devastating impact it can have on communities, both the young and old.

## **SUBMISSION FOR THE ACCUSED**

9. On the antecedents, Ms Hazelman submits that the Court consider that the accused had a 'difficult upbringing.' This included family violence and substance abuse within the family. When questioned by the Court on this 'substance abuse', Counsel referred the Court to Part IV of the Forensic Mental Health Assessment Report (the Report) on the accused that was prepared by a Dr Victor Harold Wasson- RON Hospital Clinical Psychiatrist on 17/03/25. In 2012, the accused was first seen by a Dr Mapa, a visiting psychiatrist. He was diagnosed as having –'Schizo- Affective Disorder, Alcohol dependence disorder, cannabis dependence disorder and inhalant dependence disorder.(petrol, glue, mortein) He was put on medications. He requested a discontinuation of his medications on 10/04/ 13 as he was mentally stable at that time. The notes state- 'he was put on a drug holiday.' On 30/11/13, he was visited at home. He had a relapse. Long acting antipsychotic injections were recommended. Between 27/06/2014 and 13/06/18- he was lost to the Mental Health Team. On 13/ 6/ 2018, during a home visit, he appeared well. His drug holiday was maintained. He was lost again until 17/6/21 when the court requested a psychiatric evaluation. His records state that he was well. **The Mental Health Team never saw him again until he was interviewed for this sentencing submission on 13<sup>th</sup> March 2025.**
10. At paragraph V of the report, it states- 'During his mental state examination interview, he was asked about the charge against him (Unlawful Cultivating Cannabis) to which he responded saying **he grew up in an environment that encouraged such behaviour.**'
11. Notably, paragraph V also states- "**At this point the Defendant appears to be mentally stable.**"
12. At paragraph VII, Dr Wasson discusses the concept of *Adverse Childhood Experiences* (ACEs) and how these impact on 'moral culpability' in drug cultivation.' The Report notes-'many legal systems consider the impacts of childhood trauma when determining culpability or sentencing but how much of an influence ACEs have on culpability depends on factors such as:
- i. Intent- **in this case the individual engaged in drug cultivation out of perceived necessity (i.e. economic pressure, survival).**

- ii. Awareness of harm- in this case the individual is fully aware of the consequences of his actions on the **community including those who buy drugs from him**. However, his need for cultivation of cannabis likely stems from the need to supply his drug habit and from economic pressures rather than a deliberate intent to harm others.
- iii. Economic desperation- in this case due to the upbringing of the defendant in a household **that normalised cannabis cultivation and sales**, potentially contributing to his consumption and eventual addiction- he may have felt financially cornered particularly in certain areas where legitimate job opportunities are scarce. In these circumstances, addiction in combination with economic hardship could lead to the defendant to view cannabis cultivation as a necessity for survival or as a means of funding his own addiction.'

13. In closing, the Report notes- *'Ultimately the most effective ethical response to this individual caught in this cycle of addiction and crime is likely a balanced approach that acknowledges both his diminished moral culpability due to addiction and the need for rehabilitation and support rather than solely focusing on punitive measures alone.'*

14. Part VIII of the Report recommends:

- i. He be referred for Substance Abuse counselling at RON Hospital Health Unit;
- ii. Receive psychoeducation and is educated on coping mechanisms/ distraction techniques for stress; and
- iii. Be regularly reviewed by the Mental Health team to monitor his condition and observe for any signs of illness relapse.

15. Ms Hazelman refers to the following cases:

- i. *R v Akyers Daniel* (Criminal Case No. 13 of 2024- I considered the 'impaired mental functioning' of the accused based on the Forensic Mental Health Assessment Report of Dr Wasson dated 02<sup>nd</sup> October 24. More importantly, I considered the disoriented demeanor of the accused in court. I awarded him a sentence of 12 months imprisonment. This was suspended for 2 years.
- ii. *Siganto v The Queen* ( 1998) 194 CLR 656- where the court said- *' A person charged with a criminal offence is entitled to plead not guilty and defend himself or herself without thereby attracting the risk of the imposition of a penalty more serious than would otherwise have been imposed.'*
- iii. *Veen v The Queen* ( 1979) 143 CLR 458 per Murphy J( at 495)- *' It is a distortion of the criminal law to sentence people to longer terms because they are sick or have diminished responsibility. It is inconsistent with the aims of criminal law.'*

- iv. *Freeman v Harris* [1980] VR 267 per Stark J (at 272)- '[A] lengthy term of imprisonment cannot be imposed for the purpose of curing a disease- for this purpose treating an addiction to a drug as a disease.'  
In the same case, Murphy J ( at 280-281) said:  
*'In my view it would be quite wrong for a sentencing tribunal to impose a sentence of imprisonment upon an offender which is dictated not by the gravity or heinousness of the crimes committed, but by the tribunal's desire to cure the offender of some disease such as a drug addiction. In sentencing, the punishment in the particular case should be proportionate to the offence. It is not open to the court to punish an offender more because he is ill and because it is considered to be for his own benefit to try and cure him. The gravity of the offence must be first paramount.'*
- v. *In R v Adam* [ 2022] QCA 41 at [41], referencing *R v Tsiaras* [ 1996] 1 VR 398- '*serious psychiatric illness not amounting to insanity is relevant to sentencing in at least five ways..*'
- vi. *R v Verdins* ( 2007) 16 VR 269 at [43] the Tsiaras principles are reformulated and the court considered how the ' impaired mental functioning' at the time of the offending may reduce the offender's moral culpability.
- vii. Counsel urges the Court to consider that the accused has been in remand since 06<sup>th</sup> May 2024 and to refer to the UK sentencing guidelines for cannabis offences and the decisions of the EWCA- Court of Appeal (England and Wales) in the following cases:
  - a. *Auton & Ors v R* [2011] EWCA Crim 76 (small- scale, non- industrial cultivation)
  - b. *Sheen* [ 2007] EWCA Crim 1255 (larger scale home operation)
  - c. *R v Xu & Ors* [ 2007] EWCA Crim 3129 (industrial- scale commercial grown)

For small or personal use cultivation-3- 5 years  
Industrial scale- more than 5 years
- viii. Counsel submits that in this case, there is 'lack of large-scale distribution' and the sentence should be below 3 years or at the most, between 3- 5years.

## DISCUSSION

- 16. I thank both Counsels for their helpful submissions. The issues arising in this case are very significant; especially for a small jurisdiction like Nauru.
- 17. In considering the submission by Ms Hazelman on the issue of '*impaired mental functioning*' I reiterate what I observed in the *R v Akyers Daniel* case.

‘ v. On sentencing of accused persons that suffer from a form of mental impairment or disorder, Counsel refers to R v Adam [2022] QCA 41. The Queensland Court of Appeal at [41] said- *‘Whenever an offender suffers from a mental impairment or disorder, there are settled principles to be applied in the consideration of a just sentence. In R v Tsiaras,[20] the Victorian Court of Appeal stated:[21] “Serious psychiatric illness not amounting to insanity is relevant to sentencing in at least five ways. **First**, it may reduce the moral culpability of the offence, as distinct from the prisoner’s legal responsibility. Where that is so, it affects the punishment that is just in all the circumstances and denunciation of the type of conduct in which the offender engaged is less likely to be a relevant sentencing objective. **Second**, the prisoner’s illness may have a bearing on the kind of sentence that is imposed and the conditions in which it should be served. **Third**, a prisoner suffering from serious psychiatric illness is not an appropriate vehicle for general deterrence, whether or not the illness played a part in the commission of the offence. The illness may have supervened since that time. **Fourth**, specific deterrence may be more difficult to achieve and is often not worth pursuing as such. **Finally**, psychiatric illness may mean that a given sentence will weigh more heavily on the prisoner than it would on a person in normal health”.*

Later in R v Verdins,[22] the Victorian Court of Appeal observed that the sentencing considerations identified in Tsiaras were not applicable only to cases of “serious psychiatric illness”. The Court observed: [23]

*“One or more of those considerations may be applicable in any case where the offender is shown to have been **suffering at the time of the offence (and/or to be suffering at the time of sentencing)** from a mental disorder or abnormality or an impairment of mental function, whether or not the condition in question would properly be described as a (serious) mental illness.”*

At [43] The Court went on to reformulate the principles identified in Tsiaras as follows: [24]

“Impaired mental functioning, whether temporary or permanent (‘the condition’), is relevant to sentencing in at least the following six ways:

1. *The condition may reduce the moral culpability of the offending conduct, as distinct from the offender’s legal responsibility. Where that is so, the condition affects the punishment that is just in all the circumstances; and denunciation is less likely to be a relevant sentencing objective.*
2. *The condition may have a bearing on the kind of sentence that is imposed and the conditions in which it should be served.*
3. *Whether general deterrence should be moderated or eliminated as a sentencing consideration depends upon the nature and severity of the symptoms exhibited by the offender, and the effect of the condition on the mental capacity of the offender, whether at the time of the offending or at the date of sentence or both.*

4. *Whether specific deterrence should be moderated or eliminated as a sentencing consideration likewise depends upon the nature and severity of the symptoms of the condition as exhibited by the offender, and the effect of the condition on the mental capacity of the offender, whether at the time of the offending or at the date of the sentence or both.*
5. *The existence of the condition at the date of sentencing (or its foreseeable recurrence) may mean that a given sentence will weigh more heavily on the offender than it would on a person in normal health.*
6. *Where there is a serious risk of imprisonment having a significant adverse effect on the offender's mental health, this will be a factor tending to mitigate punishment".*

At [44] - In terms of the extent to which impaired mental functioning may reduce moral culpability, the Court relevantly observed:

*"It is of the nature of the sentencing discretion that views will differ as to how, and to what extent, impaired mental functioning may reduce the blameworthiness of the offender's conduct. The effect on the court's assessment of culpability will, of course, vary with the nature and severity of the condition, and with the nature and seriousness of the offence. It is not appropriate for an appellate court to be prescriptive in this regard, nor is it possible to be exhaustive. It may assist sentencing judges, nevertheless, if we list the various ways in which impaired mental functioning has been held – correctly, in our view – to be capable of reducing moral culpability."*

Impaired mental functioning at the time of the offending may reduce the offender's moral culpability if it had the effect of:

- a. impairing the offender's ability to exercise appropriate judgment;
- b. impairing the offender's ability to make calm and rational choices, or to think clearly;
- c. making the offender disinhibited;
- d. impairing the offender's ability to appreciate the wrongfulness of the conduct;
- e. obscuring the intent to commit the offence; or
- f. contributing (causally) to the commission of the offence."

At [45]- 'In R v Goodger,[26] Keane JA (with whom Fraser JA and Atkinson J agreed) referred to Verdins with apparent approval and also observed:

*"This Court has accepted the proposition that, generally speaking, a mental disorder short of insanity may lessen the moral culpability of an offender and so reduce the claims of general or personal deterrence upon the sentencing discretion."*

18. I considered all the above and I said-

'[ 15.] What would be the appropriate sentence here? Based on the case authorities referred to by Counsels and discussed above, it is clear that the offence of 'Intentionally causing serious harm under Section 71 of the Crimes Act 2016 warrants a custodial sentence.

[16.] Having reached that conclusion, I remind myself of my observations of the accused in court. He appeared disoriented. He had difficulty in comprehending the facts of the case when translated in the Nauruan language. He was struggling to concentrate. I remind myself that Dr Wasson concluded that the accused knew what he was doing at the material time. In the same report Dr Wasson concludes- 'he is currently being followed regularly by our mental health Unit Outreach team and on regular medications (long acting anti – psychotic injection and oral anti – epileptic meds). I also refer to the principles in R v Verdins, discussed above, where the Victorian Court of appeal looked at the 6 principles to be considered in cases of 'impaired mental functioning. 'I find that this reduces the moral culpability of the accused. I further find that an immediate custodial sentence will fall foul of principle 6 in that- 'Where there is a serious risk of imprisonment having a significant adverse effect on the offender's mental health, this will be a factor tending to mitigate punishment".

19. I sentenced Aykers Daniel to 12 months imprisonment. This was suspended for 2 years.

20. For the present case, the amount of cannabis sativa cultivated by the accused is unprecedented in this jurisdiction. Where the Supreme Court is asked to sentence an accused, I mention here what I believe the prosecution and investigators should have done in their recording of the evidentiary details of the cultivation site. This is necessary as there is a dearth in the evidence as recorded in the Magistrate's judgment on the details that will guide a sentencing judge to assess the scale of the cultivation operation and the potential harm such an enterprise can cause to the people of Nauru. There was no site visit by the Magistrate. For a small jurisdiction like Nauru, it should not be difficult for the Magistrate to visit the drugs cultivation sites. A little walk can do wonders. For future reference, I recommend the following:

- i. **Firstly**, they should have measured the actual dimensions of the backyard. Even without a tape measure, this can be done by pacing and estimating the dimensions in meters;
- ii. **Secondly**, the actual measurements of the 4 areas that had the potted cannabis plants should have been recorded;
- iii. **Thirdly**, the details of the sizes and numbers of each category of plants (seedlings- numbers, lengths in centimetres and weights; medium sized plants- numbers, lengths in centimetres and weights; mature plants- numbers, lengths in centimetres and weights);
- iv. **Fourthly**, the numbers of sacks and plastics that contained individual cannabis plants should have been counted, itemised and recorded;
- v. **Fifthly**, the numbers of unused potting materials should be counted and recorded;
- vi. **Sixthly**, the lengths of used and unused **shade nets** should be recorded;
- vii. **Seventhly**, the size and numbers of water receptacles that were clearly being used for water storage and for watering the plants should be recorded;
- viii. **Finally**, any weapons or traps that may be used to keep others from entering the fenced compound are to be recorded.

21. In the absence of the above, I have had to rely on the prosecution exhibits. The PEX- 3, a video of the backyard where the cannabis plants were grown and the 12 photographs in PEX 15 are quite telling. They show the following:

- i. The back of the accused's house where the cannabis was grown is totally fenced in by roofing iron sheets. The compound covers quite a large area and can only be accessed from the dwelling house.
- ii. A policeman was seen to have removed a spear like weapon leaning next to the wall close to the backdoor leading to the outdoor compound. Was this meant for any intruders who would want to help themselves to the priced crop? The search and seizure policemen were in riot gears as they entered the accused's dwelling and onto the compound where the cannabis plants were growing. Were they expecting some resistance from the home owners or others that may have been tasked to guard the cash crop??
- iii. The compound had 2 large water tanks- these were probably used to water the pumpkins **and the cannabis plants**;
- iv. There were lengths of **shade nets** (both used and unused) – A length of the shade net was **clearly being used** to shade some cannabis plants from excessive sun rays, strong winds and heavy rain);
- v. Water drums, hose pipes and clean 20 litres and 10 litres buckets for watering plants were clearly visible;
- vi. There were basins, and eskies that contained small pots and 250g butter-like containers where young cannabis plants were grown. An old freezer could also be seen. I infer that this was also used to store potted cannabis seedlings;
- vii. Some small pot plants with cannabis seedlings were growing and well camouflaged and shaded amongst the pumpkin leaves;
- viii. Medium 25kg bin bags had medium sized cannabis plants;
- ix. Large 40 kg flour bags half-filled with soil had the mature cannabis plants; and
- x. Approximately 30 unused, new packing pots lay on the side.

The above show an organised enterprise by the accused. They do not suggest a case of 3-7 plants to feed an insatiable habit that has become an addiction. The evidence supports what Dr Wasson says in paragraph VI of his report-

- i. 'in this case the individual engaged in drug cultivation out of perceived necessity (i.e. economic pressure, survival)
- ii. Awareness of harm- in this case the individual is fully aware of the consequences of his actions on the community **including those who buy drugs from him**
- iii. Economic desperation- in this case due to the upbringing of the defendant in a household that normalised cannabis cultivation and sales...'

22. From the organised nature of the cannabis cultivation and the disclosures to Dr Wasson that the accused **'is fully aware of the consequences of his actions on the community including those who buy drugs from him'**, leads me to conclude with certainty that the accused cultivated the cannabis for the purposes of sale, his livelihood and ill-gotten gains.
23. I also note that Dr Wasson, at paragraph V of 'the Report' states- 'With regard to symptoms of psychosis, the Defendant, at the time of the alleged offence(s), denies experiencing any perceptual disturbances (auditory/ visual hallucinations) nor acting under the influence of any delusions or overvalued ideations.'
- Dr Wasson adds- **"At this point the Defendant appears to be mentally stable."**
24. I have considered the following provisions of the Crimes Act 2016:
- i. Section 277- Kinds of sentences;
  - ii. Section 278- Purposes of sentencing;
  - iii. Section 279- Sentencing considerations;
  - iv. Section 280- Sentencing considerations- imprisonment;
25. Considering the above provisions and case law, **I enter a conviction against the accused.**
26. What would be the appropriate sentence here? How about the issue of **'impaired mental functioning'**? Is the moral culpability of the accused reduced because his mental condition had the effect of:
- (a) impairing the offender's ability to exercise appropriate judgment;
  - (b) impairing the offender's ability to make calm and rational choices, or to think clearly;
  - (c) making the offender disinhibited;
  - (d) impairing the offender's ability to appreciate the wrongfulness of the conduct;
  - (e) obscuring the intent to commit the offence; or
  - (f) contributing (causally) to the commission of the offence."
27. My discussions in paragraphs [20]- [22] above lead me to conclude that the moral culpability of the accused is not reduced in this case. He was assessed as normal when he was last reviewed in June 2021. Dr Wasson assessed him on 13<sup>th</sup> March 25 as mentally stable. The organised and semi- sophisticated way of his cannabis cultivation show the work of a calculating mind rather than one affected by a mental disorder.
28. Based on the case authorities referred to by Counsels and discussed above, it is clear that being convicted for Unlawful Cultivation of an Illicit Drug under Section 6 of the Illicit Drugs Control Act 2004 and in particular, the number of illicit drugs cultivated being more than 100 plants with a total weight of 7.61 kilograms, **this warrants a custodial sentence**. This is also conceded by the Defence Counsel.

29. Before I consider the length of the imprisonment term, I make it clear that any term of incarceration here is not for the purpose of curing the accused of his addiction to drugs. I further remind myself, as per Stark J in *Freeman v Harris* [1980] VR 267-  
**‘The gravity of the offence must be first paramount.’**
30. On Ms Hazelman’s submission that the ‘accused is entitled to plead not guilty and defend himself or herself without thereby attracting the risk of the imposition of a penalty more serious than would otherwise have been imposed’- as in *Signato v The Queen* (1988) 194 CLR 656, I am guided by the sentencing guidelines established in case law and as in paragraph [29] above- **‘ the gravity of the offence must be first paramount.’**
31. Furthermore, in my sentencing remarks in *R v Xavier Namaduk, Criminal Case No 24 of 2021* (sentence passed on 04th October 24), I referred to the **deterrence and rehabilitation factors** as purposes of sentencing. I mentioned the following:

*‘ Under Section 278(b) of the Crimes Act 2016- it provides:  
“to prevent crime by deterring the offender and other people from committing similar offences.”*

[28]. In *R v Radich* [1954] NZLR 86 (CA) the court said (at 87):  
*“We should say at once that this last argument omits one of the main purposes of punishment, which is to protect the public from the commission of such crimes by making it clear to the offender and to other persons with similar impulses that, if they yield to them, they will meet with severe punishment. In all civilized countries, in all ages, that has been the main purpose of punishment, and it still continues so. The fact that punishment does not entirely prevent all similar crimes should not obscure the cogent fact that the fear of severe punishment does, and will, prevent the commission of many that would have been committed if it was thought that the offender could escape without punishment, or with only a light punishment.”*

The court added:

*“If a court is weakly merciful, and does not impose a sentence commensurate with the seriousness of the crime, it fails in its duty to see that the sentences are such as to operate as a powerful factor to prevent the commission of such offences. On the other hand, justice and humanity both require that the previous character and conduct, and probable future life and conduct of the individual offender, and the effect of the sentence on these, should also be given the most careful consideration, although this factor is necessarily subsidiary to the main considerations that determine the appropriate amount of punishment.”*

[29] On **rehabilitation** as a purpose of sentencing, Section 278(d) provides:  
“to promote the rehabilitation of the offender.”

[30] In *Yardley v Betts* (1979) 22 SASR 108, King CJ said:

*"The protection of the community is also contributed to by the successful rehabilitation of offenders. This aspect of sentencing should never be lost sight of and it assumes particular importance in the case of first offenders and others who have not developed settled criminal habits. If a sentence has the effect of turning an offender towards a criminal way of life, the protection of the community is to that extent impaired. If the sentence induces or assists an offender to avoid offending in future, the protection of the community is to that extent enhanced."*

32. I remind myself of the **deterrence and rehabilitation factors above** as I consider how long the term of imprisonment should be. In *Seru v State* [2023] FJCA 67; AAU115.2017 (25 May 2023), the Fiji Court of Appeal looked at - Sentencing guidelines (Cultivation of cannabis sativa/marijuana) in Fiji. It is to be noted that under the *Illicit Drugs Control Act* 2004 in Fiji, the penalty is a fine of one million dollars, imprisonment for life or both. The Fiji Court of Appeal held:

*'[35] Firstly, the court should determine the offender's **culpability** (role) and then the **harm** caused (output or potential output). Then, the court should use the starting point given in the Sentencing Table below to reach a sentence corresponding to the role and category identified. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm could merit upward adjustment from the starting point. After further adjustment for aggravating or mitigating features a sentence within the range in the Sentencing Table below should be arrived at. Thereafter, reduction for guilty pleas, time in remand, totality principle etc. would complete the sentencing process.*

*[36] CULPABILITY. Culpability is demonstrated by the offender's role as given below. In assessing culpability, the sentencer should weigh up all the factors of the case to determine role (**leading role, significant role or lesser role**). Where there are characteristics present which fall under different role categories, or where the level of the offender's role is affected by the scale of the operation, the court should balance these characteristics to reach a fair assessment of the offender's culpability. Thus, it must be borne in mind that these roles may overlap or a single offender may have more than one role in any given situation. The demarcation of roles may blur at times. The sentencers should use their best judgment and discretion in such situations.*

**Leading role:**

*Owner, organizer, initiator or principal party in the venture. Involved in setting-up of the operation, for example obtaining the lands, premises, workers and equipment with which to carry out the cultivation. May have one or more such ventures.*

*Directing or organizing production/cultivation on a commercial scale*

*Substantial links to, and influence on, others in a chain*

*Close links to original source*

*Expectation of substantial financial or other advantage*

*Uses business as cover*

*Abuses a position of trust or responsibility*

***Significant role:***

*Play a greater or dominant part. Running the operation.*

*Operational or management function within a chain. May make arrangements for the plants to be brought in, and the crop to be distributed. They may help to run more than one operation and be involved in making payments, such as rental payments, albeit again on instructions from those running the operation.*

*Involves others in the operation whether by pressure, influence, intimidation or reward*

*Expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender's own habit), whether or not operating alone*

*Some awareness and understanding of scale of operation*

***Lesser role:***

*Secondary party. Sometimes as "gardeners" tending the plants and carrying out what might be described as the ordinary tasks involved in growing and harvesting the cannabis. Simply be doing their tasks on the instructions of above in the hierarchy. May get paid for the work or subsistence.*

*Performs a limited function under direction*

*Engaged by pressure, coercion, intimidation, grooming and/ or control*

*Involvement through naivety, immaturity or exploitation*

*No influence on those above in a chain*

*Very little, if any, awareness or understanding of the scale of operation*

*If own operation, solely for own use (considering reasonableness of account in all the circumstances)*

*Expectation of limited, if any, financial advantage, (including meeting the offender's own habit)*

[37] **HARM.** In assessing harm, output or potential output are determined by the number of plants/scales of operation (category 01, 02, 03 or 04). The court should determine the offence category from among 01- 04 given below:

- **Category 1** – Large scale cultivation capable of producing industrial quantities for commercial use with a considerable degree of sophistication and organization. Large commercial quantities. Elaborate projects designed to last over an extensive period of time. High degree of sophistication and organization. 100 or more plants.
- **Category 2** – Medium scale cultivation capable of producing significant quantities for commercial use i.e. with the object of deriving profits. Commercial quantities. Over 50 but less than 100 plants.
- **Category 3** – Small scale cultivation for profits capable of producing quantities for commercial use. 10 to 50 plants (with an assumed yield of 55g per plant).
- **Category 4** – Cultivation of small number of plants for personal use without sale to another party occurring or being intended. Less than 10 plants (with an assumed yield of 55g per plant).

[38] **SENTENCING TABLE** (cultivation of cannabis sativa).

Culpability	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
<b>Harm</b>			
<b>Category 1</b>	<b>Starting point</b> 18 years' custody	<b>Starting point</b> 14 years' custody	<b>Starting point</b> 9 years' custody
	<b>Category range</b> 16 – 20 years' custody	<b>Category range</b> 12 – 16 years' custody	<b>Category range</b> 7 years' – 12 years' custody
<b>Category 2</b>	<b>Starting point</b> 14 years' custody	<b>Starting point</b> 9 years' custody	<b>Starting point</b> 5 years' custody
	<b>Category range</b> 12 years– 16 years' custody	<b>Category range</b> 7 years'– 12 years' custody	<b>Category range</b> 3 years– 7 years' custody
<b>Category 3</b>	<b>Starting point</b> 9 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 7 years'– 12 years' custody	<b>Category range</b> 3 years'– 7 years' custody	<b>Category range</b> 1 year – 3 years' custody
<b>Category 4</b>	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 18 months' custody	<b>Starting point</b>
	<b>Category range</b> 3 years' – 7 years' custody	<b>Category range</b> 1 year – 3 years' custody	<b>Category range</b> Non-custodial – suspended sentence

[39] Aggravating and mitigating features. This is not an exhaustive list.

Statutory aggravating factors:

- *Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since conviction (see Naureure v State [2022] FJCA 149; AAU151.2020 (12 December 2022) at [32] –[39] for a detailed discussion on this aspect)*
- *Offence committed on bail*

Other aggravating factors include:

- *Exploitation of children and/or vulnerable persons to assist in drug-related activity*
- *Exercising control over the home of another person for drug-related activity*
- *Nature of any likely supply*
- *Level of any profit element*
- *Use of premises accompanied by unlawful access to electricity/other utility supply of others, where not charged separately*
- *Ongoing/large scale operation as evidenced by presence and nature of specialist equipment*
- *Exposure of drug user to the risk of serious harm over and above that expected by the user, for example, through the method of production or subsequent adulteration of the drug*
- *Exposure of those involved in drug production/cultivation to the risk of serious harm, for example through method of production/cultivation*
- *Exposure of third parties to the risk of serious harm, for example, through the location of the drug-related activity*
- *Attempts to conceal or dispose of evidence, where not charged separately*
- *Presence of others, especially children and/or non-users*
- *Presence of weapons, where not charged separately*
- *Use of violence (where not charged as separate offence or taken into account at step one)*
- *Failure to comply with current court orders*
- *Offence committed on licence or post sentence supervision*
- *Offending took place in prison (unless already taken into consideration at step 1)*
- *Established evidence of community impact*
- *Use of sophisticated methods or technologies in order to avoid or impede detection*
- *Use of indoor growing system (hydroponic method) to increase the growth and harvesting period and THC in the plants*
- *Growing for personal use but supplying to others on a non-commercial basis*
- *Period over which the offending has continued.*
- *Estimated value of the crop, if available.*
- *Assumed yield or the weight of dried cannabis*
- *Supply to others on a non-commercial basis in category 4.*

## Factors reducing seriousness or reflecting personal mitigation

- *Involvement due to pressure, intimidation or coercion falling short of duress (as opposed to being a willing party), except where already taken into account at step one. Acting under duress or undue influence.*
- *Isolated incident*
- *No previous convictions or no relevant or recent convictions*
- *Offender's vulnerability was exploited*
- *Remorse*
- *Good character and/or exemplary conduct*
- *Determination and/or demonstration of steps having been taken to address addiction (whose offending sits at the lower end of the scale in terms of seriousness) or offending behavior*
- *Serious medical conditions requiring urgent, intensive or long-term treatment*
- *Age and/or lack of maturity*
- *Mental disorder, impairment or diminished responsibility short of insanity or learning disability*
- *Personal circumstances, sole or primary carer for dependent relatives only in relation to category 4.*
- *Assumed yield or the weight of dried cannabis*
- *Sales are infrequent and of limited extent in category 3.*

33. Relying on the *Seru v State* Fiji Court of Appeal sentencing guidelines, I find that the accused is the initiator or principal party in the cultivation of the 141 cannabis plants. In this regard, I assess the culpability of the accused, Natahan Gadaraoa as of a **leading role**. At paragraph [21] above, I outlined what the photographs and video show. Although the cultivation site is at the accused's backyard, it is of a large scale relative to the size of this island and its population. The compound is totally fenced and barricaded with roofing iron sheets. One has to go through the house to access the cannabis farm. The plants were planted in big sacks/ flour bags, medium sized bin bags, smaller pot plants placed in large eskies and basins, and pot plants shaded within pumpkin plants. There were used and unused shade nets, water tanks and drums, buckets and receptacles to water the plants, and unused potting containers. This leads me to conclude that this cultivation operation was organised. It had some form of sophistication, though appearing rudimentary. As there were more than 100 plants, I assess the **harm** as falling within **Category 1**. The guidelines referred to by the Fiji Court of Appeal in the *Seru v State* case places the tariff for Category 1 cases between 16-20 years custodial terms in Fiji.

34. For Nauru, this offence carries a maximum sentence of 10 years and a fine not exceeding \$50,000.00 under the *Illicit Drugs Control Act 2004*. The cultivation and sale of cannabis in Nauru has the potential to cause so much harm to the country as a whole. For small, close knit communities like Nauru, the consequences of the drug trade will be dire with dreadful ramifications. It is a scourge that will bring immeasurable suffering to the people; especially the young and the vulnerable. It can lead to the total ruination of Nauru and her people. This menace or plague of cultivating illicit drugs needs to be nipped and stopped before it becomes widespread and rampant around the island. Considering all that, I take 9 years imprisonment as the starting point here.

35. I add 6 months for the following aggravating factors:

- The evidence clearly shows that the illicit drugs being cultivated in this case were both for personal use and for sale.
- The serious risk and harm to Nauru as a society from the drug trade.

36. The accused has been in custody since 06th May 2024. For time spent in custody, I reduce the sentence by 12 months.

37. The accused is a first offender. Of the 8 years 6 months, 2 years is suspended for 3 years.

38. This sentence is a reminder to all Nauruans and visitors to the Pleasant Islands that when you deal with illicit drugs, do not expect mercy from the Courts. Rather, prepare yourself to spend time in prison for a very long time.

## **CONCLUSION**

39. The accused is sentenced to 6 years 6 months imprisonment and fined \$5,000.00.

40. The fine of \$5,000.00 is to be paid within 21 days in default another 12 months is added onto his prison sentence.

41. If the accused pays his fine within 21 days from today, he is to serve 6 years before he is eligible for probation or parole.

42. If the accused fails to pay his fine within 21 days from today, he is to serve 7 years before he is eligible for probation or parole.

43. The RON Hospital Mental Health Unit is to carry out periodical visits to the accused in prison for counselling, psychoeducation and review of his condition.

**Dated this 10<sup>th</sup> day of April 2025**

  
**Kiniviliame T. Keteca**

**Judge**

