

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 156 OF 2017

STATE

V

LEMEKI TABUSOI

Counsel : Mr. T. Qalinauci for State.
: Ms. V. Narara for Accused.

Sentence Hearing : 17th October, 2017

Date of Sentence : 23rd October, 2017

SENTENCE

1. Mr. Lemeki Tabusoi, you were charged in the Magistrates Court at Rakiraki as follows:-

Statement of Offence

UNLAWFUL CULTIVATION OF ILLICIT DRUGS: Contrary to Section 5 (b) of the Drug Control Act 2004.

Particulars of Offence

LEMEKI TABUSOI, on the 26th day of August, 2014 at Wainiviti Settlement, Nalawa, Ra in the Western Division without lawful authority, cultivated 127 plants of Indian hemp or cannabis sativa, with the heights ranging from 25 cm and total weight of 8.6 kilograms, an illicit drug.

2. After a fully defended trial you were found guilty and convicted as charged by the learned Magistrate of Rakiraki.
3. The learned Magistrate transferred the record of the Magistrates Court to this Court for sentencing. I perused the same and evidence led in the trial. I am satisfied that you have been correctly convicted according to law.
4. On the 26th August, 2014, Inspector Koro of Rakiraki Police Station (PW1) with 3 other police officers (PW2, PW3 and PW4) came to your hose at Rakiraki with a search warrant when they received information that you were cultivating illicit drugs in your farm at Wainiviti Settlement. You showed your farm to the police officers voluntarily where you had planted Indian hemp plants (cannabis sativa). In your presence, Police officers uprooted 127 plants from your farm.
5. You were arrested and interviewed under caution by Cpl. Levani (PW.3). You admitted voluntarily that you had planted the plants uprooted from your farm for your livelihood.
6. Plants were handed over to Cpl. Levani (PW3) who later handed them over to the Government Analyst. Government Analyst's report confirmed that the dried leaves as cannabis sativa, an illicit drug under the Drug Control Act. The report also confirmed that the parcel contained a total weight of 8.6 kilograms of cannabis sativa.
7. Your Counsel filed helpful mitigation submission. I took into account your personal and mitigating circumstances submitted on your behalf. I also considered the submission filed by the State in coming to your sentence.
8. The maximum punishment for Unlawful Cultivation of Illicit Drugs under Section 5 (b) of the Illicit Drugs Control Act 2004 is a fine not exceeding \$1,000,000.00 or imprisonment for life or both.
9. The Court of Appeal in Kini Sulua and Michael Ashley Chandra v The State, Criminal Appeal No. AAU 0093 of 2008 and AAU 0074 of 2008 (31 May, 2012) formulated the following sentencing guidelines for offences committed under section 5 (a) and 5 (b) of the Illicit Drugs Control Act:

"Category 1: possession of 0 to 100 grams of cannabis sativa - a non-custodial sentence to be given, for example, fines, community service, counseling, discharge

with a strong warning, etc. Only in the worst cases, should a suspended prison sentence or a short sharp prison sentence be considered.

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.

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.

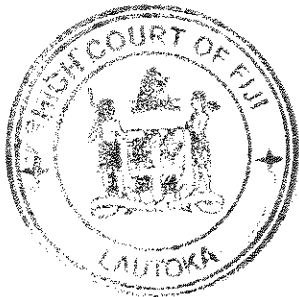
Category 4: possessing 4,000 grams and above of cannabis sativa. Tariff should be a sentence between 7 to 14 years imprisonment”.

10. It appears that the tariff applicable to a particular case is determined on the basis of the quantity of the illicit drugs found in the possession /cultivation of the offender. The weight of the cannabis cultivated by you is 8.6 kilograms which comes within category 4 above. Accordingly, the applicable sentencing tariff in this case is a sentence between 7 and 14 years’ imprisonment.
11. In the recent past, illicit drug menace has become a major social problem in our society. Those who are found guilty of planting cannabis sativa must be severely punished to send a clear message of denunciation and also to deter the offender and other potential offenders. Marijuana, the end product of cannabis sativa, is an addictive drug which has the potential to destroy our younger generation. The punishment prescribed under the Illicit Drugs Control Act 2004 reflects the serious consideration given to prevent cultivation of this drug.
12. When considered the serious nature of the offence committed, you should be punished to the extent and in a manner which is just in all circumstances of this case.
13. The amount of cannabis uprooted from your plantation is considerable. I pick a starting point of 11 years’ imprisonment to reflect the gravity of the offending.
14. There are no aggravating factors.

15. Your Counsel has drawn my attention to your personal and mitigating circumstances for my consideration. You are 51 year- old father of five children. You have divorced from your wife. Your children will undoubtedly face a difficult time by the situation you yourself have created.
16. I consider you to be a first offender although you are serving a prison term of 7 years and 4 months for a similar offence committed after this offence. You have co-operated with police during investigations and admitted your wrongdoing at the police interview.
17. For the mitigating factors, I deduct 1 year leaving a balance of 10 years' imprisonment. Your final sentence is 10 years' imprisonment.
18. Having considered Section 18 (1) of the Sentencing and Penalties Act and the decision of of the Supreme Court in *Tora v State* [2015] FJSC 23; CAV11.2015 (22 October 2015), I impose a non parole period of 8 years. Accordingly, you are eligible for parole after serving 8 years in prison.
19. Having considered Section 22 of the Sentencing and Penalties Act, I order that your sentence be served concurrently with the existing prison term.

Summary

20. You are sentenced to 10 years' imprisonment to be served concurrently with the existing prison term with a non-parole period of 8 years.
21. 30 days to appeal to the Court of Appeal.



Aruna Aluthge
Judge

At Lautoka
23rd October, 2017

Counsel: Office of the Director of Public Prosecution for State
Office of the Legal Aid Commission for Accused