

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**REVISIONAL JURISDICTION**

**CRIMINAL REVIEW CASE NO. HAR 011 OF 2012S**

**STATE**

**VS**

**JOSAIA QALITA**

**Counsels : Mr. L. Fotofili for the State**

**Accused in Person**

**Hearing : 15<sup>th</sup> March, 2013**

**Judgment : 02<sup>nd</sup> May, 2013**

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**JUDGMENT**

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1. On 18<sup>th</sup> February, 2012, the accused appeared in the Suva Magistrates Court, on the following charge:

**Statement of Offence**

**UNLAWFUL CULTIVATION OF ILLICIT DRUGS: Contrary to  
Section 5(a) of Illicit Drugs Act, 2004.**

**Particulars of Offence**

**JOSAIA QALITA** on the 14<sup>th</sup> day of February, 2012, at Wailailai Farm, Drue Village, Kadavu, in the Eastern Division without

lawful authority, cultivated 126 Marijuana plants weighing 3146.8 kilograms botanically known as Cannabis Sativa, the Illicit Drugs.

2. Looking through the court record, the weight of this illicit drug in the charge was not correct. A copy of the government analyst report said, the drugs weighed 3,146 grams of cannabis sativa, **not** 3,146 kilogram of cannabis sativa. The prosecution, nor the court saw the need to amend this charge, to reflect the correct position. This was a serious flaw. In the interest of justice, I will treat the weight of the illicit drug in the charge as 3,146 grams, instead of 3,146 kilograms.
3. On 18<sup>th</sup> February 2102, the accused waived his right to counsel. The charge was read and explained to him. He said, he understood the same, and he pleaded guilty to the charge. The summary of facts was read to him. It said that, on 14<sup>th</sup> February 2012, at a farm in Kadavu, the accused without lawful authority, cultivated 126 marijuana plants, which weighed a total of 3,146 grams of cannabis sativa, an illicit drug. The accused admitted the same, was found guilty as charged and convicted accordingly.
4. He submitted his plea in mitigation. On 20<sup>th</sup> March, 2012, the court delivered its sentence. It again relied on Meli Bavesi v The State, Criminal Appeal No. HAA 027 of 2004, High Court, Suva. It took 2 to 4 years imprisonment as the tariff. It started with 2 years imprisonment. It took the weight of the drugs as an aggravating factor, and increased the 2 years by 1 year, to 3 years imprisonment. As a 1<sup>st</sup> offender, pleading guilty, married with 2 children, a farmer, previous good character and 42 days in remand (mitigating factors), the court reduced the 3 years to 1 year 9 months 11 days, out of which 6 months 11 days to be served in custody, and the 15 months balance suspended for 2 years.
5. On 31<sup>st</sup> May, 2012, the Fiji Court of Appeal delivered a guideline judgment on drug sentencing in Fiji, in Kini Sulua, Michael Ashley Chandra, v The State. Criminal Appeal No. AAU 0093 of 2008 and AAU 0074 of 2008. Subject to the decision of the Supreme Court of Fiji, the Fiji Court of

Appeal, while commenting on the sentencing of drug offences in Fiji, laid down a sentencing guideline as follows:

- (i) **Category 1:** possession of 0 – 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.
  - (ii) **Category 2:** possession of 100 to 1,000 grams 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. Tariffs 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.
6. In this case, 3,146 gram of illicit drug was involved. It was therefore a category 3 offence. The tariff is a sentence between 3 to 7 years imprisonment. In this case, I would start with a sentence of 4 years. The weight of the illicit drugs found on the accused was more than 2,500 grams, and I would treat that as an aggravating factor and increase the sentence by 2 years to 6 years imprisonment. For the mitigating factors identified by the Magistrate Court, I would make a total deduction of 2 years, leaving a balance of 4 years imprisonment. In my view, the justice of this case demands a sentence of 4 years imprisonment from 20<sup>th</sup> March 2012.

7. Pursuant to section 262(1)(a) of the Criminal Procedure Decree 2009, I make the following orders and directives:

- (i) The Suva Magistrate Court's 20<sup>th</sup> March 2012 sentence of 1 year 9 months 11 days is quashed and set aside;
- (ii) In substitution thereof, the accused is sentenced to 4 years imprisonment from 20<sup>th</sup> March 2012, but since he had served 6 months 11 days in custody, and been remanded in custody from 1<sup>st</sup> October 2012 to 1<sup>st</sup> May 2013 (7 months), 14 months is to be deducted from the 4 years, leaving a balance of 2 years 10 months;
- (iii) Because of (ii) above, the accused is to serve the remaining 2 years 10 months, effective forthwith.

**Salesi Temo**  
**JUDGE**

**Solicitor for the State** : **Office of the Director of Public Prosecutions, Suva**  
**Solicitor for Accused** : **Accused in Person**