

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC. 23 of 2015**

**STATE**

**V**

**ILIESA TUITUBA**

**Counsel** : Ms. D. Kumar for the State  
Ms. L. Raisua for the Accused

**Date of Sentence** : 29<sup>th</sup> April, 2016

**SENTENCE**

1. Iliesa Tuituba, you were charged for the following offences by the Director of Public Prosecutions;

***COUNT ONE***

***Statement of Offence***

**Unlawful Possession of Illicit Drugs:** Contrary to section 5(a) of the Illicit Drugs Control Act 2004.

***Particulars of Offence***

**ILIESA TUITUBA** on the 4<sup>th</sup> day of November, 2014 at Wainadoi, Navua in the Central Division, unlawfully possessed 443.6 grams of an illicit drug known as cannabis.

**COUNT TWO**

***Statement of Offence***

**Unlawful Cultivation of Illicit Drugs:** contrary to section 5(a) of the Illicit Drugs Control Act 2004.

***Particulars of Offence***

**ILIESA TUITUBA** on the 4<sup>th</sup> day of November, 2014 at Wainadoi, Navua in the Central Division, unlawfully cultivated 7.6 kilograms of an illicit drug known as cannabis.

2. You pleaded guilty for the above charges on 14<sup>th</sup> April 2016 and you were convicted accordingly on 28<sup>th</sup> April 2016. At the time you pleaded guilty for the charges, you were represented by the Legal Aid Commission.
3. According to the summary of facts filed on 28<sup>th</sup> April 2016;
  - a) On 4 November 2014 while searching your residence, police officers found a clear plastic bag which contained 16.5 grams of *cannabis sativa*. You freely and voluntarily informed the team of police officers that the leaves came from plants you were cultivating.
  - b) You then voluntarily led the police team on an estimated 30 minute walk into the bushes near your residence to an open space on a hill and you showed the of police officers the *cannabis sativa* plants you were cultivating. 51 plants were uprooted. The height of the uprooted plants after the roots were removed was found to be within the range between 57 cm and 117 cm. The total weight of the uprooted plants was 7.6 kilograms.
  - c) In your cautioned interview, you voluntarily confessed that you had started cultivating *cannabis sativa* for the first time about four months prior to 5 November 2014 with the intention of selling it to users. You admitted that you planted the 51 cannabis plants seized by the police, and admitted to having been in possession of the cannabis sativa found by the police in the clear plastic bag at your residence on 4 November 2014.
4. The offence under section 5(a) of the Illicit Drugs Control Act 2004 carries a maximum penalty of a fine not exceeding \$1,000,000 or imprisonment for life or both.

5. Both counsel for prosecution and for defence highlighted the judgment in the case of *Sulua v State* [2012] FJCA 33 as the guideline judgment to be followed in sentencing offenders for the possession of *cannabis sativa*.
6. It is pertinent to note that the aforementioned judgment classifies offences under section 5(a) of the Illicit Drugs Control Act 2004 into four categories based on the weight of the drugs involved, for the purpose of sentencing. Under the 1<sup>st</sup> category a non-custodial sentence is suggested where the weight of the drugs involved is up to 100 grams. The 4<sup>th</sup> category where an imprisonment term between 7 – 14 years is suggested, applies when the weight of the drugs involved is more than 4 kilograms.
7. Section 17 of the Sentencing and Penalties Decree 2009, reads thus;

*“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”*
8. The two charges you are convicted of are based on the same facts. According to the statement of offence in count one you are charged for possession of drugs and that of count two you are charged for cultivation of drugs. However, both those acts constitute the same offence under section 5(a) of the Illicit Drugs Control Act 2004. Therefore, I consider it appropriate to impose an aggregate sentence of imprisonment for the two counts in view of the provisions of section 17 of the Sentencing and Penalties Decree.
9. In relation to the first count, you admitted that you were in possession of 16.5 grams of the illicit drug, *cannabis sativa* and in relation to second count, you admitted that you cultivated 51 *cannabis sativa* plants. The weight of the drugs in relation to the second count is 7.6 kg according to the summary of facts you admitted.
10. Considering the weight of the drugs involved in both counts I select 8 years imprisonment as the starting point of your sentence.
11. I agree with the prosecution that the fact that you had the intention of selling the illicit drug to users should be considered as an aggravating factor. Accordingly I increase



your sentence by one year to reflect this aggravating factor. Now your sentence is 9 years imprisonment.

12. You pleaded guilty on the 16<sup>th</sup> April 2016 when this matter was fixed for trial from 25<sup>th</sup> to the 29<sup>th</sup> April 2016. However, the counsel for the prosecution quite correctly and fairly pointed out that this court should consider granting you an appropriate discount in view of the fact that you had admitted to all the elements of the offence in the admitted facts at an earlier stage of this case.
13. This matter was first called in the High Court on 30<sup>th</sup> January 2015. Your plea was taken on 3<sup>rd</sup> June 2015 where you pleaded not guilty for both charges. In, the admitted facts filed on 28<sup>th</sup> July 2015 you seem to have admitted the necessary elements relating to both counts. Archbold Hong Kong 2013, at page 244 states thus;

*“The acceptance of a plea of guilty does not require a formal acknowledgment by the court to that effect: Secretary for Justice v Yuen Lit-ping (unrep., HCAL 77/1998); ... A plea of guilty is an admission of the truth of the elements of the offence: R v Riley [1896] 1 QB 309.”*
14. Considering the above I hold that you deserve a one fourth reduction of your sentence in view of your plea of guilty. Accordingly, I deduct 2 years and 3 months from your sentence.
15. In mitigation, your counsel had submitted the following;
  - a) You are 49 years old who is single;
  - b) You are a self-employed farmer;
  - c) You cooperated with the police from the time the search was conducted at your residence;
  - d) You are remorseful;
  - e) You have no relevant previous conviction.
16. I accept the above circumstances as mitigating factors and accordingly I deduct a further 2 years in view of those factors.
17. I hereby sentence you for an imprisonment term of 4 years and 9 months. I order that you are not eligible to be released on parole until you serve 3 years and 6 months of

that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Decree 2009.

18. I am satisfied that the above aggregate sentence of imprisonment does not exceed the total effective period of imprisonment had I imposed separate terms of imprisonment for the two counts.

19. Section 24 of the Sentencing and the Penalties Decree reads thus;

*“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”*

20. According to the counsel for the prosecution, you were arrested in relation to this case on 04<sup>th</sup> November 2014. You were granted bail on 30<sup>th</sup> June 2015 but the bail was revoked on 24<sup>th</sup> March 2016. The period you were in custody shall be regarded as a period of imprisonment already served by you pertaining to the sentence imposed on you in this case. I hold that the period to be considered as served should be 9 months.


21. In the result, you are sentenced to an imprisonment term of 4 years and 9 months with a non-parole period of 3 years and 6 months. Considering the time spent in custody, the remaining period to be served is;

Head Sentence – 4 years

Non-parole period – 2 years and 9 months

22. 30 days to appeal to the Court of Appeal.



  
Vinsent S. Perera  
JUDGE

**Solicitors for the State : Office of the Director of Public Prosecution, Suva.**  
**Solicitor for the Accused : Office of the Director of Legal Aid Commission, Suva.**