

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

LAUTOKA CRIMINAL CASE NO. HAC 211 OF 2018L

STATE

vs

ILAISA CALEVU

**Counsels : Mr. M. Vosawale for State
Ms. V. Narara and Mr. K. Skiba for Accused**

Hearings : 19, 21, 22, 25, 26, 27 May, 15, 16, 17, 18, 19, 22 and 23 June, 2020.

Summing Up: 24 June, 2020.

Judgment : 25 June 2020

Sentence : 26 June 2020

SENTENCE

1. In a judgment delivered yesterday, the court found you guilty and convicted you on the following counts in the following information:

Count 1

Statement of Offence

UNLAWFUL CULTIVATION OF ILLICIT DRUGS: Contrary to section 5
(a) of the Illicit Drugs Control Act 2004.

Particulars of Offence

ILAISA CALEVU and **SEMISI TANIMANAQE** on the 15th day of June, 2016 at Navosa in the Western Division, without lawful authority, cultivated one thousand two hundred and six (1206) plants of illicit drugs known as Cannabis Sativa, weighing 6.2 kilograms.

Count 3

Statement of Offence

RESISTING ARREST: Contrary to Section 277 (b) of the Crimes Act 2009.

Particulars of Offence

ILAISA CALEVU on the 6th day of March, 2017 at Navosa in the Western Division, resisted **POLICE CONSTABLE 5240 ESALA KAMUNAGA** whilst the said **POLICE CONSTABLE 5240 ESALA KAMUNAGA** was effecting arrest in the due execution of his duty.

Count 5

Statement of Offence

CRIMINAL INTIMIDATION: Contrary to Section 375 (1) (a) (iv) of the Crimes Act 2009.

Particulars of Offence

ILAISA CALEVU on the 13th day of March, 2018 at Navosa in the Western Division, without lawful excuse, threatened to kill **POLICE CONSTABLE 4482 URAIA LIQORIO** with a cane knife with intent to cause alarm to the said **POLICE CONSTABLE 4482 URAIA LIQORIO**.

2. The brief facts were as follows. In June 2016, the police received information that you were cultivating cannabis sativa plants, that is, marijuana, high up in the hills of Navosa. On 13 June 2016, a police raiding party went up to your marijuana farm. In fact, you led them to your farm. They saw your marijuana plants, uprooted the same, and brought them back to Navosa Police Station. The drugs were analyzed by the government analyst on 16 June 2016, and it was confirmed the plants were cannabis sativa, weighing 6.2 kilograms. Please refer to Prosecution Exhibit No. 11.

3. You were caution interviewed by police, and you admitted the allegations in count no. 1. You also admitted the allegations in count no. 3 and 5 when caution interviewed by police. Please refer to Prosecution Exhibits 6 and 8. You had been tried and convicted on the above offences.
4. We will begin with count no. 1, the “unlawful cultivation of illicit drugs”, contrary to section 5 (a) of the Illicit Drugs Control Act 2004. Of the three counts, this is the most serious offence. It carried a maximum sentence of life imprisonment or a fine not exceeding \$1,000,000 or both. 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, 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. 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.
5. The weight of the drugs in this case being 6.2 kilograms, it makes the case a Category 4 case. The tariff is therefore a sentence between 7 to 14 years imprisonment. However, the final sentence will depend on the aggravating and mitigating factors.

6. For count no. 3, “resisting arrest”, the maximum penalty is 5 years imprisonment.
7. For count no. 5, “criminal intimidation”, the maximum penalty is also 5 years imprisonment.
8. The aggravating factors in this case were as follows:
 - (i) The amount of drugs you were cultivating were huge.
 - (ii) Your attitude to police officers are obviously negative. Police officers are paid by the public to protect them. You have to learn to follow the law. If police officer arrests you, don't resist. Also don't threaten to kill them if they are doing their job. The court do not take lightly any attack or threat against police officers. An attack on any police officer is an invitation to the court to send you to prison, if found guilty. If you think, their arresting you was unlawful, wait until you come into the courtroom, and challenge them accordingly. In this case, you will have to pay for your unlawful actions against the police.
9. The mitigating factors were as follows:
 - (i) You had been remanded in custody for 2 years 4 months, while awaiting trial;
 - (ii) This case had been hanging over your head for approximately 4 years, while it was lingering on in the court system, a punishment in itself;
 - (iii) In investigating count no. 1, you assisted police by leading them to and showing them your marijuana farm, and later when they caution interviewed you, you freely admitted count no. 1 to them. Your co-operation on count no. 1 must be rewarded.
10. On count no. 1, “unlawful cultivation of illicit drugs”, I start with a sentence of 10 years imprisonment. For the aggravating factors, I add 4 years, leaving a total of 14 years imprisonment. I deduct 2 years 4 months, for time already served while remanded in custody, leaving a balance of 11 years 8 months. I deduct another 1 year 8 months, for having to wait for 4 years for your case to be dealt with, leaving a balance of 10 years imprisonment. For co-operating with police for showing them your marijuana

farm, and admitting count no. 1 when caution interviewed, I deduct 3 years, leaving a balance of 7 years imprisonment.

11. On count no. 3, “resisting arrest”, I sentence you to 6 months imprisonment.
12. On count no. 5, “criminal intimidation”, I sentence you to 3 years imprisonment.
13. The summary of your sentences are as follows:
 - (i) Count no. 1: Unlawful Cultivation of Illicit Drugs : 7 years imprisonment.
 - (ii) Count no. 3: Resisting Arrest : 6 months imprisonment.
 - (iii) Count no. 5: Criminal Intimidation : 3 years imprisonment
14. Because of the totality principle of sentencing, I direct that all the above sentences be made concurrent to each other, making a final total sentence of 7 years imprisonment.
15. Mr. Ilaisa Calevu, for offending as alleged in counts no. 1, 3 and 5 of the information, I sentence you to 7 years imprisonment, with a non-parole period of 5 years, effective forthwith.
16. I direct that Prosecution Exhibit No. 9 (i.e. the dried cannabis sativa plants etc.) be photographed by the police, and the photos thereof to be part of the record, before it is destroyed by the Chief Registrar’s office, with the assistance of the police.
17. You have 30 days to appeal to the Court of Appeal.




Salesi Temo
JUDGE

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