

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION
CRIMINAL APPEAL CASE NO. HAA 045 OF 2019S

BETWEEN: VILIKESA VATUWALIWALI

APPELLANT

AND: THE STATE

RESPONDENT

Counsels : Appellant in Person
Ms. B. Kantharia for Respondent
Hearing : 23 March, 2020.
Judgment : 23 July, 2020.

JUDGMENT

1. On 28 July, 2019, the appellant appeared in the Nausori Magistrate Court, on the following charge:

“Statement of Offence (a)

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

Particulars of Offence (b)

VILIKESA VATUWALIWALI on the 25th day of June, 2019 at Waimalua Settlement, Tailevu in the Central Division, without lawful excuse cultivated 111.5 grams of Cannabis Sativa or Indian hemp an Illicit Drug.”

2. In recording the proceeding, the court record reads as follow:

"IN THE RESIDENT MAGISTRATE'S COURT
AT NAUSORI

Criminal Case No. 129/19

BEFORE MR LASITHA CHAMINDA
RESIDENT MAGISTRATE

28/06/19

Prosecution: Fazim PC

Accused: Present

Court: *Full disclosures received.*

The charge sheet is read in itaukei understood and pleaded guilty of his own free will.

Summary fact presented for the Court. Understood and admitted, convicted.

Mitigation

33 years single. Farmer. \$250 per week. Forgiven. Not to reoffend. No previous conviction except pending case of CF 100/19.

To ensure your presence in the Court and on the public interest you are further remanded.

Accused for Sentence 02/07/2019 at Tailevu.

L. Chaminda (Mr)
Resident Magistrate

2/7/19

Prosecution: Sergeant Rao

Accused: Present

Court: *You are further remanded.*

Accused for Sentence. Adjourned to 8/7/2019 at Nausori.

L. Chaminda (Mr)
Resident Magistrate

8/7/19

Prosecution: PC Shelvin

Accused: Present

Court: *You are remanded. Accused for Sentence on 22/7/2019.*

*L. Chaminda (Mr)
Resident Magistrate*

23/07/19

Prosecution: PC Shelvin

Accused: Present

Court: *The Sentence is pronounced in open Court.*

*L. Chaminda (Mr)
Resident Magistrate"*

3. On 23 July 2019, the Magistrate Court sentenced the appellant to 75 month imprisonment, with a non-parole period of 65 months imprisonment.
4. The appellant complained to the High Court, basically saying that the sentence was harsh and excessive. He had not complained about his conviction.
5. I have carefully read and considered the Magistrate Court record and the learned Magistrate's sentencing remarks to find out whether or not the appellant was justified in making the above complaints.
6. This case had once again demonstrated the problems identified in **Vilikesa Taginakalou v State**, Criminal Appeal Case No. HAA 003 of 2019S, High Court, Suva, delivered on 8 November 2019. When sentencing the appellant in this case, the learned Magistrate relied on the English Court of Appeal Case of **Auron** [2011] EWCA Crim 76, **re koroi & Others**, HAR 003 to 006 of 2012, High Court, Suva (20 April 2012) and **Dibi v State**, Criminal Appeal Case No. HAA 96 of 2017, High Court, Lautoka (16 February, 2018). The above cases had been overtaken by the Fiji Court of Appeal case of **Kini Sulua & Another v The**

State [2012] Fiji Law Report, Volume 2, pages 111 to 147. In **Vilikesa Taginakalou v State** (supra), it had been said that to ignore the binding nature of **Kini Sulua v The State** (supra), when sentencing those found guilty of cannabis sativa type offendings in the Magistrate Courts, would lead to a possible overturning of any sentencing decision.

7. In terms of the sentencing guideline laid out in **Kini Sulua v The State** (supra), the weight of the cannabis sativa drug in this case was 111.5 grams. That makes the case a Category 2 offence, with the set tariff of between 1 to 3 years imprisonment. It was said in **Kini Sulua v The State** (supra) that those found possessing and/or cultivating cannabis sativa less than 500 grams, should be sentenced to less than 2 years imprisonment.
8. In this case, the appellant pleaded guilty to the offence on first call. He was a first offender. He is 33 years old and a farmer. He had been remanded in custody for nearly a month. He had saved the court's time by pleading guilty early. Applying **Kini Sulua v The State** (supra), he should be sentenced to less than 2 years. A 6 years prison sentence was obviously excessive and unjust in terms of the **Kini Sulua v The State** (supra) guidelines. In my view, as of today, the appellant had already been in prison for one year.
9. Given what I said above, I uphold the appellant's complaint that the 75 months imprisonment imposed by the Nausori Magistrate Court was excessive and unjust in terms of the **Kini Sulua v The State** guideline. I therefore set aside and quash the 75 months imprisonment imposed on 23 July 2019; and in substitution thereof, a sentence of 12 months imprisonment is imposed, to take effect from 23 July 2019.
10. As a result of the above, the appellant's sentence appeal is allowed. He had served his sentence. He is now free to go home.



Solicitor for Appellant
Solicitor for State

: **In Person.**
: **Office of Director of Public Prosecution, Suva.**

A handwritten signature in blue ink, appearing to read 'Salesi Temo'.

Salesi Temo
JUDGE