

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

**CRIMINAL CASE NO. HAC 016 OF 2019/ HAC 39/2023**

**STATE**

**V**

**APENSIA BULIVOU**

Counsel: Mr. T. Tuenuku for State  
Mr. P. Gade for Defence

Date of Hearing: 08 May 2023  
Date of Sentence: 22 May 2023

**SENTENCE**

1. Mr. Apensia Bulivou, you stand convicted of one count of unlawful cultivation of illicit drugs and one count of unlawful possession of illicit drugs contrary to section 5 (a) of the Illicit Drugs Control Act 2004. The amended information reads as follows:

Count One

Statement of Offence (a)

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

Particulars of Offence (b)

APENISA BULIVOU on the 2<sup>nd</sup> day of November 2016, at Matalevu, Tavua in the Western Division, without lawful authority, cultivated 4,970 plants of Cannabis Sativa, an illicit drug weighing 61.3 kilograms.

Count Two

Statement of Offence (a)

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

Particulars of Offence (b)

APENISA BULIVOU on the 2 nd day of November 2016, at Matalavu, Tavua in the Western Division, without lawful authority, possessed 772.3 grams of Cannabis Sativa, an illicit drug.

2. In the Magistrates Court at Tavua, you pleaded guilty to each count. The Learned Magistrate found you guilty on the facts you had admitted. Being satisfied that the guilty plea was unequivocal and free from any influence, the Learned Magistrate convicted you on both counts and referred this matter to this Court for sentencing under Section 7(1) of the Criminal Procedure Act. You now come before this Court for sentence.
3. For the purpose of sentencing, I enquired into the circumstances of the case that led to the conviction. The facts you admitted are as follows.

On the 2nd day of November 2016 at Matalavu, Tavua, the police officers conducted a drug raid at the Marijuana farm of the accused. When they arrived at the farm, the accused was there but ran away after noticing the police officers. Fortunately, one of the police officers, PC 5156 Tomasi who was part of the raid team recognized the accused as he ran away from them. After the accused ran away, the police officers uprooted a total of 4, 970 Cannabis Sativa plants from the accused's marijuana farm.

The police officers also seized 3 plastic bags which contained dried Cannabis Sativa leaves from a tent that was erected on the farm by the accused. The accused was finally arrested on the 22nd of December, 2016 and he was interviewed under caution at Tavua Police Station (annexed and marked "A" is the caution interview notes of the accused). He admitted cultivating the Cannabis Sativa plants on his farm. He also admitted unlawfully possessing the 3 plastic bags containing dried Cannabis Sativa leaves. The accused also admitted running away and hiding from police officers when they arrived at his marijuana farm. The 4,970 plants and the dried leaves found in the 3 plastic bags were taken to the Fiji Police Forensic Chemistry Laboratory for testing. The 4,970 plants and the dried leaves found in the 3 plastic bags were tested and found to be Cannabis Sativa, an illicit drug (annexed and marked "B" is the test results). The total weight of the 4,970 Cannabis Sativa plants were 61.3 kilograms. The total weight of the dried Cannabis Sativa leaves found in the 3 plastic bags were 772.3 grams. The total weight of the Cannabis Sativa that was unlawfully cultivated and was in the possession of the accused were 62.072 kilograms.

4. You unlawfully cultivated 4,790 Cannabis Sativa plants, with a total weight of 61.3 kilograms. You were also found in possession of 772.3 grams of dried Cannabis Sativa leaves.
5. In selecting the sentence that is best suited to you, I bear in mind the proportionality principle enshrined in the Constitution, the Sentencing and Penalties Act 2009 (SPA), specifically, Section 4 of the Act, the maximum penalty prescribed for the offence, the current sentencing

practice and the applicable guidelines issued by the courts. Having had due regard to the seriousness and the potential harm of your offence, I would select the starting point. After making due adjustments for the aggravating and the mitigating features, I will arrive at the final sentence that is just and reasonable in all the circumstances of this case.

6. The maximum punishment prescribed for each offence is a fine of one Million Dollars or life imprisonment or both. The maximum punishment prescribed for the offence signifies the seriousness of the offence.
  
7. In *Sulua v State* [2012] FJCA 33 (31 May 2012) the Court of Appeal set the sentencing tariff to all types of Cannabis Sativa offences defined in Section 5(a) and 5(b) of the Illicit Drugs Control Act 2004. Sulua guidelines are as follows:
  - (i) Category 1: possession of 0 to 100 grams of cannabis sativa - a non-custodial sentence to be given, for example, fines, community service, counselling, 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 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.
  
  - (iii) Category 3: possessing 1,000 to 4,000 grams of cannabis sativa. Tariff should be a sentence between 3 and 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 and 14 years imprisonment.
  
8. The Court emphasised that the sentencing outside the bands is not forbidden, although it must be justified. The offence on count one falls under category 4 above which warrants an

imprisonment term between 7 and 14 years and the second count falls on category 2 above which attracts an imprisonment term between 2 and 3 years.

9. In Sulua, the Court preferred a quantity based approach and the quantity is to be decided on the basis of the (dry) weight of the plants and not on the basis of the number of plants. There can be no doubt that quantity is an objectively verifiable factor, the best marker of harm and a rational measure of culpability for offending which poses a danger to public health. The fact that a large number of plants have been confiscated indicates that the plantation was aimed at commercial purposes. Harm inflicted on the community is particularly important in sentencing for commercial drug offending because of its corrosive effect on communities.
10. The illicit drug offending has become a serious problem in Fiji. A higher quantities of cannabis sativa have been seized in recent years. Deterrence is a legitimate sentencing purpose in the Sentencing and Penalties Act and the real life experience tells us that it works for most people. In the context of cannabis sativa sentencing, particularly relevant purposes include deterrence and the protection of the community.
11. According to Section 17 of the Sentencing and Penalties Act 2009, if an offender is convicted of more than one offence founded on the same facts, the court has a discretion to impose an aggregate sentence of imprisonment in respect of those offences. This is a fit case to impose an aggregate sentence under Section 17 of the Sentencing and Penalties Act for both offences.
12. There is no evidence that you are a user or an addict of the drug you had cultivated. The quantity / the number of plants seized, the previous conviction of similar nature suggest that you cultivated the drug for commercial purpose. Illegal drug dealing is a lucrative business and those who are in this business have no regard to harm that is caused to the community at large. Based on the seriousness of the offence and the potential harm that this drug could cause to the community, I pick a term of 11 years as the starting point of the sentence.
13. While the seriousness of the offence, the quantity / purity of the illicit drug as a harm factor are relevant considerations (at tier one), the sentencing discretion must be guided at tier two by all other relevant considerations, both aggravating and mitigating, including the subjective features of the offender.

14. It is aggravating that you had fled when you saw the police officers approaching the farm. You went into hiding and surrendered to police approximately two months after the raid. Since the commercial aspect of your plantation has already been taken into consideration in selecting the starting point, it would not be considered as an aggravating factor at this stage.
15. I considered the mitigation submission filed by your Counsel carefully. You are 34 years old. You admitted your wrongdoing and confessed to the offences at the police caution interview. You pleaded guilty to the charge at the first available opportunity when the amended charge was filed. However, the early admission of guilt does not appear to represent a genuine expression of remorse as it resulted from the recognition of the inevitable. You had escaped from the plantation as the police approached and the identification of you by the police officers as the culprit forced you to admit the offences. However, the early admission of guilt eased the police investigation and also saved the precious time and the resources of this Court. Therefore, you should receive a deduction on account of the early guilty plea.
16. I add 02 years for the above mentioned aggravating features and deduct 01 year for the mitigating circumstances to arrive at an interim sentence of 12 years' imprisonment.
17. You had been in police custody from 22 December 2016 and in remand for approximately 2 months until 14 February 2017 when you were enlarged on bail. I would consider your remand period as an imprisonment term you have already served.
18. When I perused the Magistrates Court Record and that of this Court, I find exceptional circumstance where further reduction should be considered. You had been in the system for a considerable period of time, approximately six years, before being properly convicted and presented for sentencing. When you were initially arraigned in the Magistrates Court for these offences in 2017, you had pleaded guilty and the matter had been transferred to this Court for sentencing. However, the Judge before whom the matter was called had quashed the conviction when he found that the conviction was not properly recorded at the Magistrates Court. The matter had then been transferred back to the Magistrates Court for re-arraignment on an amended charge. Since then this matter had been in the system for over six years.
19. You are currently serving an imprisonment term of 7 years and 2 months from 05 January 2018 for Cultivation of Illicit Drugs and Conspiracy to Supply Illicit Drugs. In mitigation your

Counsel submitted that you be given the benefit of the concurrent sentence that could have been imposed when you pleaded guilty at the first available opportunity. I agree that had you been properly convicted for this matter when you pleaded guilty at the first available opportunity, you should have received a concurrent sentence to be served with the existing sentence. You are not to be blamed for the delay caused in the system. Therefore, I give a substantial reduction of your sentence on account of the prejudice caused by the delay.

20. Accordingly, you should be sentenced to an aggregate imprisonment term of 8 years to be served concurrently with the existing sentence.
21. To balance your potential for rehabilitation with the protection of the community, I fix a non-parole period at 7 years.
22. **Summary**  
Mr. Apensia Bulivou, you are sentenced to 8 years' imprisonment to be served concurrently with the existing imprisonment term with a non-parole period of 7 years.
23. You have 30 days to appeal to the Court of Appeal if you so desire.



Aruna Aluthge

Judge

22 May 2023

**Solicitors:**

Office of the Director of Public Prosecutions for State

Legal Aid Commission for Defence