IN THE HIGH COURT OF FIJI
AT LABASA
APPELLATE JURISDICTION

Criminal Appeal Case No. HAA 9 of 2025
(Labasa Criminal Case No. 572 of 2025)

JONE DRODROLAGI **APPELLANT**

-v-

STATE **RESPONDENT**

Counsel: **Appellant in person**
Ms E Thaggard for the State

Date of Hearing: 16 December 2025
Date of Judgment: 22 December 2025

JUDGMENT

1. On 14 August 2025, in the Magistrates' Court at Labasa, the appellant pleaded guilty to a charge of Unlawful Possession of Illicit Drugs, contrary to section 5(a) of the Illicit Drugs Control Act 2004.

2. A summary of facts was read and agreed by the appellant. Those facts were that, on 12 January 2023, a police officer was on surveillance patrol at Labasa Market when he noticed the appellant acting suspiciously. The appellant was apprehended and told to hand over the pink plastic he was holding in his right hand. It was found to contain some branches of dried leaves believed to be marijuana. Upon analysis, it was found to be cannabis sativa weighing 378.8 grams.

3. The learned Resident Magistrate convicted the appellant on his own plea and adjourned for sentencing.

4. On 29 August 2025, the Resident Magistrate sentenced the appellant to 10 months imprisonment. The Magistrate's written sentencing remarks set out clearly how this sentence was arrived at ("the impugned sentence").

5. Dissatisfied with the impugned sentence, on 16 September 2025, the appellant filed a home-made document headed "Application for Leave to Appeal" dated 30 August 2024. The appellant sought to advance four substantive grounds of appeal:

> *"A. That the Learned Magistrate erred in law and in fact in taking into consideration the accused list of previous convictions and disregard the non-custodial options outlined in the Arisi Kaitaini Supreme Court decision which was prejudicial and unethical to the interest of justice and fairness according to law.*
>
> *B. The Learned Magistrate erred in law and in fact considering the Appellant's early guilty plea, family circumstances and either mitigation factors where he should be given a lenient and reasonable sentence based on other precedent cases.*
>
> *C. The Learned Magistrate erred in law and in fact when stating that the purpose of his sentence is deterrence and not considering any chances of rehabilitation to reflect his mitigation factors in assisting the court's valuable time and resources to warrant a decent and uniform sentence respectively.*
>
> *D. That the sentence rendered by her sister Magistrate is harsh and excessive in all the circumstances of the case."*

Appellant's written submissions

6. The appellant filed written submissions which he relied on at the hearing of his appeal. The gravamen of the appellant's complaint is that his sentence was

harsh and excessive. He drew the court's attention to two cases in which the offenders were given non-custodial sentences for possession of larger quantities of cannabis. Whilst not advanced as one of his original grounds of appeal, the appellant also raised the issue of the long delay between his offending in January 2023 and the date he was charged in July 2025. During this period, he was a farmer and family man.

Respondent's submissions

7. Ms. Thaggard has made helpful written and oral submissions for which the Court is grateful.

8. Ms. Thaggard argues that there is no merit in the complaint that the magistrate erred in disregarding the non-custodial disposals outlined in *Kaitani* for Category 1 offending. The learned magistrate had *Kaitani* well in mind and decided that the custody threshold was crossed in all the circumstances of this case, principally that the appellant was a repeat offender for possession of cannabis. The magistrate had given a substantial discount to reflect the appellant's early guilty plea, and did not err in prioritising the purpose of deterrence having regard to the appellant's recidivism. Ms. Thaggard drew the Court's attention to *dicta* in *Kaitani* that Category 1 allows for a *"short sharp prison sentence"* in the *"worst cases"*. She argues that the present case may be classified as falling in the category of *"worst cases"* within Category 1.

9. When the Court raised the issue whether the starting point of 12 months' imprisonment may be considered too high, and whether the uplift of 6 months to reflect aggravating factors might have involved a degree of double counting, Ms. Thaggard sought to justify the starting point on the basis that the appellant was a repeat offender. Very fairly, Ms. Thaggard accepted that the uplift of 6 months from that starting point may have involved an element of double counting. She also very properly accepted that the long delay between the index offending and the date of charge might be considered as a mitigating factor which was not taken into consideration by the magistrate.

Discussion and disposal

10. At first blush, the sentence of 18 months' imprisonment, before discount for mitigation and plea, would appear excessive having regard to the clear statement

in *Kaitani* that, for possession of less than 1 kg of cannabis, *“there is no need for the State to waste its resources on this category”*, and that, “*Only in the worst cases, should a suspended prison sentence or a short sharp prison sentence be considered”.*

11. It is perhaps not easy to identify what a *“worst case”* of simple possession of a relatively small quantity of cannabis might involve. Given that the Supreme Court does not provide further guidance, there is a danger that different sentencing courts may take differing views on what constitutes a worst case, thereby undermining the fundamentally important principle of consistency. Indeed, in the present case the appellant is aggrieved that he was sentenced to immediate imprisonment whereas other offenders he identifies were fined for possession of slightly larger quantities of cannabis.

12. In the impugned sentence, the Resident Magistrate correctly assessed harm as falling within Category 1 of *Kaitani*. She was mindful of the non-custodial options outlined in *Kaitani* and rejected those options because of the appellant’s previous convictions for possession of cannabis. Presumably, the learned magistrate assessed the present case as falling within the *“worst cases”* warranting a short prison sentence because of the appellant’s previous similar convictions. In my view, it was reasonably open to the magistrate to adopt that view.

13. The next issue I must address is whether the magistrate adopted the correct starting point for that custodial sentence. For Category 2 offending (1kg to 5kg) the appropriate range is 1 to 4 years’ imprisonment. In this case, the appellant was in possession of less than half the indicative quantity for the bottom of Category 2, yet the magistrate took a starting point corresponding to the bottom of Category 2. At paragraph 12 of the impugned sentence, the magistrate stated that:

> *“I consider the objective seriousness of the offence considering the weight of the illicit substance found in your possession, without considering any mitigating or aggravating features of the case, and select a starting point of 12 months.”*

14. I fail to see how a starting point of 12 months’ imprisonment may be justified based solely on the weight of illicit drugs found in the appellant’s possession. To

find otherwise would be to completely disregard the *Kaitani* weight-based categories. In my view, the magistrate erred in principle in the adoption of a starting point for a Category 1 offence equivalent to what would be an appropriate starting point for a Category 2 offence.

15. Accepting the magistrate's categorisation of this case as a worst case warranting an immediate custodial sentence, in my view the appropriate starting point would have been 6 months' imprisonment. When balancing aggravating and mitigating factors, care must be taken not to double count the aggravating factors that elevated the case into the category of worst cases to further enhance the sentence.

16. At paragraph 8 of the impugned sentence, the magistrate identified the aggravating factors as the appellant walking around in public at the market, which is right next to the Police Market Post, and, when he was approached, he tried to run away. It would appear that the magistrate took a dim view of the appellant's blatant disregard of the law in the context of the court having already given him two chances by the imposition of suspended sentences for possession of cannabis. I share that dim view and echo what the learned magistrate said about the possession of illicit drugs on the streets of Labasa being too prevalent. In my view, the magistrate was right to adopt as her main purpose in sentencing the appellant general and specific deterrence, with rehabilitation being secondary in all the circumstances of this case. The index offending was committed during the operational period of a suspended sentence for unlawful possession of cannabis imposed a few months before the appellant was apprehended in this case.

17. Leaving aside credit for the appellant's early plea, balancing the aggravating and mitigating factors, the just and proportionate sentence is one of 12 months' imprisonment. To reflect full credit for the early plea, I reduce that sentence by one third. From the resulting sentence of 8 months' imprisonment, I deduct 1 month to reflect time served on remand.

18. Accordingly, I quash the impugned sentence and sentence the appellant to 7 months' imprisonment. Plainly, suspension is not warranted.

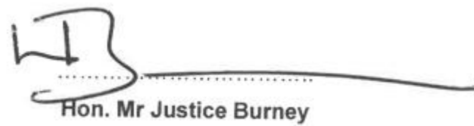
Orders:

(i) Appeal against sentence allowed;

(ii) Sentence of 10 months' imprisonment quashed;

(iii) Appellant sentenced to 7 months' imprisonment with effect from 29 August 2025;

(iv) 30 days to appeal to the Court of Appeal.



Hon. Mr Justice Burney

At Labasa
22 December 2025

Solicitors
Appellant in person
Office of the Director of Public Prosecutions for the State