

IN THE RESIDENT MAGISTRATE'S COURT AT SUVA

Criminal Case No.412/2013

**THE STATE
V
LORIMA ROKOBIAU**

For Prosecution: PC Pauliasi

For the Accused: Present

SENTENCE

1. **Lorima Rokobiau**, you were charged with the offence of Unlawful Possession of Illicit Drugs contrary to section 5 (a) of the Drugs Control Act Number 9 of 2004 and the particulars of offence states as follows;

On the 27th day of February 2013 at Nabua in the Central Division, without lawful Authority had in his possession **6.3** grams of Indian hemp leaves botanically known as Cannabis Sativa an Illicit Drugs.

2. The summary of facts of the case that was submitted by the prosecution and admitted by you.
3. I have considered mitigating factors and your personal background submitted by you which were brought before me in your oral mitigation.
4. **Statutory Indication:**

Section 5 reads; Any person who without lawful authority-

- (a) acquires, supplies, possesses, produces, manufactures, cultivates, uses or administers an illicit drug; or
- (b) engages in any dealings with any other person for the transfer, transport, supply, use, manufacture, offer, sale, import or export of an illicit drug;

commits an offence and is liable on conviction to a fine not exceeding \$1,000,000 or imprisonment for life or both.

The Tariffs

I draw my attention to the recent **Judgment Sulua v State [2012] FJCA 33; AAU0093.2008 (31 May 2012)**.

Their Lordships have analyzed 50 cases prosecutions for “possession of cannabis” contrary to section 5 (a) of the Illicit Drugs Control Act 2004 to assist to draw up a Sentencing guideline proposing the following four categories; 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, 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 – 1000 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.

Consequently, the four categories mentioned above, apply to each of the verbs mentioned in section 5 (a) of the 2004 Act mentioned above. The weight of the particular illicit drug will determine which category the case falls under, and the applicable penalty that will apply”.

5. **Sentence**

I now proceed to consider appropriate sentences on you upon considering the general principle of sentencing under Section 15 (3) of the Sentencing and Penalties Decree and objective of sentencing under section 4 (1) and 4 (2) of the Sentencing and Penalties Decree.

In Sentencing you, I consider and acknowledge our early guilty plea and mitigating Factors including your personal background and your antecedents’; you have four previous convictions. I also note that you are remorseful. You also stated that the reason for possession is for your personal use.

I note that you have remanded in custody from 1-3-13 to 20-3-13 pending sentence. Fiji Court of Appeal in: Prasad v State [2010] FJCA 12; AAU0111.2007 (8 April 2010) at paragraph referring to Basa v The State [2006] FJCA 23; AAU0024.2005 (24 March, 2006) held;

“As a matter of sentencing principle, any period that the offender spends in custody on remand should be taken into account when calculating the sentence. Although, it is not necessary to make a precise calculation.”

In all the circumstances I find it appropriate to consider the time you spent in custody. I am of the view that you learnt your lesson having spent time in prison. I also note that you do not have any previous conviction for an offence of similar nature.

6. In this case, you fall into the first Category. See (Sulua v State-supra) considering all the circumstances’ of this case I order you to pay a fine of \$100.00 [01 penalty unit] in default 10 days for the offence of Unlawful Possession of Illicit Drugs contrary to section 5 (a) of the Drugs Control Act Number 9 of 2004. You have 28 days to pay.
7. I further make an order that if there are any drugs remaining in police custody, I hereby direct that such drugs are to be destroyed and a Certificate confirming the same is to be forwarded to the Court for the record.

8. **Right to Appeal**

28 days to appeal.

Review; 29th of July 2013

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Lakshika Fernando

Resident Magistrate

On this 01st day of July 2013.