

**IN THE MAGISTRATE'S COURT AT LABASA**  
**CRIMINAL JURISDICTION**

*Criminal Case No. 503 of 2011*

**STATE**

v

**APENISA MARA**

For the Prosecution : **PC Monish**  
For the Accused : **In Person**  
  
Judgment : **26 January 2018**

**JUDGMENT**

1. The Accused, Apenisa Mara, is charged for *Found In Possession of Illicit Drugs*, contrary to *section 5(a)* of the *Illicit Drugs Control Act 2004*.
2. The particulars of the offence are;-  
*"Apenisa Mara on the 4<sup>th</sup> day of November 2010, at Labasa in the Northern Division without lawful authority processes 10.8 grams of cannabis sativa an illicit drugs."*
3. The Accused pleaded not guilty to the charge on 12 March 2012. The case proceeded to trial on 16 May 2016, and 20 September 2016, for the prosecution case. The Accused exercised his rights to remain silent on 20 September 2016.

The trial was adjourned to 16 November 2017, to allow the accused to bring his witness. The accused was unable to bring his witness to court and the trial concluded. There were four witnesses called by the prosecution.

4. *Section 5(a) of the Illicit Drugs Control Act, state;-*

*"Any person who, without lawful authority-*

*(a) acquires, supplies, possesses, produce, manufactures, cultivates, uses or administers an illicit drugs, commits an offence....."*

5. There is no offence for processing illicit drugs in the above offending section. The allegation against the accused is that the illicit drugs were found in his flat and he was interviewed on that allegation. Since there is no offence of processing in *section 5(a) of the Illicit Drugs Control Act*, I find that using of the word processing in the charge is a typing error and it is a technical issue that caused no prejudice to the accused. The correct word or offence should be possession.

6. The elements of the offence are;-

- a. the accused,*
- b. without lawful authority,*
- c. possessed illicit drug known as cannabis sativa.*

7. The 20 sachets of dried leaves wrap with foil was found on top of the table in a plastic in one of the room in the accused house at Waiqeale. That is the evidence of Serupepeli Lailai who searched the accused house on 4 October 2010. According to Serupepeli who is the first prosecution witness, the accused took them to that room in which the 20 sachets were found. He seized the drugs and listed it in the search list (prosecution exhibit 1) and took it to Labasa Police Station and handed over the drugs to Corporal Mani. He tendered the 20 sachets of drugs as prosecution exhibit 2.

8. The second prosecution witness Police Constable Jiten stated that he received the 20 sachets from Detective Seru who conducted the search. He confirmed 20 sachets as the same one that was given to him by Detective Seru. He interviewed the accused and tendered the caution interview as prosecution exhibit 3. He packed the dried leaves on an envelope with brown cellotape and exhibited the 20 sachets with the exhibit writer. The envelope was tendered as prosecution exhibit 4.
9. Unaisi was the Crime Writer in 2010. She is the third prosecution witness. She received a white envelope with brown cellotape from the investigation officer and she kept it in the exhibit room at the Police station. The exhibit is log with the investigation officer's name and the contents. She confirmed prosecution exhibit 4. She log the exhibit and hand over to the government analyst for analysis. The analysis was given to her by the government analyst and she filled the form.
10. The fourth prosecution witness, Miliana Werebauinona. She is the Principal Scientific Officer at the Fiji Police Force Laboratory and she replaced Miliakere Nawaikula, the government analyst. She worked with Miliakere and she recognise her signature. She referred to the analyst report prepared by Miliakere for Apenisa Mara. It was dried leaves confirmed to be Indian hemp or cannabis sativa with 10.8 grams she tendered the Analyst Report as prosecution exhibit 5.
11. The Accused exercised his rights to remain silent and no adverse inference will be drawn against him. He is under no obligation to prove his innocent. The burden is on the prosecution to prove the case beyond the reasonable doubt.
12. In the caution interview, the accused stated that he was informed by the police that the drug was found inside a room from his house. He did not know on how it was there.
13. The definition of possession was clarified in the case of *Koroivaki [2013] FGCA 15 AAU of 2010 (5 March 2013)* and *Sheik Mohammed and Another, AAU 92*

of 2011 (12 December 2014). Applying this definition to the facts of the case, I find the accused to be in possession of 10.8 grams of illicit drugs known as Indian hemp or cannabis sativa. I reject the accused statement in the caution interview that he is not aware of the drug inside his house as he is living alone in that house.

14. In assessing the evidence, I find that the Prosecution has proven all the elements of the offence beyond reasonable doubt.
15. In my judgment, I find the Accused guilty as charge, and I convicted the Accused accordingly.

**28 days to appeal.**



C. M. Tuberi  
RESIDENT MAGISTRATE