

**IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION**

Criminal Case No. 317/2020

BETWEEN: STATE

PROSECUTION

AND: TOMASI RATUKANA

FIRST ACCUSED

AND: SAULA TUBUNA

SECOND ACCUSED

AND: SEINI QALULU

THIRD ACCUSED

Counsel: Sergeant 4897 Veri Vunaki for Police Prosecution
Mr. R. Filipe (Duty Solicitor) for First Accused
Second Accused unrepresented and absent.

Date of Hearing: 27 November 2025

Date of Judgment: 12 March 2026.

JUDGMENT

Introduction

1. Mr. Tomasi Ratukana ("the First Accused"), Mr. Saula Tubuna ("the Second Accused") and Ms. Seini Qalulu were charged and produced in Court for 1 count of Unlawful Possession of an Illicit Drug contrary to section 5(a) of the Illicit Drug Control Act 2004. The particulars of the offence are:

Statement of Offence

Unlawful Possession of Illicit Drugs: Contrary to Section 5(a) of the Illicit Drugs Act 2004.

Particulars of Offence

Tomasi Ratukana, Saula Tubuna and Seini Qalulu on the 5th day of November 2022 at Nukuloa, Ba in the Western Division, without lawful authority had in their possession 172.4g of Illicit Drugs namely Cannabis Sativa.

2. On 24 June 2024, the First and Third Accused pleaded Not Guilty to the above offence. The Court was provided with the Second Accused's Travel History from Immigration which showed that he had left for Christchurch, New Zealand on 13 April 2023 and had not returned. As such, a Not Guilty plea was entered for the Second Accused and a Bench Warrant was issued.
3. On 2 October 2024, the Affidavit of the Investigating Officer was filed in Court and the same annexed the Travel History of the Second Accused. On the same date, after considering the Affidavit filed and Article 14(2)(h)(i) of the Constitution, this Court was satisfied that the Second Accused had been aware of the requirement of his attendance in the matter as he had been warned to appear in Court for all court dates when he was granted bail on 8 November

2022 and he had undertaken the same when he signed his Bail Undertaking Form. Further, by virtue of his non-appearance, it was found that the Second Accused deliberately chose not to attend Court. Thus, this Court ordered that the matter proceed in the absence of the Accused.

4. Further, on 27 November 2025, the date of Trial pursuant to section 171(1) of the Criminal Procedure Act, this Court decided to proceed with the Trial as if the Second Accused were present given that he had notice of this matter and was aware to always be present and appear for his matter as per his Bail Undertaking Form signed on 8 November 2022. Further, despite being aware of these proceedings and undertaking to appear, the Accused's absence in the matter from 5 September 2023 is deliberate. Subsequently, Trial in absentia proceeded with respect to the Second Accused. Prosecution called a total of 5 witnesses and thereafter closed its case.
5. On the same date, this Court was satisfied that a case had not been made out against Ms. Qalulu to sufficiently require her to make a defence with respect to the charge, as such she was acquitted.
6. This Court found that there was a case made out against the First and Second Accused to sufficiently require them to make a defence. The procedure under section 179 of the Criminal Procedure Act was explained to the First Accused. It was also explained to him that he had a right to remain silent. The First Accused elected to give evidence and not call any witnesses. The First Accused gave evidence and then closed his case.
7. The counsel for the First Accused and Prosecution relied on Court Record.
8. It is important to note that the Second Accused's absence from this Trial has not been taken negatively. It is the Court's overriding duty to ensure that a hearing conducted in the absence of the Accused is conducted as fair as circumstances permit to lead to a just conclusion and the Court should not deviate from the applicable procedures and principles of conducting a fair and just hearing in the absence of an accused (vide *Kumar v State*; Criminal Case: HAA 34 of 2015 (15 December 2015)).
9. Having considered the evidence of Prosecution and the First Accused, I now pronounce my Judgment.

Burden of Proof

10. It is imperative to highlight that as a matter of law, the onus or burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no burden on an accused to prove his or her innocence as an accused is presumed to be innocent until proven guilty.
11. It is for the prosecution to prove the accused's guilt beyond a reasonable doubt. If there is doubt, so that the court is not sure of the accused's guilt, or if there be any hesitation in the court's mind on any of the ingredients or on the evidence led by prosecution, the accused must be found not guilty of the charges and accordingly acquitted.

Summary of Evidence

12. DC Samisoni and PC Navitalai both testified that on 5 November 2022 that they had been part of a team that had gone to Nukuloa to conduct a search at the house where the First Accused

was residing. DC Samisoni stated that a search warrant had been shown to the First Accused and thereafter canine Conan was deployed in the house with DC Samisoni to search where canine Conan indicated.

13. DC Samisoni and PC Navitalai stated that inside a double wall of the house, a clear plastic was found inside a blue shopping bag and it contained 12 sachets of dried leaves. He also stated that a search of a bag was conducted and inside the bag were seedlings believed to be marijuana seedlings. DC Samisoni testified that the bag also contained Saula's passport and documents.
14. WCPL Akenata testified that she was the Investigating Officer in the matter and that she had filled in the General Sample – Advice Letter to Analyst Form and that she had been the one who has escorted the drugs to Lautoka for analysis and upon confirmation that the samples were positive as being drugs, she had received instructions to charge. It was through WCPL Akenata that a photograph of Saula was tendered as 'PEX2'.
15. Sgt Josateki gave evidence with respect to the photographs he had taken of the drugs and then preparing a photographic booklet which was tendered as 'PEX3'.
16. Ms. Miliana testified that she had received samples from WPC Akenata and that she had registered and assigned a Job Number and then proceeded to analyse the sample to confirm identity. Upon completion, she prepared a report and handed everything to WPC Akenata.
17. Ms. Miliana explained that the 35 samples consisted of 4 plant materials, 12 samples of dried leaves and 19 seeds. When shown the Certificate of Analysis, Ms. Miliana explained that it consisted of 2 parts with the first part being the Advice Letter to the Analyst and the second part being the Certificate of Analysis and that she filled the Certificate of Analysis. Ms. Miliana explained that she filled in the date of 7 November 2022, that she had received the samples from PC Akenata and that the samples were plant material, dried leaves and seeds with the collective weight of the sample and the identity of the sample. She stated that she determined that the samples were Indian Hemp with a total weight of 172.4grams. Ms. Miliana then explained that she prepared a Statement which described the samples as well as the Analysis which gave a breakdown of the samples received and weight of samples.
18. The General Sample – Advice Letter to Analyst with description of samples being 12 sachets wrapped in aluminium foil, 68 plant material wrapped in gladwrap, 50 plant material inside black plastic, loose dried leaves inside a clear plastic and 23 plant material was tendered as 'PEX4A' and the General Sample – Advice Letter to Analysts with the description of colourful pencil case containing seeds and 18 sachets containing seeds was tendered as 'PEX4B'. The Statement of Ms. Miliana which contained the description of the sample was tendered as 'PEX4C' and the Analysis of Cannabis was tendered as 'PEX4D'.
19. The First Accused denies having possession of the drugs found and states that the room in which the drugs were found in was where Saula had been in for 1 night before the Police had come to conduct the search.

Evaluation of Evidence

20. For a proper analysis of the evidence for the offence of Unlawful Possession of Illicit Drug, it is imperative for the Court to turn its mind to the elements of the offending, which are:

- i. the accused
- ii. without lawful authority
- iii. possesses
- iv. an illicit drug

21. From the outset, it is evident that the First Accused agrees that he was at home when the Police came and conducted a search. It is further evident that he agrees that marijuana was found in the house he resides in but he disputes having knowledge and thus possession of the same.

22. It is important to highlight that although the charge does not specifically state that the Accused were jointly in possession of the drugs, the evidence elicited by Prosecution seems to allude that because the drugs were found in the premises under the control of the First Accused which was where the Second Accused was at the time when the drugs were found and seized then they both knew that there were drugs present in the house and were therefore in possession.

23. In the case of **State v Ho Criminal Case No. HAC 22 of 2024 (31 July 2025)** His Lordship Justice Aluthge succinctly discussed the meaning of joint possession and found that currently the definition in the 2012 edition of Archbold as stated in **Abourizk v State Criminal Petition No. CAV 0013 of 2019 (28 April 2022)** has been accepted by the Supreme Court. However, His Lordship acknowledged that the correct definition is now before the Full Court as a question of law as stated in the leave ruling of **Abourizk v State Criminal Appeal No. 0071 of 2023 (19 March 2024)**. Thus, the definition of joint possession is:

"An allegation of joint possession of drugs, where they have not been found on the person of any of the joint possessors, entails an allegation that each had the right to say what should be done with the drugs, a right shared with the other joint possessors."

24. Keeping the above in mind, the Court will need to evaluate the evidence by Prosecution. The evidence presented will be evaluated to determine the testimonial trustworthiness of the evidence which will be done by evaluating the credibility – the correctness or veracity of the evidence and the reliability of evidence – the accuracy of the evidence - vide **State v Prasad Criminal Case No. HAC 72 of 2021 (20 June 2024)**. In doing this, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (vide **State v Moroci Criminal Case No. HAC 161 of 2023 (26 April 2024)**).

25. It is Prosecution's case that on 5 November 2022, DC Samisoni and PC Navitalai with A/Sgt Lanyon and PC Neumi had gone to the First Accused's residence given that they had received information. Upon reaching the First Accused's residence in Nukulua, the search warrant which was 'PEX1' was shown to the First Accused, and he was explained the reason for their presence and that they would be searching his house.

26. As per DC Samisoni and PC Navitalai, the canine Conan was deployed in the house. DC Samisoni explained that he searched inside a double wall of the house, which was the place where canine Conan indicated, he found a clear plastic inside a blue shopping bag containing 12 sachets of dried leaves believed to be marijuana. This was confirmed by PC Navitalai.

27. DC Samisoni and PC Navitalai both then testified that DC Samisoni questioned the First Accused and Saula who were present during the search, however, no-one owned up to whom it belonged to. As such, DC Samisoni stated he then cautioned Saula and then searched a bag and inside the bag were seedlings believed to be marijuana seedlings with Saula's passport and a file containing his documents. DC Samisoni further stated that at the Station that the 12 sachets were counted in the First Accused and Saula's presence with a search list then being provided to them.
28. WCPL Akenata testified that she was the original Investigating Officer for the matter and that she had make sure that the drugs that were handed to her were escorted to the analyst to be analysed to determine if it was positive as being drugs. She testified that she had escorted the drugs which had been confiscated to Lautoka to the Analyst's Office.
29. WCPL Akenata explained that she had filled a General Sample Form and packed the exhibits but before taking the drugs she had exhibited it as it was a Sunday and given that she would escort the drugs to Lautoka the next day – Monday. WCPL Akenata then testified that the General Sample Form, which she filled in on 7 November 2022 stated the name of the suspect, her name and rank and what she had taken with her which were 12 sachets wrapped in foil and 68 plant materials wrapped in gladwrap with 6 plant material inside a black plastic and loose dried leaves inside a clear plastic. She also explained that there had been a colourful pencil case containing seeds and 18 sachets.
30. Ms. Miliana, who is the Principal Scientific Officer at the Forensic Office testified that on 7 November 2022, she had been at the Forensic Office at the Police Headquarters Building in Lautoka and she testified that she received 35 samples from PC Akenata of Ba Police Station and upon receipt of these 35 samples, she registered the samples and allocated the Job Number 2221566. After registering the samples to a Job Number, she then proceeded to analyse the sample to confirm identity. Upon completion, she then prepared a report and handed everything back to PC Akenata.
31. Ms. Miliana explained that the 35 samples consisted of 4 plant materials, 12 samples of dried leaves and 19 seeds. When shown the Certificate of Analysis, Ms. Miliana explained that it consisted of 2 parts with the first part being the Advice Letter to the Analyst and the second part being the Certificate of Analysis and that she had filled the Certificate of Analysis. Ms. Miliana explained that she filled in the date of 7 November 2022, that she had received the samples from PC Akenata and that the samples were plant material, dried leaves and seeds with the collective weight of the sample and the identity of the sample. She stated that she determined that the samples were Indian Hemp with a total weight of 172.4grams. Ms. Miliana then explained that she prepared a Statement which described the samples as well as the Analysis which gave a breakdown of the samples received and weight of samples.
32. At this juncture, it is imperative for the Court to highlight that DC Samisoni stated that 12 sachets of dried leaves were found in a clear plastic inside a blue shopping bag and that a bag was searched and inside the bag were seedlings whereas WCPL Akenata testified that the samples she had taken for analysis were 12 sachets wrapped in foil and 68 plant materials wrapped in gladwrap with 6 plant material inside a black plastic and loose dried leaves inside a clear plastic. She also explained that there had been a colourful pencil case containing seeds and 18 sachets.

33. As per the General Sample - Advice Letter to Analyst which was tendered as 'PEX4A' the samples were 12 sachets wrapped in aluminium foil, 68 plant material wrapped in gladwrap, 50 plant material inside black plastic, loose dried leaves inside a clear plastic and 23 plant material and the General Sample – Advice Letter to Analysts which was tendered as 'PEX4B' the sample was a colourful pencil case containing seeds and 18 sachets containing seeds.
34. Sgt Josateki, who was the CSI Officer and who had photographed the parcel handed to him by WCPL Akenata tendered a photographic booklet as 'PEX3' which was never used by Prosecution. Prosecution never used the booklet with DC Samisoni and PC Navitalai to confirm the form in which the drugs had been found at the time of the search at the First Accused's home was the same form depicted in the photographic booklet. Prosecution failed to use the photographic booklet with WCPL Akenata to confirm if the drugs which were found during the search were the same drugs that had been handed to her as depicted in the photographic booklet and whether it was the same drugs that she had exhibited as well as given to Sgt Josateki for photographing and taken for analysis.
35. Further, Prosecution failed to use the photographic booklet with Ms. Miliana to confirm that the samples she had received from WCPL Akenata were the same as depicted in the photographic booklet and whether the drugs depicted in the photographic booklet were the same as mentioned in the 2 General Sample – Advice Letter to Analysis Forms tendered and which then tested positive as cannabis sativa with a total weight of 172.4 grams. Had the photographic booklet been used then perhaps the description of the drugs found could have been easily explained with no discrepancies between the witnesses especially between those who found the drugs and those who received and analysed the drugs.
36. Turning to the First Accused's evidence, he maintained in his evidence that the Police had come to where he was residing in November 2022 and informed him that they were there to look for marijuana in his house. The First Accused stated he allowed them and showed them where he had been lying down which was in the first room, but they found nothing there. He then testified that the Police went into the second room where his children slept and then they went into the third room which is where they found a parcel of marijuana and the room where Saula was sleeping.
37. The First Accused stated that he had been living in that house for 1 year and that it belonged to his wife relatives. He also testified that Saula had come to the house, the night before the search as Saula was to install electricity by doing the wiring. The First Accused maintained that Saula would be living in the house in particular the third room while he was attending to the wiring, but the First Accused was unaware for how long.
38. The Court is mindful of the cross examination of DC Samisoni where he stated that he never clarified whose room the items were found in. When it was suggested that the First Accused was not in possession of the items found, DC Samisoni maintained that he was but then he went on to agree that the only reason that the house was searched was because it belonged to the First Accused and that was the reason for him being charged. Even PC Navitalai agreed in cross examination that DC Samisoni was the better person to know where the items were found in the house as he was the one who discovered them.
39. It is the Court's observation, that Prosecution failed to elicit any evidence beyond a reasonable doubt to show that the First Accused was in joint possession of the drugs found as no evidence was elicited that the First Accused and Saula were dictating what was or would be done with


the drugs especially as the Accused stated that Saula had only come to the home the night before the search. Further, Prosecution failed to elicit any evidence that the First Accused had access to the room where he testified that the drugs were found and where Saula stayed in.

40. Moreover, Prosecution failed to prove beyond a reasonable doubt that the drugs found were in Saula's possession. The Court is mindful that DC Samisoni testified that he had found seedlings in a bag which contained Saula's passport and documents. However, no other evidence was elicited to show that Saula had control of the drugs found and that he had knowledge of the drugs being in his control and that he had the intention of possessing the said substance.
41. Given the above reasons, the Court will not endeavour into a discussion into the identity of the Second Accused.
42. Thus, considering the evidence in totality, the Court finds that Prosecution has failed to prove beyond a reasonable doubt that on 5 November 2022, the First Accused and the Second Accused had in their possession, without lawful authority, 172.4 grams of illicit drugs namely cannabis sativa.

Determination

43. I find that Prosecution has not discharged its burden in proving all the elements for Unlawful Possession of Illicit Drugs beyond reasonable doubt.
44. I, therefore, find the Accused, Tomasi Ratukana and Saula Tubuna, not guilty as charged for Unlawful Possession of Illicit Drugs and hereby acquit them forthwith.
45. Any party aggrieved with the Court's decision has 28 days to appeal to the High Court.




N. Mishra
Resident Magistrate