

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU 0065 OF 2016
(High Court Action No: HAC 0008 of 2015)

BETWEEN : THE STATE *Appellant*

AND : ETUATE DREDUADUA *Respondent*

Coram : Chandra, RJA

Counsel : Mr A Jack for the Appellant
Ms S Nasedra for the Respondent

Date of Hearing : 19 June, 2019

Date of Ruling : 9 July, 2019

RULING

- [1] The Respondent was charged for one count of Unlawful Cultivation of Illicit drugs namely Cannabis sativa with a total weight of 10 Kilograms, contrary to Section 5(a) of the Illicit Drugs Control Act No.9 of 2004.

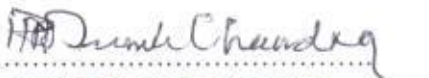
- [2] After trial, the Assessors returned with a unanimous guilty verdict with which the learned Trial Judge concurred and the Respondent was convicted and sentenced on 26th May 2016 to a term of 2 years and 8 months with a non-parole period of 2 years.
- [3] The Appellant filed a timely notice of appeal against the sentence setting out the following ground:
- “That the Learned Trial Judge erred in law and in fact when he failed to sentence the defendant as a category 4 offender in line with the sentencing guideline outlined in Sulua v State [2012] FJCA 33; AAU 0093; 2009 (31 May 2012)”.*
- [4] The Appellant submitted that the learned Sentencing Judge cited the decision in Kini Sulua (supra) in his sentencing judgment but had incorrectly stated the category which was appropriate for the offending of the Respondent.
- [5] The learned Judge had categorized the offending of the Respondent under Category 3 set out in the judgment of Kini Sulua (supra) which had a sentencing range between 3 to 7 years of imprisonment.
- [6] The weight of the illicit drug for which the Respondent was offended was 10 Kg which should have brought the Respondent under Category 4 in the Kini Sulua decision for which the sentencing range was between 7 and 14 years.
- [7] Therefore there is an error in the sentencing judgment which falls within the errors contemplated in the decision in Naisua v State [2013] FJSC 14; CAV0010.2013 (20 November 2013) which would be where the Sentencing Judge :
- (i) Acted upon a wrong principle;
 - (ii) Allowed extraneous or irrelevant matters to guide or affect him;
 - (iii) Mistook the facts;
 - (iv) Failed to take into account some relevant consideration.
- [8] The ground of appeal urged by the Appellant is arguable.

- [9] The Legal Aid Commission appearing for the Respondent conceded that there was an error in the sentencing judgment but urged that the Full Court should not enhance the sentence in view of the mitigating factors urged by him at sentencing.

Orders of Court:

Leave to appeal against sentence is granted.




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Hon. Justice Suresh Chandra
RESIDENT JUSTICE OF APPEAL