IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CRIMINAL APPEAL NO.AAU 0071 of 2019
[High Court of Suva Criminal Case No. HAC 255 of 2017S]

BETWEEN:

NEMANI RAVIA
Appellant

AND:

STATE
Respondent

Coram: Prematilaka, JA

Counsel: Appellant in person
Ms. J. Prasad for the Respondent

Date of Hearing: 03 March 2021

Date of Ruling: 04 March 2021

RULING

[1] The appellant had been charged in the High Court of Suva on a single count of Cultivation of Illicit Drugs contrary to section 5(a) of the Illegal Drugs Control Act of 2004 committed on 09 June 2017 at Naqia Village, Wainibuka in the Eastern Division. The information read as follows.

"Statement of Offence

UNLAWFUL CULTIVATION OF ILLICIT DRUGS: Contrary to section 5 (a) of the Illicit Drugs Control Act 2004.

Particulars of Offence

> *NEMANI RAVIA on the 9th day of June 2017, at Naqia Village, Wainibuka, in the Eastern Division, without lawful authority, cultivated 87 plants of cannabis sativa, an illicit drug, weighing 34.2 kilograms".*

[2] At the conclusion of the summing-up, on 29 April 2019 the assessors had unanimously opined that the appellant was guilty as charged. On the same day the learned trial judge had agreed with the assessors, convicted the appellant and sentenced him on 30 April 2019 to 12 years of imprisonment subject to a non-prole period of 10 years.

[3] The appellant had signed an appeal against conviction and sentence on 20 May 2019 (received by the CA Registry on 07 June 2019). He had followed it up with amended grounds of appeal on 25 February 2020 and 01 May 2020. He had restated his initial grounds of appeal dated 20 May 2019 and supplemented them with written submissions on 10 September 2020. He confirmed on 30 October 2020 and once again at the leave hearing that he would rely on those grounds of appeal and submissions. The State had tendered its written submissions in response to those grounds of appeal on 04 December 2020. Both parties made oral submissions too at the leave to appeal hearing.

[4] The cases presented by the prosecution and the defence are as follows (see the summing-up).

> *14. The prosecution's case was as follows. On 9 June 2017, the accused, Mr. Nemani Ravia (DW1) was 36 years old. He was married with four (4) young children aged 12, 10, 7 and 5 years old. He resided with his family in their residence at Naqia, Wainibuka, Tailevu. He is a subsistence farmer by profession and plants bananas, dalo, cassava, vegetables, yaqona and other crops. He also kept domesticated animals. According to the police investigation officer, Corporal 4106 Waisea (PW4), Naqia Village was considered a "red-zone area" as far as the unlawful cultivation of cannabis sativa plants was concerned. PW4 said, their information were normally received from the relatives of those alleged to be cultivating cannabis sativa, commonly known as marijuana.*
>
> *15. According to the prosecution, the police decided to raid Naqia Village on 9 June 2017 to catch the alleged marijuana cultivators. According to PC 3908 Emosi Nokonokovou (PW1), the police received information that Mr. Nemani Ravia (DW1) was allegedly selling and cultivating marijuana. PW1 said a team was formed, which included him, PC 5382 Jiutasa Taiki (PW2), SC 2089 Saimoni Kete (PW3), and a police driver to apprehend Mr. Ravia. On 9 June 20187 at about 4 am, PW1 and his team left Korovou Police Station in a police vehicle and went to Mr. Ravia's house. At 8 am, they knocked at Mr. Ravia's house, and later searched the same with the authority of a search warrant.*

16. According to police, nothing was found at Mr. Ravia's house. He was later taken to Nayavu Police Post by police. <u>According to PW1, PW2 and PW3, Mr. Ravia admitted to them, at the Police Post, that he had a marijuana farm at Naqia.</u> They returned to his residence at Naqia. According to the prosecution, Mr. Ravia later led PW1, PW2 and PW3 through bush and mountain tracks, to his marijuana farm, which was 2 hours journey to and from his residence. At the farm, the police saw marijuana plants growing, and according to prosecution, <u>Mr. Ravia allegedly admitted to police that the marijuana farm and plants were his</u>. PW2 and PW3 later allegedly uprooted the plants. There were 86 in total, and 1 consisting of plant materials. Altogether, there were 87 plant materials.

17. PW1, PW2 and PW3 later carried the marijuana plants from the farm to the road. They later took the same to Nayavu Police Post. From there, they took the plants to Korovou Police Station and handed the same to Corporal 4106 Waisea (PW4). PW4 was the police investigation officer. PW4 later handed the 87 marijuana plants to WPC 4501 Mere (PW5), the Korovou Police Station exhibit writer, for safe keeping. At 2.40 pm on 9 June 2017, PW4 handed the 87 marijuana plants to the police forensic officers, Ms. Susana Lawedrau (PW6) and Ms. Miliana Werebauinona (PW7), to analyze for cannabis sativa content. <u>After examining and analyzing the 87 plant materials, PW7 found the same to be cannabis sativa, and it weighed a total of 34.2 kilograms.</u> The plants were later handed back to PW5 for safe keeping.

18. Because of the above, the prosecution is asking you, as assessors and judges of fact, to find the accused guilty as charged. That was the case for the prosecution.

<u>THE ACCUSED'S CASE</u>

19. On 23 April 2019, the first day of the trial, the information was put to the accused, in the presence of his counsel. He pleaded not guilty to the charge. In other words, he denied the allegation against him. When a prima facie case was found against him, at the end of the prosecution's case, wherein he was called upon to make his defence, he chose to give sworn evidence and called his first cousin (DW2) as his only witness. That was his right.

20. The accused's case was very simple. On oath, he denied the allegation against him. <u>He, however, admitted planting one marijuana plant on his dalo plantation, for his own personal use. He denied that the 86 marijuana plants and 1 plant material obtained from a farm he showed the police were his. According to the accused (DW1), he wanted to help the police by showing them the marijuana farm. He said, instead of thanking him, the police framed him by saying the farm was his.</u>

21. Furthermore, the accused said, he did not admit to the police that the marijuana farm was his. He said, the police were lying. Because of the above, the defence is asking you, as assessors and judges of fact, to find the accused not guilty as charged. That was the case for the accused.'

[5] In terms of section 21(1)(b) and (c) of the Court of Appeal Act, the appellant could appeal against conviction and sentence only with leave of court. The test for leave to appeal is **'reasonable prospect of success'** (see **Caucau v State** AAU0029 of 2016: 4 October 2018 [2018] FJCA 171, **Navuki v State** AAU0038 of 2016: 4 October 2018 [2018] FJCA 172 and **State v Vakarau** AAU0052 of 2017:4 October 2018 [2018] FJCA 173, **Sadrugu v The State** Criminal Appeal No. AAU 0057 of 2015: 06 June 2019 [2019] FJCA87 and **Waqasaqa v State** [2019] FJCA 144; AAU83.2015 (12 July 2019) in order to distinguish arguable grounds [see **Chand v State** [2008] FJCA 53; AAU0035 of 2007 (19 September 2008), **Chaudry v State** [2014] FJCA 106; AAU10 of 2014 and **Naisua v State** [2013] FJCA 14; CAV 10 of 2013 (20 November 2013)] from non-arguable grounds.

[6] Further guidelines to be followed for leave to appeal when a sentence is challenged in appeal are well settled (vide **Naisua v State** CAV0010 of 2013: 20 November 2013 [2013] FJSC 14; **House v The King** [1936] HCA 40; (1936) 55 CLR 499, **Kim Nam Bae v The State** Criminal Appeal No.AAU0015 and **Chirk King Yam v The State** Criminal Appeal No.AAU0095 of 2011). The test for leave to appeal is not whether the sentence is wrong in law but whether the grounds of appeal against sentence are arguable points under the four principles of ***Kim Nam Bae's*** case. **For a ground of appeal timely preferred against sentence to be considered arguable there must be a reasonable prospect of its success in appeal**. The aforesaid guidelines are as follows.

(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.

[7] Grounds of appeal urged on behalf of the appellant are as follows.

'Conviction

Ground 1
THAT the Learned Judge failed to consider that the investigation in my matter was not conducted in a proper manner.

Ground 2

THAT the Learned Judge did not consider that I only admitted planted one plant of marijuana at my land only.

Ground 3

THAT the Learned Judge failed to consider that I had informed the Police Officers about Samu who had planted the marijuana alleged in this case.

Ground 4

THAT the Learned Judge did not consider my evidence that PW 1, Emosi Nokonokovou was not present during the investigation.

Sentence

Ground 1

That the Sentence is too harsh and excessive.

Ground 2

That the Court did not take into account that I had assisted the Police Officers and cooperated with them to locate the marijuana.

01st ground of appeal

[8] The appellant's contention relates to the manner in which the investigation had been carried out. He submits that when the police party raided his residence they could not find any prohibitory items yet he was arrested and taken to the police station where he is supposed to have admitted orally to PW1- PW3 that he had a marijuana farm at Naquia. However, according to the summing-up the police officers had in their possession a search warrant. Thereafter, the appellant is alleged to have led the police party to a farm where they had uprooted 86 plants and 01 plant materials and the appellant is alleged to have admitted once again orally that the farm and the plants were his. These allegations had been denied by the appellant in his evidence. It is not clear whether the police officers had made any contemporaneous notes of the said admissions in their note books.

[9] Thus, it is clear that no caution had been administered before the alleged confessions. However, it is not clear that the appellant had been told that he was under arrest in connection with the marijuana farm. It does not appear that the police had cautioned the appellant of his right to remain silent or advised him of his right to counsel. Clearly there had not been a voir dire inquiry either but according to the trial judge the appellant had not challenged leading in evidence the oral admissions.

[10] **Singh v State** [2011] FJCA 3; AAU0005.2009 (24 January 2011) is a case where at the time of making the confession, parents of the accused had been present and the police officer had explained the judge's rules and after cautions and formalities the accused had made the oral confession. There had been a *voir dire* on the admissibility of the oral confession too. In the circumstances, the Court of Appeal held that considering the nature of the evidence and the evidence before court the trial judge had not erred in law by admitting the oral confession.

[11] Needless to say that the circumstances in this case is far less satisfactory and convincing for the alleged oral confessions to be admitted and acted upon. I think this aspect of the case needs to be looked at more closely by the full court and I am inclined to grant leave to appeal.

02nd and 03rd grounds of appeal

[12] The trial judge had referred to the appellant's evidence at paragraphs 19 to 21 of the summing-up. Though, there is a reference to another witness called by the appellant (DW2) his testimony is not reflected in the summing-up at all. It is clear that the appellant had denied making the alleged oral confessions to the police officers regarding the marijuana farm at Naquia as belonging to him. However he had consistently admitted (including his cautioned statement which, of course, was not produced at the trial) that he had planted one marijuana plant for his personal use at his dalo farm situated about 700-800 m away from his house and led the police party to show them a marijuana farm about 3-4 km inside the jungle in the mountains. It had taken them nearly 02 hours reach the marijuana farm.

[13] According to the appellant, he had come across this marijuana farm about 04 months age when he and his cousin were in the area looking for wild yam. He had identified one Samuela Koro as the owner of that farm as they had seen him going towards the jungle where the marijuana farm was located going across the appellant's farm. According to the appellant he had divulged these matters to the police party but the police officers who had uprooted 86 marijuana plants from that farm and 01 plant from his dalo farm, had assigned the responsibility of all of them to the appellant and charged him for having cultivated all 87 plants. The police had not been able to apprehend Samuela as he had fled the village.

[14] The trial judge had correctly identified the element of cultivation at paragraph 11 of the summing-up as follows.

> *'[11] The prohibited act in the offence is the verb "cultivate". Under Section 2 of the Illicit Drugs Control Act 2004, the word "cultivate" means "planting, sowing, scattering the seed, growing, nurturing, tendering or harvesting". Put simply, the prosecution must make you sure that the accused was planting or growing an illicit drug, at the material time. This is the physical element of the offence.'*

[15] However, the trial judge had erred in equating cultivation with ownership of marijuana plants in directing the assessors as follows at paragraph 25 of the summing-up.

> *'[25] From the above evidence, it appeared that the prosecution had proven that the marijuana plants uprooted from the farm Mr. Nemani Ravia had shown the police, were indeed cannabis sativa, an illicit drug, and the same weighed 34.2 kilogram. The only question that remains to be answered was whether or not the above marijuana plants belong to Mr. Nemani Ravia?*

[16] In his alleged admissions all what the appellant had told (if the police officers are to be believed) was that the marijuana farm deep inside the jungle/forest was his. In other words, he had admitted ownership of the farm but not that he had cultivated marijuana plants. The trial judge had directed the assessors to decide whether marijuana plants belonged to the appellant. In other words the trial judge's direction was more on possession of marijuana plants rather than cultivation of them. However, the appellant had not been charged with possession of 87 marijuana plants.

[17] Having directed himself according to the summing-up, in the judgment the trial judge had gone on the alleged admissions of the appellant that marijuana farm was his and stated further that his admission to cultivating one marijuana plant was sufficient qualification to cultivate 87 marijuana plants.

[18] I think this aspect of the mater warrants serious consideration of the full court to see whether the prosecution evidence had established the element of 'cultivation' beyond reasonable doubt.

04th ground of appeal

[19] The appellant's complaint under this ground of appeal cannot be considered without the trial proceedings.

01st ground of appeal (sentence)

[20] The appellant had been dealt with under category 4 of sentencing guidelines in **Sulua v State** [2012] FJCA 33; AAU0093.2008 (31 May 2012) where the sentencing tariff for possession of cannabis sativa of 4000g or above was set between 07-14 years of imprisonment.

[21] The trial judge had taken the quantity of 34.2 kg as an aggravating factor and added 04 years to the starting point of 10 years.

[22] The sentencing tariff of 07-14 years for any weight of 04 kg or more of cannabis sativa as stipulated in **Sulua v State** [2012] FJCA 33; AAU0093.2008 (31 May 2012) does not necessarily mean that any weight of or above 4kg should only get a sentence between 07-14 years. Depending on the higher weight above 04kg the final sentence could get increased upwards from 07 years and it could be even above 14 years if all the aggravating circumstances so warrant in any given case. Merely because the sentence is above the tariff that does not necessarily make it illegal either. It is trite law that if the sentencing judge explains the ultimate sentence could be lower or higher than the accepted range of sentence. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range (vide **Koroivuki v State** [2013] FJCA 15; AAU0018 of 2010 (05 March 2013).

[23] However, there is a question whether the trial judge had double counted the weight of marijuana as an aggravating factor which the judge may have already considered in picking the starting point at 10 years towards the higher end of the tariff.

[24] In **Senilolokula v State** [2018] FJSC 5; CAV0017.2017 (26 April 2018) the Supreme Court has raised a few concerns regarding selecting the 'starting point' in the two-tiered approach to sentencing in the face of criticisms of 'double counting' and stated that sentencing is an art, not a science, and doing it in that way the judge risks losing sight of the wood for the trees.

[25] The Supreme Court said in **Kumar v State** [2018] FJSC 30; CAV0017.2018 (2 November 2018) that if judges take as their starting point somewhere within the range, they will have factored into the exercise at least *some* of the aggravating features of the case. The ultimate sentence will then have reflected any *other* aggravating features of the case as well as the mitigating features. On the other hand, if judges take as their starting point the lower end of the range, they will not have factored into the exercise *any* of the aggravating factors, and they will then have to factor into the exercise *all* the aggravating features of the case as well as the mitigating features.

[26] Some judges following **Koroivuki v State** (supra) pick the starting point from the lower or middle range of the tariff whereas other judges start with the lower end of the sentencing range as the starting point.

[27] This concern on double counting was echoed once again by the Supreme Court in **Nadan v State** [2019] FJSC 29; CAV0007.2019 (31 October 2019) and stated that the difficulty is that the appellate courts do not know whether all or any of the aggravating factors had already been taken into account when the trial judge selected as his starting point a term towards the middle of the tariff. If the judge did, he would have fallen into the trap of double-counting.

[28] The methodology commonly followed by judges in Fiji is the two-tiered process expressed in the decision in **Naikelekelevesi v State** [2008] FJCA 11; AAU0061.2007 (27 June 2008) which was further elaborated in **Qurai v State** [2015] FJSC 15; CAV24.2014 (20 August 2015). It operates as follows:

> *(i) The sentencing judge first articulates a starting point based on guideline appellate judgments, the aggravating features and seriousness of the offence i.e. objective circumstances and factors going to the gravity of the offence itself [not the offender]; the seriousness of the penalty as set out in the relevant statute and relevant community considerations (tier one). Thus, in determining the starting point for a sentence the sentencing court must consider the nature and characteristic of the criminal enterprise that has been proven before it following a trial or after the guilty plea was entered. In doing this the court is taking cognizance of the aggravating features of the offence.*
>
> *(ii) Then the judge applies the aggravating features of the offender i.e. all the subjective circumstances of the offender which will increase the starting point, then balancing the mitigating factors which will decrease the sentence, (i.e. a bundle of aggravating and mitigating factors relating to the offender) leading to a sentence end point (tier two).*

[29] However, in applying the two-tiered approach the judges should endeavor to avoid the error of double counting as highlighted by the Supreme Court. The best way obviously to do that is to follow the two-tiered approach diligently as stated above**.** In this regard, it is always helpful for the sentencing judges to indicate what aggravating factors had been considered in picking the starting point in the middle of the tariff and then to highlight other aggravating factors used to enhance the sentence. If the starting point is taken at the lower end without taking into account any aggravating features, then all aggravating factors can be considered to increase the sentence.

[30] The observations of the Supreme Court in **Qurai v State** **[2015]** FJSC 15; CAV24.2014 (20 August 2015) are instructive in this regard.

> *'[49] In Fiji, the courts by and large adopt a two-tiered process of reasoning where the sentencing judge or magistrate first considers the objective circumstances of the offence (factors going to the gravity of the crime itself) in order to gauge an appreciation of the seriousness of the offence (tier one), and then considers all the subjective circumstances of the offender (often a bundle of aggravating and mitigating factors relating to the offender rather than the offence) (tier two), before deriving the sentence to be imposed. This is the methodology adopted by the High Court in this case.*
> *[50] It is significant to note that the Sentencing and Penalties Decree does not seek to tie down a sentencing judge to the two-tiered process of reasoning described above and leaves it open for a sentencing judge to adopt a different approach, such as "instinctive synthesis", by which is meant a more intuitive process of reasoning for computing a sentence which only requires the enunciation of all factors properly taken into account and the proper conclusion to be drawn from the weighing and balancing of those factors.*
> *[51] In my considered view, it is precisely because of the complexity of the sentencing process and the variability of the circumstances of each case that judges are given by the Sentencing and Penalties Decree a broad discretion to determine sentence. In most instances there is no single correct penalty but a range within which a sentence may be regarded as appropriate, hence mathematical precision is not insisted upon. But this does not mean that proportionality, a mathematical concept, has no role to play in determining an appropriate sentence. The two-tiered and instinctive synthesis approaches both require the making of value judgments, assessments, comparisons (treating like cases alike and unlike cases differently) and the final balancing of a diverse range of considerations that are integral to the sentencing process. The two-tiered process, when properly adopted, has the advantage of providing consistency of approach in sentencing and promoting and enhancing judicial accountability, although some cases may not be amenable to a sequential form of reasoning than others, and some judges may find the two-tiered sentencing methodology more useful than other judges.*

[31] This court is faced with exactly the same dilemma in this appeal. It is not clear what other factors the trial judge had considered in selecting the starting point other than the weight of cannabis, for the trial judge had not set out any other aggravating factors. It could therefore be reasonably assumed that it is the weight of the cannabis as an aggravating feature that may have gone into the decision of picking the starting

point at 10 years. If so, there could be double counting when the sentence was enhanced by further 04 years in consideration of the weight once again for the second time.

[32] I previously had the opportunity of examining a similar complaint in **Salayavi v State** [2020] FJCA 120; AAU0038 of 2017 (03 August 2020) where I stated:

> *'[30] In the present case, however, it is clear what features the learned trial judge had considered in selecting the starting point. Therefore, it becomes clear that there had been double counting when the same or similar factors were counted as aggravating features to enhance the sentence. Like in this case, if the trial judges state what factors they have taken into account in selecting the starting point the problem anticipated in **Nadan** may not arise. Therefore, in view of the pronouncements of the Supreme Court in **Nadan** it will be a good practice, if not a requirement, in the future for the trial judges to set out the factors they have taken into account, if the starting point is fixed 'somewhere in the middle of the range' of the tariff. This would help prevent double counting in the sentencing process. In doing so, the guidelines in **Naikelekelevesi** and **Koroivuki** may provide useful tools to navigate the process of sentencing thereafter.'*

[33] If ***Naikelekelevesi*** guidance is carefully followed *i.e.* first set out the objective circumstances *i.e.* the factors going to the gravity of the offence to pick the starting point and then state the aggravating features of the offender *i.e.* all the subjective circumstances of the offender to enhance the sentence, the danger of double counting expressed by the Supreme Court may be able to be avoided.

[34] However, it is the ultimate sentence that is of importance, rather than each step in the reasoning process leading to it. When a sentence is reviewed on appeal, again it is the ultimate sentence rather than each step in the reasoning process that must be considered (vide **Koroicakau v The State** [2006] FJSC 5; CAV0006U.2005S (4 May 2006). In determining whether the sentencing discretion has miscarried the appellate courts do not rely upon the same methodology used by the sentencing judge. The approach taken by them is to assess whether in all the circumstances of the case the sentence is one that could reasonably be imposed by a sentencing judge or, in other words, that the sentence imposed lies within the permissible range (**Sharma v State** [2015] FJCA 178; AAU48.2011 (3 December 2015).

[35] Nevertheless, whether the sentence imposed on the appellant is justified should be decided by the full court despite the sentencing error of probable double counting. If so, the full court would decide what the ultimate sentence should be. The full court exercising its power to revisit the sentence under section 23(3) of the Court of Appeal Act would have to decide that matter after a full hearing.

[36] The appellant should be given leave to appeal against sentence on this sentencing error. The appropriate sentence is a matter for the full court to decide [Also see **Salayavi v State** AAU0038 of 2017 (03 August 2020) and **Kuboutawa v State** AAU0047.2017 (27 August 2020) for detailed discussions].

[37] Leave to appeal against sentence could also be granted on a different footing namely the general state of confusion prevalent in the sentencing regime on cultivation of illicit drugs among trial judges which is yet unresolved by the Court of Appeal or the Supreme Court.

[38] Some High Court judges and Magistrates apply sentencing guidelines in **Sulua v State** *(supra)* in respect of cultivation as well while some other High Court judges have suggested different sentencing regimes on the premise that there is no guideline judgment especially for cultivation of marijuana[1] meaning that ***Sulua*** guidelines may not apply to cultivation and the sentences not following ***Sulua*** guidelines have been based by and large on the number of plants and scale and purpose of cultivation[2]**.** State has earlier cited before this court the scale of operation measured by the number of plants (incorporating potential yield) and the role of the accused as a measure of his responsibility as the basis for possible guidelines in 'cultivation' cases deviating from ***Sulua*** guidelines[3].

[39] These disparities and inconsistencies have been amply highlighted in eight recent Rulings[4] in the Court of Appeal and therefore, the same discussion need not be repeated here.

02nd ground of appeal

[40] There are no merits in the second ground of appeal as the trial judge had taken into account the appellant having co-operated with the police as a mitigating factor.

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1 See **State v Bati** [2018] FJCA 762; HAC 04 of 2018 (21 August 2018).

2 **Tuidama v State** [2016] FJHC 1027; HAA29.2016 (14 November 2016), **State v Matakorovatu** [2017] FJHC 742; HAC355.2016 (29 September 2017), **Dibi v State** [2018] FJHC 86; HAA96.2017 (19 February 2018) and **State v Nabenu** [2018] FJHC 539; HAA10.2018 (25 June 2018).

3 **Raivasi v State** [2020] FJCA 176; AAU119.2017 (22 September 2020) and **Bola v State** [2020] FJCA 177; AAU132.2017 (22 September 2020).

4 **Matakorovatu v State** [2020] FJCA 84; AAU174.2017 (17 June 2020), **Kaitani v State** [2020] FJCA 81; AAU026.2019 (17 June 2020), **Seru v State** [2020] FJCA 126; AAU115.2017 (6 August 2020), **Kuboutawa v State** AAU0047.2017 (27 August 2020) and **Tukana v State** [2020] FJCA 175; AAU117.2017 (22 September 2020), **Qaranivalu v State** [2020] FJCA 186; AAU123.2017 (29 September 2020) and **Kaloulia v State** [2021] FJCA 6; AAU0036.2017 (8 January 2021) and **Naqeleca v State** [2021] FJCA 7; AAU0093.2017 (8 January 2021)

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Order

1. Leave to appeal against conviction is allowed.
2. Leave to appeal against sentence is allowed.

Hon. Mr. Justice C. Prematilaka
JUSTICE OF APPEAL