IN THE COURT OF APPEAL, FIJI

[On Appeal from the High Court]

CRIMINAL APPEAL NO. AAU 0123 OF 2017

[Suva High Court Case No: HAC 287 of 2015]

BETWEEN : **ACURA QARANIVALU**

Appellant

AND : **THE STATE**

Respondent

Coram : **Mataitoga, P**
Qetaki, RJA
Andrée Wiltens, JA

Counsel : **Prakash S for the Appellant**
: **Vosawale R for the Respondent**

Date of Hearing : **11 November, 2025**
Date of Judgment : **28 November, 2025**

JUDGMENT

[1] The appellant (Acura Qaranivalu) was charged, prosecuted and found guilty following a trial in the High Court at Suva. In a judgment delivered on 7 June 2017, the court found the appellant guilty and convicted him on the following information:

Statement of Offence

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

Particulars of Offence

> **ACURA QARANIVALU** on the 3rd day of January 2012, at Vuravu Farm, Daku Village, Kadavu, in the Southern Division, without lawful authority *cultivated 32 plants of cannabis sativa an illicit drug, weighing 11.0 kilograms.*

[2] The appellant was sentenced on 7 June 2017 to 12 years imprisonment with a non-parole period of 10 years.

THE APPEAL

[3] Being aggrieved with the decision, the Appellant filed the following papers in person in the Court of Appeal Registry, thereby initiating a timely appeal against conviction and sentence:

(a) Application for Leave to Appeal against Conviction and Sentence on Criminal Case 287/15 dated 12 June 2017 and filed on 18 August 2017;

(b) Amended Proposed Grounds for Leave to Appeal against Conviction and Sentence dated 16 September 2019 and filed on 09 October 2019;

(c) Submissions for the Appellant dated 23 September 2019 and filed on 9 October 2019;

(d) Submissions in Rebuttal to the Respondent dated 18 June 2020 and filed on 3 July 2020;

(e) Appellant Rebuttal to the Respondent Submissions dated 22 June 2020 and filed on 3 July 2020; and

(f) Appellant Rebuttal to Respondent Submissions dated 23 July 2020 and filed on 29 July 2020.

[4] The Appellant submitted 10 grounds of appeal against conviction and 2 against sentence for the Leave hearing. The single judge of the Court of Appeal considered the grounds of appeal and in a ruling dated 29 September 2020, he refused leave to appeal against conviction but leave to appeal against sentence was allowed.

[5] The appellant with the assistance of Legal Aid Commission Counsel filed an application to renew his grounds of appeal against conviction and because it was out of time, an application for enlargement of to time renew the appeal was also made on 30 December 2021.

[6] The renewed grounds submitted by the appellant's counsel was limited to 3 grounds of appeal against conviction and 1 against sentence.

Renewed Grounds of Appeal

[7] The appellant's grounds of appeal are set out below.

Against Conviction:

Ground (a)

That the Learned Trial Judge erred in law and in fact when he considered that the prosecution has proven their case when in fact the elements of the charge is not proved beyond reasonable doubt that the Appellant unlawfully cultivate the alleged illicit drugs on the 3rd day of January, 2012.

Ground (b)

That the Learned Trial Judge erred in law and in fact when he overlooked and ignored the substantial material irregularity regarding the rightful and or correct quantity weight of the cannabis sativa (marijuana) uprooted and found by Police on the 3rd day of January, 2012, where upon no formal enquiry was made on the irregularity nor any verification on which the Learned Prosecution must give credible reasons regarding the evident irregularity thus the Appellants trial was held unfairly resulted to the conviction being unsafe.

Ground (c)

That the Learned Trial Judge erred in law and in fact when he ruled the allege confession as admissible, failed to analyze the Appellant oppressive treatment, breaches of the Judges Rule and constitutional rights during the whole period of police custody thus the failure to analyses the Appellants defense of the voir dire ruling and the summing up gives rise to an unfair trial and a perverse.

Against Sentence

Ground (d)

That the Learned Sentencing Judge erred when he considered or took into account as aggravating factor the quantity of illicit drugs already part of the particulars of

Enlargement of Time Application – Relevant Law

[8] This appeal was filed out of time by 2 months 3 days. It is late. The following rules of the Court are relevant:

Relevant Practice Directions:

(i) Practice Direction No. 3 of 2018, dated 20 June 2018 states as follows:

Any renewed application to the Court of Appeal under section 35(3) of the Court of Appeal Act in a criminal appeal shall be filed and served within 30 days of the date of pronouncement of the decision of the judge refusing the application.

(ii) Practice Direction No. 4 of 2019, dated 11 June 2019 states as follows:

In default of a party failing to file and serve a renewed application for leave to appeal or a renewed application for an enlargement of time within 30 days of the date of pronouncement of the decision refusing the application, the appeal shall be dismissed pursuant to the inherent power of Court to avoid abuse of process.

Case law

[9] The guidance of the Supreme Court in **Vakacegu v State [2023] FJSC 13** (CAV 005 of 2020) is useful, wherein the court stated:

"The grant of enlargement of time to appeal out of time; or, the grant of renewal of the application for enlargement of time once refused by a single Justice of Appeal acting in terms of Section 35 (1) of the Court of Appeal Act, is not automatic. It, instead, involves a process by the full court where the application of the relevant criteria is considered in a stringent manner as laid down by judicial authorities. The criteria have been laid down bearing in mind the inviolable need to conform to the rules of the court; and, the justifiable need to ensure justice to a litigant at default.

The court's power in this regard is discretionary. The discretion is not unfettered. That is a discretion that has to be exercised reasonably, fairly and lawfully by applying inter alia the principles enunciated in the judicial precedents on the facts and circumstances of each case. The principle laid down by the Judicial Committee of the Privy Council in the United Kingdom in Ratnam v Cumaraswamy [1964] 3 All ER 933 at 935, is a sound principle to start with. It said:

> *"The rules of court must prima facie be obeyed, and in order to justify a court in extending the time during which some step in procedure requires to be taken there must be some material upon which the court can exercise its discretion".*

[10] For this appeal we adopt the approach of the Supreme Court in **Kumar & Sinu v State [2012] FJSC 17** (CAV 01 of 2009) as regards the factors to be considered when assessing an application for Enlargement of Time to Appeal:

> "*The factors to be considered for an enlargement of time are (a) the length of the delay, (b) the reason for the failure to file within time, (c) whether there is a ground of merit justifying the appellate court's consideration and where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed and (d) if time is enlarged, will the respondent be unfairly prejudiced."*

[11] In **Fisher v State** [2016] FJCA 57; AAU132.2014 (28 April 2016), on the issue of delay; the court stated, how such delays should be addressed in dealing with an application for enlargement of time to appeal by an imprisoned convict, were considered. It was observed in that decision that:

> *"[12] The Supreme Court has acknowledged that incarcerated appellants who are unrepresented do face difficulties in the preparation of their appeals. However, those difficulties do not justify setting aside the requirements of the Act and the Rules: **Raitamata v- The State[2008] FJSC 32**, CAV 2 of 2007; 25 February 2008 and **Sheik Mohammed – v- The State [2014] FJSC 2**, CAV 02/2013; 27 February 2014. The explanation for the delay will not by itself ordinarily lead to the conclusion that an enlargement of would be granted. It is usually necessary to consider whether the appeal has sufficient merit to excuse the Appellant's non-compliance with the Rules. It is necessary for the Appellant to show that his **appeal grounds** have sufficient merit to (a) excuse the delay and (b) be considered by the Court of Appeal."*
>
> (underlined for emphasis)

[12] With the above guideline from relevant caselaw, this court will now proceed to assess the appellant's application for enlargement of time in the framework of the 4 factors set out by the Supreme Court in **Kumar & Sinu v State** (supra)

Assessment of Grounds of the Application for Enlargement of Time

[13] In undertaking the assessment, the first two factors: length of the delay and the reason for the delay.

(a) & (b) - Length and Reason for Delay

The length of the delay in this case is 2 months 3 days. The reason submitted by the appellant was his status as a prisoner and the severe restrictions in Fiji due to COVID19 Pandemic during 2020 to 2021. Furthermore, he submitted that as part of his prisoner rehabilitation program he was in Rakiraki for more than 2 months for cane-cutting.

In the view of the court the delay is not substantial and there are cogent reasons provided by the appellant. The court noted that in **Julien Miller v State** Crim Appeal No: AAU 0076 of 2007, Byrne JA stated: "*were this application for leave to have been made much earlier and within what I would have thought was reasonable time of 3 months, at the latest beyond the 30 days prescribed by the Act.*"

It is not unreasonable to allow the delay, being within the 3 months allowance noted in **Julien Miller** (supra). The reasons for the delay and the short delay being under 3 months, and in light of the grounds of appeal against conviction submitted, as not only having merit, it justifies full court consideration the court and allows enlargement of time to the appellant to appeal. The reason for the length of the delay in the filling of the appellant appeal against conviction is not unreasonable.

(c) Prejudice to the respondent if the enlargement of time application is granted was not pleaded by counsel. On the facts it was unlikely that there was prejudice to the respondent if the enlargement of time to appeal is given.

(d) Grounds Justifying appellate Courts Consideration

In reviewing the renewed grounds of appeal against conviction, the 3 grounds submitted by the appellant, can be consolidated to 2 substantive grounds which merit consideration of the full court. These are:

i) The reasonableness of the verdict of guilty at the trial of the appellant, in light of the serious gaps in the chain of evidence in the handling of the marijuana sativa exhibits by the prosecution witnesses before the court;

ii) The relevance of the admission of the Caution Interview statement of the appellant at the trial was prejudicial given that it had no probative value.

[14] Section 23(1) of the Court of Appeal Act 1949 states: "The Court of Appeal –

(a) On any such appeal against conviction shall allow the appeal they think the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or the judgement of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision n any question of law or there that on any ground there was a miscarriage of justice, and in any case shall dismiss the appeal;

(b) .....

Provided that the court may not withstanding that they are of opinion that the point raised on appeal against conviction or against acquittal to be decide in favor of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has occurred."

Was the Verdict unreasonable or cannot be supported on the evidence at the trial?

[15] In **Navunisaravi v State [2023] FJCA 68** (AAU 150/2017) the Court of Appeal stated:

"*[63] When examining whether a verdict is unreasonable or cannot be supported by evidence, as stated by the Court of Appeal in **Kumar v State** AAU 102 of 2015 (29 April 2021) and **Naduva v State** [2021] FJCA 98; AAU0125.2015 (27 May 2021) the correct approach by the appellate court is to examine the record or the transcript to see whether by reason of inconsistencies, discrepancies, omissions, improbabilities or other inadequacies of the complainant's evidence or in light of other evidence including defense evidence, the appellate court can be satisfied that the assessors, acting rationally, ought nonetheless to have*

*entertained a reasonable doubt as to proof of guilt. To put it another way the question for an appellate court is whether upon the whole of the evidence it was reasonably open to the assessors to be satisfied of guilt beyond reasonable doubt which is to say whether the assessors **must** as distinct from **might**, have entertained a reasonable doubt about the appellant's guilt.*

*[65] **Sahib v State** [1992] FJCA 24; AAU0018u.87s (27 November 1992) too applied more or less a similar test in considering whether the verdict is unreasonable or cannot be supported by evidence under section 23(1)(a) of the Court of Appeal Act.*

*[66] When a verdict is challenged on the basis that it is unreasonable, the test is whether the trial judge could have reasonably convicted on the evidence before him [vide **Kaiyum v State** [2014] FJCA 35; AAU0071.2012 (14 March 2014."*

[16] The appellant in his written submission prepared with the assistance of Counsel from the Legal Aid Commission submitted the following precise issues to the court which they claim makes the finding of guilt against the appellant unreasonable and not supported by the evidence at the trial. These are i) elements of the charge were not proven by evidence adduced at the trial to meet the standard of proof beyond reasonable doubt; ii) date of the offence in the information was not put to the appellant during caution interview; iii) admission of general and irrelevant admissions in caution interview; iv) disparities in the number of plants and their physical stated in the charge statement and the evidence of the police officers in court.

[17] Review of the above issues submitted by the appellant:

i) Elements of the charge were not proven by evidence at the trial.

In support of this claim the appellant submits that the charge alleges that he on 3 January 2012 at Varavu Farm, Daku Village, Kadavu cultivated 32 plants of cannabis sativa weighing 11 kg. The charge against the appellant was cultivation of Illicit Drugs under the Illicit Drugs Control Act 2004, contrary to section 5(a). The particulars of the offence were that the appellant on 3 January 2012, at Varavu Farm, Daku Village, Kadavu, without lawful authority cultivated **32 plants of cannabis sativa** an illicit drug weighing 11 kg.

The prosecution evidence summarized by the trial judge in his Summing Up to the assessors were as follows:

"The state's case against the Appellant (accused)

The State's evidence as per the Summing Up[1] was as follows:

D/Sergeant Adriu (PW1) said, on 3 January 2012, he received information that people were cultivating marijuana in the Vuravu Settlement area. He organized a party of 5 police officers to execute a search warrant on one Apakuki's house in the area. He took his party from the Kadavu Police Station to Apakuki's house via a fibre glass boat. At the house, they executed the search warrant. PW1 said, they found 24 marijuana plants been hung up to dry at Apakuki's house. PW1 said, according to the information he received, the 24 plants were said to belong to the accused. PW1 said, they seized the plants and took the same to Kadavu Police Station.

Waisale Saru (PW2) next gave evidence. PW2 said, he was a police officer on 3 January 2012, and was part of the team that raided Vuravu Settlement that day. PW2 said, his team went to a farm at Vuravu Settlement. At the farm, they uprooted numerous marijuana plants. PW2 said, they received information that some marijuana plants had been uprooted and dried at a nearby house.

PW2 said, they later went to the house and saw 24 marijuana plants been dried. PW2 said, they later seized the 24 plants and took them to Kadavu Police Station. It would appear that these were the same marijuana plants PW1 was talking about above.

Enroute to Kadavu Police Station on 3 January 2012, PW2 said they saw the appellant (accused) in another fiber glass boat. They arrested him and took him also to Kadavu Police Station. At Kadavu Police Station, the drugs and the accused were handed over to the Station Orderly.

WPC 3623 Taraivini Vusoni (PW3) said, on 3 January 2012, she received the abovementioned 24 marijuana plants and 6 branches of dried leaves from PW1. PW3 said, she packed, tagged and stored the plants in the exhibit room for transfer to Suva. PW3 said, she was the exhibit writer and her job was to look after the exhibits until they were produced in court.

[1] Page 88-90 Court Record

Sergeant 1785 Sakaraia Tuberi (PW4) said, on 9 January 2012, he took the 24 plants stored in the exhibit room to Suva for analysis. PW4 said, he and other police officers escorted the above drugs from Kadavu Police Station, to Nabua Police Station and then to Koronivia Research Station on the same day.

The drugs were handed over to the Government Analyst, Ms. Miliakere Nawaikula (PW6), for analysis. PW6 said, she analysed the drugs on the same day and found them to be cannabis sativa and they weighed 11 kilograms. PW6 tendered her Certificate of Analysis as Prosecution Exhibit No. 2. The drugs were handed back to police after the analysis.

D/Acting Corporal 3036 Amani Satuwere (PW5) said, he cautions interviewed the accused at Kadavu Police Station on 7 January 2012 in the English language. He said, he asked the accused 57 questions and he gave 57 answers. He said, the interview started at 9.02am and it concluded at 1.16pm. PW5 said, the accused was given his legal rights, his right to counsel, the standard caution and his rest, smoke and toilet breaks. PW5 said, he did not assault or threatened the accused during the interview, or while he was in his custody. During the interview, PW5 said, the accused confessed to the crime. The interview notes were tendered in evidence as Prosecution Exhibit No. 1. As to his alleged confession, please refer to questions and answers 21, 23, 25, 28, 29, 30 to 34, 44, 45, 47, 54 and 55 of Prosecution Exhibit No. 1."

Who cultivated 32 or 24 Marijuana Plants?

[18] The appellant was charged that without lawful authority he cultivated 32 plants of cannabis sativa and illicit drugs weighing 11 kg. From the above summary of evidence, the appellant counsel, submits that it is apparent that the team of police officers had raided a farm at Vuravu Settlement and uprooted some marijuana plants. Thereafter, they proceeded to Apakuki's house and seized 24 plants of marijuana that had been hung out to dry. Both PW1 and PW2 confirmed that Appellant was not present at the house during seizure of the 24 plants. The raid team acted purely on information received. Therefore, there is no direct evidence from PW1 and PW2 that the Appellant was cultivating marijuana, contrary to the particulars of the offence for which he was charged.

[19] There is no direct evidence that **the 24 plants seized** at Vuravu Settlement was cultivated by the appellant, which was charged in the Information laid against him. In the following paragraph, reference is made to the fact that at the trial of the appellant,

he called a witness (DW4) who gave sworn evidence that the marijuana plants the subject of the charge made against appellant was his (DW4) and was grown by him at his farm near Vuravu Settlement, Daku Village, Kadavu. The charge is about **32 plants not 24 plants** and the prosecution did not provide evidence at the trial to explain this discrepancy. This is a fatal gap, and the prosecution did not provide any explanation through admissible evidence. This is a major discrepancy in the evidence, which was not addressed, resulting in miscarriage of justice.

[20] The respondent relies on the caution interview and the answers given by the appellant to implicate him as the person who was responsible for cultivating the marijuana plants uprooted by the police. At the leave stage, in his Ruling the Single Justice of Appeal court noted as follows: **Qaranivalu v State [2020] FJCA 286**

> "[15] One of the allegations put to the appellant at the cautioned interview was that he had cultivated marijuana at Vuravu farm from 01 May 2011 to 04 January 2012 (between Q6 and Q7). Answering Q21 the appellant had admitted that he had cultivated marijuana at Vuravu Estate. He had owned it (Q31) and Apakuki was in charge of it (Q32). Marijuana plants at the farm where Apakuki was in charge had been uprooted by the police officers in January 2011. The appellant had admitted that marijuana plants uprooted from his farm and shown to him at the police station were cultivated by him (Q47). Obviously, these plants were not the ones uprooted on 03 January 2012.
>
> [16] Therefore, the admission of cultivation of marijuana plants from 01 May 2011 to 04 January 2012 is general in nature. No specific allegation set out in the charge had been put to and no answer had been obtained from the appellant in the cautioned interview as to whether on 03 January 2012 he had cultivated 32 plants of cannabis sativa weighing 11 kg. The rest of the admissions on cultivation in the cautioned interview appears to relate to the year 2011 which is outside the charge in the information. Other admissions only relate to the sale of marijuana for which there is no charge.
>
> [17] Therefore, though I cannot say with certainty at this stage whether the appellant has a reasonable prospect of success on this ground of appeal, it is certainly worthwhile for the full court to consider seriously with the help of the complete appeal record to determine as to whether there is a clear nexus beyond reasonable doubt between the admissions of cultivation and the charge against the appellant in the information."

[21] With the complete record of the trial of the appellant now available, it is clear that the admission in the caution interview was general in nature. There were no specific allegations put to the appellant during his caution interview and no admission from him on whether on 3 January 2012 he had cultivated 32 plants of cannabis sativa weighing 11 kg. The admissions on cultivation in the caution interview statement of the appellant related to the year 2011, not relevant to the charge in the information. The other admissions relate to the sale of marijuana which is not charged in this case.

[22] On the basis of the above analyses of the evidence, it clear that the date of the charge and other ingredients of the charge were not proven beyond reasonable doubt. In that regard the guilty finding is unreasonable and not supported by evidence. It must be quashed.

No Directions on DW4's evidence to Assessors

[23] There is a further relevant evidence which was not referenced in the summing up by the trial judge, that is that the same marijuana sativa plants alleged to have been cultivated by appellant the subject of the charge on this appeal, was the same plants for which Apakuki Kauyaca Vitukawalu was charged, prosecuted, found guilty and imprisoned for in **State v Apakuki Kauyaca Vitukawalu [2016] FJSC 586** (HAC 288 of 2016). Furthermore, Apakuki Kauyaca Vitukawalu when cross-examined during the High Court Trial of the appellant in this case, stated in answer to his evidence:

> *"Q by Qaranivalu: Mr Apakuki can you please clearly tell this court the marijuana plants that you were charged with and the one I was being charged with are the same or not marijuana plants that were charged with Acura*
> *A by Kauyaca [Full name is Apakuki Kauyaca Vitukawalu]: The marijuana that I was charged with my Lord, they are the same marijuana plants that are being charged with Mr Acura, my Lord."*

[At page 310 of the Court Record under Re-examination of DW4 – Mr Kauyaca]

[24] In the trial judge's Summing Up, the evidence given DW4 Apakuki Kauyaca Vitukawalu sworn evidence just quoted above, for the appellant, despite its direct relevance to issue of whether the charges against the appellant were proven beyond reasonable doubt, was not mentioned at all in the Summing Up. This omission of the

trial judge, in not giving the relevant directions in his summing up to the assessors and how they may deal with this evidence, which directly contradicts the whole basis of the charge against the appellant [Acura Qaranivalu] results in unfairness. This omission results in miscarriage of justice to the appellant.

Caution Interview Statement of the appellant to general and lack specific connections to particular of the offence charged

[25] The police seized the plants and took it to Koronivia Research Station for analysis on 9 January 2012. It was found that the plants were cannabis sativa and they weighed 11 kilograms. The appellant was caution interviewed by police on 7 January 2012 and admitted to police that he had been cultivating cannabis sativa plants, with others, on 3 January 2012. As a result, he was later charged for unlawful cultivating of illicit drugs. The appellant submitted that the caution interview statement of the appellant relied on by the respondent at the trial was general in nature and not specific in terms of what was required to prove the elements of charge, to meet the required standard of proof beyond reasonable doubt.

[26] Another gap in the evidence was *that the marijuana that was taken to Koronivia Research station for analysis was from Apakuki or Acura's (appellant) farm*. This was a major discrepancy on an element of the offence charged which when raised with counsel for the respondent at the full court hearing, there was no response. When you consider that DW4 sworn evidence at the trial the marijuana sativa taken to Koronivia Research station was from his farm and not that of the appellant – Acura Qaranivalu. The finding of guilty at the trial of the appellant was unreasonable and not supported by the evidence provided. There were too may gaps in the evidence regarding the critical elements of the charge in the Information to raise reasonable doubt that the conviction is reasonable and supportable on the evidence at the trial.

Proviso to Section 23(1) (a) Court of Appeal Act

[27] On the analysis of the evidence and in light of the inadequate summing up of the evidence and the directions or lack of it, of the relevant legal principles that should

have guided the assessors in their assessments, the proviso of section 23(1) (a) of the Court of Appeal Act will not save the conviction in this case.

[28] In conclusion the court find that the verdict of guilty is unreasonable and is not supported by evidence adduced at the trial. The court order's that the appellant conviction be quashed.

ORDERS:

1. Application for Enlargement of time to appeal against conviction and sentence allowed.
2. Leave to appeal granted against conviction and sentence.
3. Appeal against conviction is successful and the conviction in the High Court case HAC No: 287 of 2017 is quashed.
4. The appellant is acquitted.

COURT OF APPEAL FIJI

The Hon. Mr Justice Isikeli Mataitoga
PRESIDENT OF THE COURT OF APPEAL

The Hon. Mr Justice Alipate Qetaki
RESIDENT JUSTICE OF APPEAL

The Hon. Mr Justice Gus Andrée Wiltens
JUSTICE OF APPEAL