

**IN THE HIGH COURT OF FIJI AT SUVA**

CASE NO: HAC. 355 of 2016

[CRIMINAL JURISDICTION]

**STATE**

**V**

**ARISI KAITANI**

**Counsel** : Ms. S. Lodhia and Mr. Z. Zunaid for State  
Mr. T. Ravuniwa for Accused

**Hearing on** : 25<sup>th</sup> June - 06<sup>th</sup> July 2018

**Summing up on** : 09<sup>th</sup> July 2018

**Judgment on** : 10<sup>th</sup> July 2018

**JUDGMENT**

1. The accused is charged with the following offences;

**FIRST COUNT**

*Statement of Offence*

**UNLAWFUL POSSESSION OF ILLICIT DRUGS:** contrary to section 5(a) of the Illicit Drugs Control Act 2004.

*Particulars of Offence*

**ARISI KAITANI AND ATIKINI MATAKOROVATU** on the 15<sup>th</sup> day of September 2016 at Kadavu in the Eastern Division, unlawfully possessed 1184.4grams of an illicit drug known as cannabis sativa.

**SECOND COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**ARISI KAITANI AND ATIKINI MATAKOROVATU** on the 15<sup>th</sup> day of September 2016 at Kadavu in the Eastern Division, unlawfully cultivated 7975.7 grams of an illicit drug known as cannabis sativa.

2. The assessors have returned with a divided opinion. The majority opined that the accused is not guilty of the above offences. One assessor found him guilty of both offences.
3. I direct myself in accordance with the summing up delivered to the assessors on 09<sup>th</sup> July 2018 and the evidence adduced during the trial.
4. The prosecution led evidence of nine witnesses and relies on direct evidence and the admissions made by the accused in the cautioned interview to prove the two charges. The accused gave evidence and called one witness.
5. In relation to the cautioned interview which is written in the English language, the accused's evidence was that he does not understand English and he did not give the answers as recorded in PE 1 and he was simply made to sign on that document. According to the accused, the interviewing officer (PW4) spoke to him in iTaukei language and asked him about his personal details which are noted in PE1 and the remaining answers were filled by the interviewing officer, PW4. The accused also said that Special Constable Keperieli Keteiwai was not present during the interview though his signature appears on PE1 as the witnessing officer. PW4 said that Special Constable Keteiwai was not present throughout the interview only on the first day, but was present on the second and the third days of the interview.
6. The accused called Special Constable Keteiwai as a defence witness who confirmed that he was not present when the accused was interviewed under caution though he had signed PE1 on the instructions of PW4 who was an officer senior to him. He also said that PW4 only spoke with the accused in iTaukei language. It was also revealed during cross-examination that Special Constable

Keteiwai (DW2) was suspended from the Police Force as he was charged for the offence of robbery.

7. When the evidence of PW4, the officer who recorded the charge statement (PW5), the accused and DW2 is taken together (despite the fact that I did not find DW2 to be a credible and a reliable witness in general), I am not convinced that PW4 gave an accurate account with regard to the recording of the cautioned interview (PE1). This raises a doubt in my mind as to whether all the answers recorded in PE1 were given by the accused in the manner it is so recorded. Therefore, I would disregard the cautioned interview, PE1.
8. Having considered the evidence of police witnesses PW1, PW2, PW3 and the military officer PW6 who took part in the raid, I accept the evidence of those witnesses that they saw the accused uprooting plants in the farm before the accused was arrested. Given the demeanour and deportment of the accused when he gave evidence taken together with all the relevant evidence led in this case, I do not find the accused's evidence that he was arrested on his way while he was looking for the herbal medicine and brought to the farm thereafter, credible and reliable.
9. I accept the evidence of the aforementioned prosecution witnesses that they uprooted 824 plants from the farm where they found the accused and the other person who is now serving (hereinafter referred to as the "co-accused") uprooting plants and I accept the evidence of the ninth prosecution witness that those are *cannabis sativa* plants which is an illicit drug.
10. Given the above evidence which I have found to be credible and reliable, I am satisfied beyond reasonable doubt that the prosecution had proven the elements of the second count beyond reasonable doubt. The inconsistency in the evidence given by PW1 with regard to the issue whether or not the 824 plants included the plants that were uprooted by the accused and the co-accused which was not

properly clarified by the prosecution, in my view, does not damage the prosecution case that the two accused were involved in cultivating 824 *cannabis sativa* plants.

11. In relation to the first count, I find that the evidence led by the prosecution leaving aside the cautioned interview which I have decided to disregard, does not establish beyond reasonable doubt that the accused was in possession of the loose material that were found in the farm including the farm house. Those loose material may be parts of the plants that would have been cultivated by the accused. But the prosecution had failed to prove that the accused had the custody and control of those loose material.
12. In the circumstances, I agree with the majority opinion of the assessors in relation to the first count. I find the accused not guilty of count one and I would acquit the accused of count one accordingly.
13. I am unable to agree with the majority opinion of the assessors in relation to count two for the reasons given above. I find the accused guilty of the second count and I would convict him accordingly.



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera".

Vinsent S. Perera

JUDGE

Solicitors;

Office of the Director of Public Prosecutions for State.  
MIQ Lawyers, Suva for Accused.