

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
LAUTOKA CRIMINAL CASE NO. HAC 024 OF 2019L

STATE
vs
MESULAME KURINACOBA

Counsels : **Ms. J. Fatiaki for State**
Ms. E. Radrole and Ms. N. Singh for Accused
Hearings : **12, 13, 14, 15 and 18 November, 2019.**
Summing Up : **19 November, 2019.**
Judgment : **19 November, 2019.**
Sentence : **20 November, 2019.**

SENTENCE

1. In a judgment delivered yesterday, the court found you guilty and convicted you 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

MESULAME KURINACOBA between the 1st day of October 2016 and the 6th day of March 2017 at Navosa in the Western Division without lawful authority, cultivated 1,589 plants of Cannabis Sativa, an illicit drug, weighing 198 kilograms.”

2. The brief facts were as follows. Between 1 October 2016 and 6 March 2017, you maintained a cannabis sativa farm and cultivated 1,589 cannabis sativa (marijuana) plants higher up in the mountains of Navosa, in the Western Division. Through the “police drug intelligence unit”, your activities were discovered. You led police to your farm, where they uprooted the above plants, took it to Navosa Police Station for analysis and the same were later discovered to be cannabis sativa plants, weighing 198 kilograms. In the last 5 days, you had been tried before myself and three assessors and you had been found guilty as charged.

3. The maximum sentence for “Unlawful Cultivation of cannabis sativa plants, an illicit drug”, is a fine of \$1,000,000 or life imprisonment or both (section 5 (a) of the Illicit Drugs Control Act 2004). Society, through Parliament, viewed the offence seriously. In **Kini Sulua, Michael Ashley Chandra v State** [2012] Fiji Law Reports, Volume 2, page 111, at paragraph 115 on page 143, the majority in the Court of Appeal laid down the following sentence guideline:
 - (i) **Category 1**: possession of 0 to 100 grams of cannabis sativa – a non-custodial sentence to be given, for example, fines, community service, counselling, discharge with a strong warning, etc. Only in the worst cases, should a suspended prison sentence or a short sharp prison sentence be considered.
 - (ii) **Category 2**: possession of 100 to 1,000 gram of cannabis sativa. Tariff should be a sentence between 1 to 3 years imprisonment, with those possessing below 500 grams, being sentenced to less than 2 years, and those possessing more than 500 grams, be sentenced to more than 2 years imprisonment.
 - (iii) **Category 3**: possessing 1,000 to 4,000 grams of cannabis sativa. Tariff should be a sentence between 3 to 7 years, with those possessing less than 2,500 grams, be sentenced to less than 4 years imprisonment, and those possessing more than 2,500 grams, be sentenced to more than 4 years.

- (iv) **Category 4:** possessing 4,000 grams and above of cannabis sativa. Tariff should be a sentence between 7 to 14 years imprisonment.
4. Although the above sentence guidelines apply to possession of cannabis sativa drugs, they also apply to unlawful cultivation of cannabis sativa plants. Please, refer to paragraph 116 and 117 of **Kini Sulua, Michael Ashley Chandra v State** (supra) in pages 143 and 144. The weight of the drugs in this case being 198 kilograms, it makes the case a Category 4 case. The tariff is therefore a sentence between 7 to 14 years imprisonment. However, the final sentence will depend on the aggravating and mitigating factors.
5. In this case, the aggravating factor was as follows:
- (i) The amount of illicit drugs you cultivated was huge, that is, 1,589 cannabis sativa plants, weighing 198 kilograms. This was one of the few cases that had passed the 100 kilograms mark. It was 38 times more than the 5.2 kilograms found on Kini Sulua in the case of **Kini Sulua v The State** (supra), where he got a sentence of 8 years imprisonment. As a result, the sentence on you will have to be more than 8 years imprisonment. The amount of illicit drugs found on you showed a deliberate contempt for the law, and you must not complain when a long custodial sentence is given to you. Your sentence will act as a deterrence to others.
6. The mitigating factors were as follows:
- (i) At the age of 37 years, this is your first offence;
- (ii) You co-operated with the police during the investigation by leading them through the Navosa mountains and showing them your marijuana farm. You also co-operated with the police by admitting the offence when caution interviewed and when formally charged;
- (iii) You were previously remanded in custody for approximately 3 months.

7. I start with a sentence of 12 years imprisonment. Because of the large amount of cannabis sativa plants you cultivated, that is, 198 kilograms in weight, I add 9 years, making a total of 21 years imprisonment. For time already served while remanded in custody, I deduct 3 months, leaving a balance of 20 years 9 months. For being a first offender, I deduct 9 months, leaving a balance of 20 years imprisonment. For co-operating with the police by showing them your marijuana farm, by admitting the offence when caution interviewed and when formally charged, I deduct 3 years imprisonment, leaving a balance of 17 years imprisonment.
8. Mr. Mesulame Kurinacoba, for unlawfully cultivating 198 kilograms of cannabis sativa plants between 1 October 2016 and 6 March 2017, at Navosa in the Western Division, without lawful authority, I sentence you to 17 years imprisonment, with a non-parole period of 15 years imprisonment, effective forthwith.
9. Pursuant to section 4 (1) of the Sentencing and Penalties Act 2009, the above sentence is designed to punish you in a manner that is just in all the circumstances of the case, to protect the community, to deter other would-be offenders and to signify that the court and community denounce the unlawful cultivation of cannabis sativa plants.
10. You have 30 days to appeal to the Court of Appeal.




Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for the Accused : **Legal Aid Commission, Suva.**