

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 391 OF 2019S**

**STATE**

**VS**

- 1. PENIASI KALI**
- 2. RUPENI TILAKORO**
- 3. VODRITI KOLI**
- 4. INOKE GADRE**

**Counselors** : **Mr. E. Samisoni for State**  
**Ms. L. Ratidara for Accused No. 1**  
**Accused No. 2, In Person, but tried in absentia**  
**Accused No. 3 in Person**  
**Accused No. 4 in Person**

**Hearings** : **23, 24, 25, 26 and 27 May 2022 [ Voir Dire Hearings], 30, 31 May 2022, 1 and 2 June 2022 [Trial Proper].**

**Judgment** : **17 June, 2022.**

---

**JUDGMENT**

---

1. On 3 June 2020, Accused No. 1, 2 and 4 waived their right to counsel, and chose to represent themselves. Accused No. 3, on first call on 12 December 2019,

waived his right to counsel and chose to represent himself. The following information was put to all accuseds on 3 June 2020:

**“Count 1**

**Statement of Offence**

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

**Particulars of Offence**

**PENIASI KALI** *between the 24<sup>th</sup> day of September 2018 to the 25<sup>th</sup> day of September 2018, at Nabulini Village, in the Eastern Division, without lawful authority, cultivated 2 plants of Cannabis sativa, an illicit drug weighing 63.8 grams.*

**Count 2**

**Statement of Offence**

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

**Particulars of Offence**

**RUPENI TILAKORO** *between the 24<sup>th</sup> day of September 2018 to the 25<sup>th</sup> day of September 2018, at Nabulini village, in the Eastern Division, without lawful authority, cultivated 1.6 grams of Cannabis sativa, an illicit drug.*

**Count 3**

**Statement of Offence**

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

**Particulars of Offence**

**RUPENI TILAKORO** *between the 24<sup>th</sup> day of September 2018 to the 25<sup>th</sup> day of September 2018, at Nabulini village, in the Eastern Division, without lawful authority, cultivated 1 plant of Cannabis sativa, an illicit drug, weighing 274 grams.*

**Count 4**

**Statement of Offence**

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

**Particulars of Offence**

**VODRITI KOLI** between the 24<sup>th</sup> day of September 2018 to the 25<sup>th</sup> day of September 2018, at Nabulini village, in the Eastern Division, without lawful authority, possessed 18.7 grams of Cannabis sativa, an illicit drug.

**Count 5**

**Statement of Offence**

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

**Particulars of Offence**

**VODRITI KOLI** between the 24<sup>th</sup> day of September 2018 to the 25<sup>th</sup> day of September 2018, at Nabulini village, in the Eastern Division, without lawful authority, cultivated 10 plants of Cannabis sativa, an illicit drug weighing 294 grams.

**Count 6**

**Statement of Offence**

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

**Particulars of Offence**

**PENIASI KALI, RUPENI TILAKORO, VODRITI KOLI AND INOKE GADRE** between the 24<sup>th</sup> day of September 2018 to the 25<sup>th</sup> day of September 2018, at Nabulini village, in the Eastern Division, without lawful authority, cultivated 96 plants of Cannabis sativa, an illicit drug weighing 14378 grams.”

2. All the accuseds said they understood the counts in the information. Accused No. 1 pleaded not guilty to count no. 1 and 6. Accused No. 2 pleaded not guilty

to count no. 2, 3 and 6. Accused No. 3 pleaded guilty to count no. 4 and 5, but not guilty to count no. 6. Accused No. 4 pleaded not guilty to count no. 6. For Accused No. 3, the prosecution presented their summary of facts for count no. 4 and 5 on 2 July 2020.

3. Briefly, the facts were as follows. Between 24 and 25 September 2018, the police Eastern Division Drugs Unit visited Nabulini Village in Tailevu to conduct a drug raid. Information was received by the police that some people were unlawfully cultivating cannabis sativa plants in the area. The police went to Accused No. 3's house and searched him. They found dried leaves wrapped in newspaper in his pant's back pocket. The leaves weighed 18.7 grams and were later confirmed to be cannabis sativa (count no. 4). Accused No. 3 also admitted to police that he was cultivating 10 marijuana plants. He showed the police the plants. The same were weighed at 294 grams and were later confirmed to be cannabis sativa (count no. 5). Accused No. 3 admitted the above summary of facts, including the particulars of the offences in count no. 4 and 5. As a result, the court found Accused No. 3 guilty as charged on count no. 4 and 5, and convicted him accordingly on those counts. Sentencing was postponed until the completion of the trial on the other counts.
4. On counts no. 1, 2, 3 and 6, the prosecution's case against all accused's were based fundamentally on their alleged confessions to the police when caution interviewed on 25 and 26 September 2018, at Korovou Police Station. The accuseds appear to contend, that the police allegedly assaulted, threatened and mistreated them, while they were in their custody. They alleged that the above police actions were designed to force them to admit the offences, when caution interviewed. They said, they were arrested by police on 24 September 2018 and taken to Nausori Magistrate Court on 27 September 2018. So, it appeared they were in police custody for 4 days. Two days (24 and 25 September 2018) were

spent in arresting the four accuseds, taking them to their alleged cannabis sativa farm, uprooting the plants and bringing the same to Korovou Police Station. Two days (25 and 26 September 2018) were spent in processing the four accuseds at Korovou Police Station. The four accuseds appeared to say that their alleged confessions to the police were forced out of them, and that they gave the same without their own free will. A voir dire was thus mandatory to determine the admissibility of the four accuseds' alleged confessions to police.

5. While trying to organize a voir dire, Accused No. 2 chose by conduct not to attend court on 2 and 21 July 2020. On 21 July 2020, the prosecution verbally applied to court to try Accused No. 2 in absentia, on the ground that he was well aware of the proceeding, as he was present on 3 June 2020, wherein he pleaded not guilty to counts no. 2, 3 and 6. In addition, the prosecution said, he had chosen, by conduct, not to attend court on 2 and 21 July 2020, and he had been avoiding the police when they visited his residence at Moto in Ba, on or about 13 July 2020. The prosecution said, they were relying on the authority of section 14 (2) (h) (i) of Fiji's 2013 Constitution. As Accused No. 2 was not present in court, he was deemed to have chosen to exercise his constitutional right to remain silent. The court granted the prosecution's application. Accused No. 1 and 3 had now engaged legal aid counsels.
6. The voir dire proceeding occurred on 23, 24, 25, 26 and 27 May 2022. Prior to the voir dire, Accused No. 3's counsel was granted leave to withdraw as counsel, on the ground of Accused No. 3's alleged changing instructions. Only Accused no. 1 was represented by counsel, while Accused No. 3 and 4 waived their right to counsel and chose to represent themselves. A total of 12 police officers and 1 former police officer gave evidence for the prosecution. Accused No. 1, 3 and 4 each gave sworn evidence and called no witness. As for Accused No. 2, who was tried in absentia, he was deemed to have chosen to exercise his constitutional

right to remain silent, when cross-examining the prosecution's witness and when it came to giving sworn evidence, in his defence.

7. The contention between the prosecution's witnesses' version of events and Accused No. 1, 3 and 4's version of events, were typical of most voir dire proceedings. The following witnesses gave evidence for the prosecution:

- (i) PW1, PC 4470 Apenisa Qiri;
- (ii) PW2, PC 6982 Simione Cavasiga;
- (iii) PW3, PC 7407 Joeli Rokorasei;
- (iv) PW4, DC 3730 Ropate Raburau;
- (v) PW5, Inspector Timoci Nakaikoso;
- (vi) PW6, PC 5597 Iakobo Bose;
- (vii) PW7, Inspector Ilaitia Ramaya;
- (viii) PW8, PC 4280 Petero Bainidawa;
- (ix) PW9, WPC 3462 Lusiana Saqanavere;
- (x) PW10, WPC 5252 Irinieta Tukutukuwaca;
- (xi) PW11, PC 5285 Savenaca Vue;
- (xii) PW12, Epeli Lalakoverata;
- (xiii) PW13, DC 3920 Sailosi Bawaqa.

8. The following witnesses gave evidence for the defence:

- (i) DW1, Peniasi Kali (Accused No.1);
- (ii) DW2, Vodriti Koli (Accused No. 3); and
- (iii) DW3, Inoke Gadre (Accused No. 4).

9. PW1, PW2, PW3 and PW4 were part of the Police Arresting Team. They were led by PW6. According to the police officers, they were briefed at Korovou Police Station on 24 September 2018. They had received information that people were cultivating cannabis sativa at Nabulini Village, Wainibuka, Tailevu. They raided the four accuseds' houses and arrested them for various drug charges itemized in the six counts in the information. The police officers said, they did not assault, threatened or mistreated the four accuseds, while they were in their custody. They said, the four accuseds were given their rights and were caution interviewed by PW10, PW11, PW12 and PW13 on 25 and 26 September 2018. Prior to the

interview, PW5, PW7 and the other police officers identified the four accuseds' cannabis sativa farm in Nabulini Village and uprooted 96 cannabis sativa plants weighing 14, 378 grams therefrom. When caution interviewed by police, all four accuseds admitted the farm was theirs and they cultivated the 96 cannabis sativa plants. The interview officers said, the accuseds were given their legal rights, their right to counsel, their meal and rest breaks. They said, all four accuseds voluntarily gave their caution interview statements. All the police interview officers said they did not assault or threatened the accuseds while they were in their custody. They said, all the accuseds gave their caution interview statements voluntarily.

10. The accuseds, on the other hand, said the police repeatedly assaulted and threatened them, while they were in their custody. They said, they were repeatedly punched, kicked and beaten with pvc pipes, baseball bats and police batons. They said, the punches and kicks were very strong. They said, they were frightened because of the police alleged brutal actions, and as a result they each confessed to the crimes alleged against them from count no. 1 to 6 of the information. They said, their caution interview statements were given involuntarily and without their own free will. On 26 May 2022, the parties made their closing submissions on the voir dire hearing.
11. On 27 May 2022, the court ruled all the four accuseds' police caution interview statements were admissible evidence and they could be used in the trial proper. In doing so, the court said, it would give its written reasons later. Below are the court's reason. The law in this area is well settled. On 13<sup>th</sup> July 1984, the Fiji Court of Appeal in **Ganga Ram & Shiu Charan v Reginam, Criminal Appeal No. 46 of 1983**, said the following. "...it will be remembered that there are two matters each of which requires consideration in this area. First, it must be established affirmatively by the crown beyond reasonable doubt that the

statements were voluntary in the sense that they were not procured by improper practices such as the use of force, threats of prejudice or inducement by offer of some advantage – what has been picturesquely described as the “flattery of hope or the tyranny of fear” Ibrahim v R (1941) AC 599, DPP V Ping Lin (1976) AC 574. Secondly even if such voluntariness is established there is also need to consider whether the more general ground of unfairness exists in the way in which the police behaved, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. Regina v Sang 91980) AC 402, 436 @ C-E. This is a matter of overriding discretion and one cannot specifically categorize the matters which might be taken into account....”

12. The court had carefully listened to and considered all the evidence tendered by the prosecution and the defence. The court had carefully assessed the demeanour of all the witnesses. The police witnesses said, they did not assault or threatened the accuseds while they were in their custody from 24 to 27 September 2018. The police caution interview officers said they did not assault or threatened the accuseds while they were caution interviewed. The accuseds said exactly the opposite. Accused No. 1, 3 and 4 said they were repeatedly assaulted and threatened by police, when they were in their custody. The nature of the assaults alleged by the accused were of such serious nature that the court expected to see serious injuries on the accuseds’ bodies when they were produced in court on 27 September 2018. But none of the accuseds complained to the magistrate to be medically examined to reveal those serious injuries. Only Accused No. 4 was medically examined on 28 September 2018, and the injuries revealed were minor. Police witnesses said these injuries resulted when he tried to escape from police on 24 September 2018. Furthermore, the nature of the assaults alleged by the accuseds were of such a serious nature that logically one would had expected them to be dead. The above were the reasons why the court



accepted the prosecution's version of events, as against the defence's version of events, on the voir dire matter. The prosecution's evidence were more credible than the defence's evidence. The defence's evidence appears to defy logic, thus it was not credible.

13. The trial proper started on 30 May 2022. The information mentioned in paragraph 1 hereof was reput to the accuseds. Court No. 4 and 5 were mistakenly reput to Accused no. 3 and he pleaded not guilty to the same. This plea was null and void, as he had been found guilty and convicted of the same on 2 July 2020. As for Accused No. 2, he was been tried in absentia. He was deemed to have understood count no. 2, 3 and 6, and was deemed to have pleaded not guilty to the same. This was the same position he took on 3 June 2020, when the information was read and explained to him. The prosecution then opened his case.
  
14. The prosecution then called the following witnesses:
  - (i) PW1, PC 4470 Apenisa Qiri;
  - (ii) PW2, PC 7407 Joeli Rokorasei;
  - (iii) PW3, DC 3730 Ropate Raburai;
  - (iv) PW4, PC 4703 Akariva Sagati;
  - (v) PW5, PC 5597 Iakobo Bose;
  - (vi) PW6, Inspector Timoci Nakaikoso;
  - (vii) PW7, Inspector Ilaitia Ratu;
  - (viii) PW8, PC 4280 Petero Bainidawa;
  - (ix) PW9, Ms. Susana Lawedrau;
  - (x) PW10, Ms. Miliana Werebauinona;
  - (xi) PW11, WPC 5252 Irinieta Tukutukuwaca;
  - (xii) PW12, Cpl 5285 Savenaca Vue;
  - (xiii) PW13, Epeli Lalakoverata;
  - (xiv) PW14, D/Cpl 3920 Sailosi Bawaqa.
  
15. The prosecution presented the following exhibits:
  - (i) Prosecution Exhibit No. 1 – Accused No.1's Search List.

- (ii) Prosecution Exhibit No. 2 – Accused No. 2’s Search List.
- (iii) Prosecution Exhibit No. 3 – Accused No. 2’s Search List.
- (iv) Prosecution Exhibit No. 4 – Accused No. 4’s Search List.
- (v) Prosecution Exhibit No. 5 – Accused No. 3’s Search List.
- (vi) Prosecution Exhibit No. 6 – All Accuseds’ Search List
- (vii) Prosecution Exhibit No. 7 – PW10’s Statement [Job No. 21811072]
- (viii) Prosecution Exhibit No. 8 – PW10’s Statement [Job No. 21811073]
- (ix) Prosecution Exhibit No. 9 – PW10’s Statement [Job No. 21811074]
- (x) Prosecution Exhibit No. 10 – PW10’s Statement [Job No. 21811075]
- (xi) Prosecution Exhibit No. 11 – PW10’s Statement [Job No. 21811076]
- (xii) Prosecution Exhibit No. 12 – Job No. 2181072
- (xiii) Prosecution Exhibit No. 13 – Job No. 2181073
- (xiv) Prosecution Exhibit No. 14 – Job No. 2181074
- (xv) Prosecution Exhibit No. 15 – Job No. 2181075
- (xvi) Prosecution Exhibit No. 16 – Job No. 2181076
- (xvii) Prosecution Exhibit No. 17 (a) – Accused No. 1’s Interview notes  
[i-taukei handwritten version]  
Prosecution Exhibit No. 17 (b) – Accused No. 1’s Interview notes  
[English handwritten version]  
Prosecution Exhibit No. 17 (c) – Accused No. 1’s Interview notes  
[English typed version]
- (xviii) Prosecution Exhibit No. 18 (a) – Accused No. 2’s Interview notes  
[English handwritten version]  
Prosecution Exhibit No. 18 (b) – Accused No. 2’s Interview notes  
[English typed version]
- (xix) Prosecution Exhibit No. 19 (a) – Accused No. 3’s Interview notes  
[i-taukei handwritten version]  
Prosecution Exhibit No. 19 (b) – Accused No. 3’s Interview notes  
[English handwritten version]  
Prosecution Exhibit No. 19 (c) – Accused No. 3’s Interview notes  
[English typed version]
- (xx) Prosecution Exhibit No. 20 (a) – Accused No. 4’s Interview notes  
[i-taukei handwritten version]  
Prosecution Exhibit No. 20 (b) – Accused No. 4’s Interview notes  
[English handwritten version]  
Prosecution Exhibit No. 20 (c) – Accused No. 4’s Interview notes  
[English typed version]

16. The defence called the following witnesses:
- (i) DW1, Peniasi Kali (Accused No. 1);
  - (ii) DW2, Vodriti Koli (Accused No. 3); and
  - (iii) DW3, Inoke Gadre (Accused No. 4).
17. The trial proper appeared to be a re-run of the voir dire proceeding. The main evidence against the accused persons were their alleged confessions in their police caution interview statements. As for Accused No. 1, the allegations in count no. 1 and 6 of the information was put to him in Questions and Answer 6 and 7 of Prosecution Exhibit 17 (c), and in Questions and Answers 25, 27, 32, 35, 37, 43, 44 and 45, he admitted the above allegations against him. As for Accused No. 2, the allegations in count no. 2, 3 and 6 of the information was put to him in Questions and Answers 8, 9 and 10 of Prosecution Exhibit No. 18 (b), and in Questions and Answers 13, 14, 21, 22, 24, 30, 31, 33, 34, 35 and 41, he admitted the above allegations against him. As for Accused No. 3, the allegation in count no. 6 of the information was put to him in Question and Answer 3 of Prosecution Exhibit No. 19 (c), and in Questions and Answers 27, 28, 30, 38, 43, 44, 45 and 46, he admitted the above allegation against him. As for Accused No. 4, the allegation in count no. 6 of the information was put to him in Question and Answer 3 of Prosecution Exhibit No. 20 (c), and in Questions and Answers 27, 28, 29, 30, 32, 34, 37, 38, 41 and 42, he admitted the above allegation against him.
18. The court had carefully considered all the evidence put before the court. The court had carefully observed the demeanours of all the witnesses. As far as the four accuseds' alleged confessions contained in their police caution interview statements were concerned, the court was of the view that all four accuseds did in fact make those statements and they did the same voluntarily and out of their

own free will. The court had found that the police did not assault nor threaten them to give their caution interview statements. The court had also found that while the accuseds were in the custody of the police between 24 and 27 September 2018, the police treated them fairly, within the resources available to the state. The court finds that what they told the police in their confessions were true.

19. Given the above, I find Accused No. 1 guilty of count no. 1 and 6. I find Accused No. 2 guilty of count no. 2, 3 and 6. I find Accused No. 3 and 4 guilty of count no. 6. I convict the accuseds on the counts they had been found guilty on. I order so accordingly.



**Salesi Temo**  
**JUDGE**

**Solicitor for State** : **Office of the Director of Public Prosecution, Suva**  
**Solicitor for Accused No. 1** : **Legal Aid Commission, Suva**  
**Solicitor for Accused No. 2** : **In Person, but tried in absentia.**  
**Solicitor for Accused No. 3** : **In Person.**  
**Solicitor for Accused No. 4** : **In Person.**