

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**

Counsels : **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.**

Sentence : **15 July, 2022.**

SENTENCE

1. In a judgement delivered on 17 June 2022, all the accuseds were found guilty and convicted on the counts concerning them, in the following information:

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 24th day of September 2018 to the 25th 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 24th day of September 2018 to the 25th 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 24th day of September 2018 to the 25th 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 24th day of September 2018 to the 25th 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 24th day of September 2018 to the 25th 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 24th day of September 2018 to the 25th 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. The brief facts were as follows. In September 2018, the police received information that some people were cultivating cannabis sativa (marijuana) plants in the Nabulini Village area in Tailevu. The police Eastern Division Drugs Unit organized two police teams to look into the matter. Information was received that the suspects were in Nabulini Village and their marijuana farms were in the interior. A police team, went to Nabulini Village to arrest and search the

suspects. Another police team was sent to the interior to locate and preserve the suspects' alleged cannabis sativa farm. The above was done between 24 and 25 September 2018. When the police arrived in Nabulini Village, each of the suspects were located, searched and arrested. The police later took them to the interior, where they located their marijuana farms.

3. The marijuana plants and materials found on the suspects and the marijuana plants uprooted from their farm were brought to Korovou Police Station, where they were analysed and weighed by the government scientific officers. All the cannabis sativa plants and materials were confirmed to be cannabis sativa, an illicit drug. The weight of the relevant drugs are described in each of the 6 counts in the information. The suspects were the four accuseds. They were each caution interviewed by police on 25 and 26 September 2018. They all admitted the allegations levelled at them in counts no. 1 to 6 in the information. Their admissions were made voluntarily and out of their own free will, and the same were true. They had been tried and convicted by the High Court.
4. The maximum sentence for “Unlawful Possession of cannabis sativa, 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.

The above tariff also applied to cultivation of cannabis sativa plants.

- 5. Count no. 6, which involved all the accuseds, was the most serious of the 6 counts. It involved the unlawful cultivation of 14,378 grams (14.378 kilograms) of cannabis sativa. It therefore makes the case a category 4 case. The tariff is a sentence between 7 to 14 years imprisonment. However, the final sentence will depend on the aggravating and mitigating factors.
- 6. In this case, there appears to be only one aggravating factor, that is, the drugs found on you and the ones you cultivated were huge.
- 7. The mitigating factors were as follows:
 - (i) Most of you were aged between 39 and 44 years old, and all of you were first offenders.
 - (ii) Most of you had spent approximately 2 months in custody, while awaiting the conclusion of the trial.
 - (iii) Most of you co-operated with police during the investigation. Some of you showed the police your marijuana plants. When interviewed by police, you all admitted the offence voluntarily.

8. I will start with the more serious charge in count no. 6. For each of you, I start with a sentence of 8 years imprisonment. For time already served while remanded in custody, I deduct 4 months, leaving a balance of 7 years 8 months. For co-operating with police, I deduct 1 year 8 months, leaving a balance of 6 years imprisonment. For being first offenders, I deduct 3 years, leaving a balance of 3 years imprisonment. I sentence each of you on count no. 6 to 3 years imprisonment.
9. On counts no. 1, I sentence Accused no. 1 to 1 month imprisonment.
10. On count no. 2, I sentence Accused No. 2 to 6 days imprisonment.
11. On count no. 3, I sentence Accused No. 2 to 2 months imprisonment.
12. On count no. 4, I sentence Accused No. 3 to 1 month imprisonment.
13. On count no. 5, I sentence Accused No. 3 to 2 months imprisonment.
14. The summary of your sentences are as follows:
 - (i) Count No. 1: Unlawful Cultivation (Accused No. 1): 1 month imprisonment.
 - (ii) Count No. 2: Unlawful Cultivation (Accused No. 2): 6 days imprisonment.
 - (iii) Count No. 3: Unlawful Cultivation (Accused No. 2): 2 months imprisonment.
 - (iv) Count No. 4: Unlawful Possession (Accused No. 3): 1 month imprisonment.
 - (v) Count No. 5: Unlawful Cultivation (Accused No. 3): 2 months imprisonment.
 - (vi) Count No. 6: Unlawful Cultivation (All Accuseds): 3 years imprisonment.

15. Because of the totality principle of sentencing, I direct that all the above sentences are to be made concurrent to each other, making a final sentence for each accuseds, that is, Accused No, 1, 2, 3 and 4, a sentence of 3 years imprisonment each.

16. Mr. Peniasi Kali, Mr. Rupeni Tilakoro (in absentia), Mr. Vodriti Koli and Mr. Inoke Gadre, for unlawfully cultivating etc. of cannabis sativa, as itemized in the information, between 24 and 25 September 2018, at Nabulini Village in the Eastern Division, I sentence each of you to 3 years imprisonment each, with a non-parole period of 2 years each, effective forthwith; except for Accused No. 2, wherein the sentence will start on the day he is arrested by police.

17. The illicit drugs are to be destroyed forthwith under the Chief Registrar's supervision, with police assistance.

18. You have 30 days to appeal to the Court of Appeal.



A handwritten signature in blue ink, appearing to be "Salesi Temo".

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.**