

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

HAC No. 44/2024

BETWEEN: **STATE**

AND: **RICHARD LOUIS**
SAMUELA TUINIVALA
PETE SALABULA

Appearances: **Ms S Naibe (O/DPP) for the State**
1st Accused in Person
No Appearance from 2nd & 3rd Accused Persons

SENTENCE

1. Richard Louis and two other suspects namely Samuela Tuinivala and Pete Salabula (who are currently at large), had been jointly charged with one count of the offence of Unlawful Cultivation of an Illicit Drug contrary to section 5(a) of the Illicit Drugs Control Act 2004.
2. The particulars of the offence charged as follows:

“Richard Louis, Samuela Tuinivala and Pete Salabula on the 8th day of August 2017 at Yaloku Ba in the Western Division without lawful authority cultivated an illicit drug namely cannabis or Indian hemp, weighing 58.1kg.”
3. The case went to trial in the absence of Samuela Tuinivala and Pete Salabula, and they were found guilty after the trial. Richard Louis was present during the prosecution case, but did not appear for the

defence case and was ultimately found guilty. All three suspects were found guilty and convicted after trial.

4. The matter was awaiting sentencing and was transferred from the Ba Magistrate Court to the High Court for that purpose. This is the sentence of the three offenders.

5. According to the evidence, Sergeant Simione Tuivuna was stationed at Ba Police Station in 2017 and was involved in community awareness activities in the Ba area. During his visit to the community, he was informed about the cultivation of illegal drugs in the interior of Ba. On the date in question, Sgt Tuivuna was given instructions to investigate the information received. He requested the assistance of police officers from Ba, who promptly travelled to Yaloku, Ba armed with the available information. He was accompanied by PC Timoci, PC Sikeli, and John Hunt, the driver. They departed from Ba Police Station at midnight and reached Yaloku Ba in the interior, where the informant was awaiting their arrival. They proceeded to walk from their meeting point with the informant to the destination for an hour and a half, as it was not reachable by road. They reached the designated location during the early hours of the morning. Upon reaching a hilltop, they gazed down to find a cultivation site of marijuana plants. They noticed a glow emanating from the tent on the farm. They were utilising their torch and it happened to be a marijuana farm. Sgt Tuivuna, with 26 years of experience in the police force, possesses a keen understanding of the appearance of marijuana plant. They approached the tent and noticed three individuals peacefully resting inside. The tent is located amidst the cannabis plants or farm. There was only one tent present, and it happened to be surrounded by marijuana plants. There was a creek nearby and the marijuana plants and tent were nestled among the surrounding bushes. The closest house in the area was approximately a two-hour drive away. The makeshift tarpaulin tent had a blue colour and

an entrance. The police officers proceeded to encircle the tent, and Sgt Tuivuna entered the tent and roused the individuals inside. He introduced himself to them and arrested them. The three individuals were the accused persons Richard Louis, Samuela Tuinivala, and Pete Salabula. The three individuals confessed to cultivating the plants and willingly showed the marijuana plants to the police officers. The Police officers then requested assistance from Lautoka Police to remove the plants. The police officers uprooted a total of 11,334 plants, including seedlings, dried leaves, and plants. They also confiscated various items from the scene, including buckets, fertilisers, insecticides, cane knives, water gallon, red knapsack spray, and a spade. They brought the seedlings, dried leaves and plants together with the mentioned items including the 3 accused persons and handed them over to other police officers at Ba Police Station for further investigation. They arrived at Ba Police Station around 1pm. The plants in question were kept in police custody and later escorted to the government analyst for tests. At the completion of analysis, the plants were positively confirmed to be cannabis sativa or marijuana an illicit drug. The total weight of the dried leaves, seedlings, and plants was determined to be 58.1kg. The three individuals in question were also interviewed under caution and charged for the alleged offence.

6. Richard Louis in mitigation, you mentioned the following: -

- You are 56 years old and have been married with 4 children.
- In regards to your 4 children, the oldest is a female in form 6, while the second oldest, also a female, is currently attending Monfort Boys School in Savusavu. The two younger children, both males, are also attending school. One is in form 4 and the youngest is in class 7.

- You're currently unemployed along with your wife as well. In the past, you used to engage in casual work for Indo Fijians and earn a weekly wage of \$80. There are no alternative sources of income.
 - During the time of the offence, you were residing in Taveuni with your family.
 - Your children are in need of your support, thus you requested for a suspended sentence.
 - You had been remanded in custody from October 2023.
7. The other two co-offenders, Samuela Tuinivala and Pete Salabula, are still on the loose and have not provided any useful information that could be relevant for the purpose of mitigation. However, I'm inclined to accept that they are first offenders since the state was unable to provide any adverse records suggesting otherwise. Richard Louis, despite the state's tendering of adverse records against you indicating a previous conviction for breach of bail bond on 23/10/08, I will consider this case as your first offence related to illicit drugs.
8. For the aggravating factors, it appears that the features mentioned below are common to you all and as follows:
- The prevalence or occurrence of similar offence in the community.
 - The marijuana plants were strategically hidden in the interior of Ba, carefully concealed within the dense forest or bushes to evade any potential detection of the illegal activity.
 - A total of 11,334 plants were uprooted, weighing a combined 58.1 kilogrammes.

9. For purpose of sentencing, the court bears in mind sections 4(1), 4(2), 15, 16, 18 & 24 of the Sentencing & Penalties Act 2009.
10. The prescribed penalty for the offence under the Illicit Drugs Control Act 2004 is life imprisonment and/or a fine of \$1000000.00, or both.
11. The guideline for drug related offences was set in the Fiji Court of Appeal case of Kini Sulua & Micheal Chandra v State Criminal Appeal No. AAU0093 & AAU0074 of 2008.
12. In contrast, the Fiji Court of Appeal in Jone Seru v State, Criminal Appeal No. AAU 115 of 2017 took another look at the guideline judgement. This was because the previous case of Sulua & Chandra (supra) dealt with possession rather than cultivation. It was noted in previous cases that different judges had adopted other guidelines, particularly in cases involving cultivation. It seemed that this led to inconsistency in sentencing for cases involving the cultivation of illicit drugs, thus the Jone Seru guidelines.
13. In Jone Seru, the Court of Appeal established a sentencing guideline for the cultivation of cannabis sativa/marijuana in Fiji, which will be applied in this case.
14. In paragraph 37 of Jone Seru, the Court of Appeal made a reference to the following:
 - **Category 1** – Large scale cultivation capable of producing industrial quantities for commercial use with a considerable degree of sophistication and organization. Large commercial quantities. Elaborate projects designed to last over an extensive period of time. High degree of sophistication and organization. 100 or more plants.
 - **Category 2** – Medium scale cultivation capable of producing significant quantities for commercial use i.e. with the object of

deriving profits. Commercial quantities. Over 50 but less than 100 plants.

- **Category 3** – Small scale cultivation for profits capable of producing quantities for commercial use. 10 to 50 plants (with an assumed yield of 55g per plant).
- **Category 4** – Cultivation of small number of plants for personal use without sale to another party occurring or being intended. Less than 10 plants (with an assumed yield of 55g per plant).

15. The sentencing table (cultivation of cannabis sativa) as mentioned in paragraph 38 of Jone Seru is provided below.

Culpability/Harm	Leading Role	Significant Role	Lesser Role
Category 1	Starting point 18 years custody Category range 16 – 20 years custody	Starting point 14 years custody Category range 12 – 16 years custody	Starting point 9 years custody Category range 7 years – 12 years custody
Category 2	Starting point 14 years custody Category range 12 years – 16 years custody	Starting point 9 years Category range 7 years – 12 years custody	Starting point 5 years custody Category range 3 years – 7 years custody
Category 3	Starting point 9 years custody Category range 7 years – 12 years custody	Starting point 5 years custody Category range 3 years – 7 years custody	Starting point 18 months custody Category range 1 year – 3 years custody

Category 4	Starting point 5 years custody Category range 3 years – 7 years custody	Starting point 18 months custody Category range 1 year – 3 years custody	Starting point Category range Non-custodial suspended sentence
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16. It is clear that the wrongdoing in this matter falls into category 1. Based on the evidence provided by PW3 (DC Timoci - a relative of Richard Louis), it seems that the three individuals involved in the incident are all from the Island of Vanua Levu. According to the records of the Magistrates Court, their birth certificates indicate that all three individuals are from the province of Cakaudrove, in Vanua Levu. There is insufficient evidence to establish that the three individuals had any legal proprietary interest to the land where the marijuana plants were found. It is unclear who owns the land, and given that the location is in the interior of Ba and the three individuals are from Vanua Levu, there is not enough evidence to indicate that the three played a leading or significant role in the illegal activity. I acknowledge that the three individuals were involved in the offence as secondary parties. They were essentially being utilised to cultivate and gather the marijuana plants ("gardeners"). There is no evidence indicating any form of external influence or manipulation in their cultivation of the plants. It seems they were motivated by financial benefits. The offender, Richard Louis, confessed to PW3 that he had planted marijuana in order to construct his house in Taveuni. Overall, it is evident that the three individuals were motivated by financial gain and personal benefit. In my view, it seems that the offender's level of culpability falls into the category of a "lesser role."

17. In that regard and according to the guideline judgment in Jone Seru (supra), I commence your respective sentences by 7 years of imprisonment each.
18. Based on the aggravating factors mentioned earlier at paragraph 8, your sentences are increased to 10 years imprisonment each.
19. Besides this being your first drug-related offence, I don't see any other mitigating factors in your favour. Your sentences are reduced to 9 years imprisonment each.
20. For Samuela Tuivala & Pete Salabula, considering the time spent in custody (14 days), I have decided to further decrease your sentences to 8 years 11 months and 16 days of imprisonment.
21. Richard Louis, I have also taken into account your complaint regarding your detention since October 2023 (7 months) following your arrest for failing to appear in court. The time you've spent in custody since October last year until now will be taken together with the 14 days you had spent in custody with the other two co-offenders before being granted bail. Your final imprisonment term is 8 years 4 months and 16 days.
22. Each of you is hereby sentenced to a non-parole term of 7 years imprisonment before being eligible for parole.
23. Your final sentences as follows:
 - **Richard Louis** – 8 years 4 months 16 days imprisonment with non-parole period of 7 years imprisonment, with effect forthwith.

- **Samuela Tuivala** - 8 years 11 months 16 days imprisonment with non-parole period of 7 years imprisonment, to commence from date of arrest.
- **Pete Salabula** - 8 years 11 months 16 days imprisonment with non-parole period of 7 years imprisonment, to commence from date of arrest.

24. Thirty days (30) days to appeal to the Court of Appeal.

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Samuela D Qica

Judge

High Court – Lautoka

Wednesday, 15th May 2024