

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 200 of 2023

STATE

v

KITIONE DRAUNIDALO

Counsel: Mr. J. Singh for the State
Ms. R. Nabainivalu for the Accused

Date of Mitigation/Sentencing Submission: 19th August 2024

Date of Sentence: 17th September 2024

SENTENCE

1. **Kitione Draunidalo**, the accused, is indicted with the offence of *Unlawful cultivation of illicit drugs* contrary to section 5(a) of the Illicit Drugs Control Act 2004 as laid out in the Information by the Director of Public Prosecutions dated 12 July 2023:

COUNT ONE

Statement of Offence

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

Particulars of Offence

KITIONE DRAUNIDALO with others on the 13th day of March 2023 at Lovu, Gau Island in the Eastern Division, without lawful authority, cultivated 211 plants of Cannabis an illicit drug, weighing approximately 278064 grams.

2. On 2 August 2023 the accused pleaded *not guilty* to the aforesaid indictment, and the matter i.e. HAC 200 of 2023 scheduled for trial on 17 – 21 June 2024, and successively adjourned for pre-trial conference.
3. However, on 12 June 2024 the accused changed his plea to that of *guilty* voluntarily and unequivocally, and confirmed by his LAC counsel Mr. P. Gade, bearing in mind that the trial was to commence on 17 June 2024.
4. On 24 July 2024 prosecutor Mr. J. Singh read out the *Summary of facts*, which was admitted by the accused Kitione Draunidalo and confirmed by his LAC counsel Mr. W. Navuni. The *Antecedent report* was also submitted by the prosecutor on 12 August 2024 which indicate *inter alia* that the accused has no prior conviction.
5. On 19 August 2024 defence counsel Ms. R. Nabainivalu submitted plea in mitigation and sentencing submission on behalf of the accused, and responded to by prosecutor Mr. J. Singh.

Summary of facts

6. PC 6158 Tomasi received information that some youth from Lovu village on the island of Gau were suspected of doing drugs at Lomai Lovu, which then prompted PC Tomasi and his team to gather information regarding such suspicious activity. On 11 March 2023 PC Tomasi and team received information that plants believed to be marijuana were discovered at Lomai Lovu. On 12 March 2023 PC Tomasi and team raided a farm at Lovu village suspected of cultivating marijuana plants, and upon reaching the said farm PC Tomasi noticed that the plants believed to be marijuana had been cut from the stamp, and discovered that branches of the plants were tied

up in bundles and hidden inside the bushes beside the farm. PC Tomasi then uprooted as many plants as he could and carried the plants and associated materials down to Naboudua settlement with his team, and from Naboudua settlement the plants were then taken to Qarani police station and handed over to the investigating officer Detective Corporal 3730 Ropate. Annexed as annexure 'A1' is a copy of the photographic booklet containing a total of 9 photographs including that of the plants and plant materials believed to be marijuana uprooted from the farm at Lomai Lovu. Detective Corporal 3730 Ropate confirmed that he received a total of **211 plants** and **plant materials** believed to be marijuana from PC Tomasi, which were then sent to the Forensic Chemistry Unit for analysis. Once analysed by Scientific Officer (Chemistry) Sakiusa Biaukula, it was discovered that the **199 plants** weighing **39890g** and **12 plant materials** weighing **238174g** were illicit drugs scientifically identified as *Cannabis* with a total weight of **278064 grams** or **278.064 kilograms**. Also annexed as annexure 'A2' is a copy of Scientific Officer (Chemistry) Sakiusa Biaukula's analysis report formally referred to as the *Certificate of Analysis* dated 17 March 2023. The said plants and plant materials were then sent to Nausori police station to be exhibited. Annexed as annexure 'A3' is a copy of the photographic booklet of the plants and plant materials uprooted from Lomai Lovu placed in the Exhibit container at Nausori police station. On 18 June 2023 the police received information that the suspect Kitione Draunidalo was drinking liquor at Tuirara subdivision, Makoi, Nasinu, and arrested later that day. Kitione Draunidalo was interviewed under caution on 18 June 2023 and made full admission to the aforesaid allegation, and then formally charged. Annexed as 'A4' is a copy of the accused's Record of interview in the i-Taukei language and English translation.

Sentence analysis for *Unlawful cultivation of the illicit drug Cannabis*

7. *Unlawful cultivation of illicit drugs* is contrary to section 5(a) which state:

5. Any person who without lawful authority-

(a) acquires, supplies, possesses, produces, manufactures, **cultivates**, uses or administers an illicit drug; or ...

commits an offence and is liable on conviction to a fine not exceeding \$1,000,000 or imprisonment for life or both.

8. The maximum penalty for the offence of *Unlawful cultivation of illicit drugs* is a fine of \$1

million or life imprisonment, or both.

9. In Seru v State [2023] FJCA 67; AAU115.2017 (25 May 2023) the Court of Appeal provided the sentencing guideline for cultivation of *Cannabis Sativa* or marijuana, and at paragraphs 35 – 40 held:

*[35] Firstly, the court should determine the offender's **culpability** (role) and then the **harm** (output or potential output). Then, the court should use the starting point given in the Sentencing Table below to reach a sentence corresponding to the role and category identified. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm could merit upward adjustment from the starting point. After further adjustment for aggravating or mitigating features a sentence within the range in the Sentencing Table below should be arrived at. Thereafter, reduction for guilty pleas, time in remand, totality principle etc. would complete the sentencing process.*

*[36] **CULPABILITY**. Culpability is demonstrated by the offender's role as given below. In assessing culpability, the sentencer should weigh up all the factors of the case to determine role (**leading role, significant role or lesser role**). Where there are characteristics present which fall under different role categories, or where the level of the offender's role is affected by the scale of the operation, the court should balance these characteristics to reach a fair assessment of the offender's culpability. Thus, it must be borne in mind that these roles may overlap or a single offender may have more than one role in any given situation. The demarcation of roles may blur at times. The sentencer should use their best judgment and discretion in such situations.*

Leading role

- *Owner, organizer, initiator or principal party in the venture. Involved in setting-up of the operation, for example, obtaining the lands, premises, workers and equipment with which to carry out the cultivation. May have one or more such ventures.*
- *Directing or organizing production / cultivation on a commercial scale*
- *Substantial links to, and influence on, others in a chain*
- *Close links to original source*
- *Expectation of substantial financial or other advantage*
- *Uses business as cover*
- *Abuses a position of trust or responsibility*

Significant role

- *Play a greater or dominant part. Running the operation.*
- *Operational or management function within a chain. May make arrangements for the plants to be brought in, and the crop to be distributed. They may help to*

- run more than one operation and be involved in making payments, such as rental payments, albeit again on instructions from those running the operation.*
- *Involves others in the operation whether by pressure, influence, intimidation or reward*
 - *Expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender's own habit), whether or not operating alone*
 - *Some awareness and understanding of scale of operation*

Lesser role

- *Secondary party. Sometimes as "gardeners" tending the plants and carrying out what might be described as the ordinary tasks involved in growing and harvesting the cannabis. Simply be doing their tasks on the instructions of above in the hierarchy. May get paid for the work or subsistence.*
- *Performs a limited function under direction*
- *Engaged by pressure, coercion, intimidation, grooming and/or control*
- *Involvement through naivety, immaturity or exploitation*
- *No influence on those above in a chain*
- *Very little, if any, awareness or understanding of the scale of operation*
- *If own operation, solely for own use (considering reasonableness of accounts in all the circumstances)*
- *Expectation of limited, if any, financial advantage, (including meeting the offender's own habit)*

[37] **HARM**. *In assessing harm, output or potential output are determined by the number of plants / scale of operation (category 1, 2, 3 or 4). The court should determine the offence category from among 1 – 4 given below:*

- ***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).*

[38] **SENTENCING TABLE** (cultivation of *Cannabis sativa*)

Culpability	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Harm			
Category 1	Starting point 18 years' custody	Starting point 14 years' custody	Starting point 9 years' custody
	Category range 16 – 20 years' custody	Category range 12 – 16 years' custody	Category range 7 years' – 12 years' custody
Category 2	Starting point 14 years' custody	Starting point 9 years' custody	Starting point 5 years' custody
	Category range 12 years' – 16 years' custody	Category range 7 years' – 12 years' custody	Category range 3 years' – 7 years' custody
Category 3	Starting point 9 years' custody	Starting point 5 years' custody	Starting point 18 months' custody
	Category range 7 years' – 12 years' custody	Category range 3 years' – 7 years' custody	Category range 1 year – 3 years' custody
Category 4	Starting point 5 years' custody	Starting point 18 months' custody	Starting point
	Category range 3 years' – 7 years' custody	Category range 1 year – 3 years' custody	Category range Non-custodial – suspended sentence

[39] Aggravating and mitigating factors. This is not an exhaustive list.

Statutory aggravating factors:

- Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since conviction (see *Naureure v State* [2022] FJCA 149; AAU151.2020 (12 December 2022) at [32] – [39] for a detailed discussion on this aspect)
- Offence committed on bail

Other aggravating factors include:

- Exploitation of children and/or vulnerable persons to assist in drug-related activity

- *Exercising control over the home of another person for drug related activity*
- *Nature of any likely supply*
- *Level of any profit element*
- *Use of premises accompanied by unlawful access to electricity/other utility supply of others, where not charged separately*
- *Ongoing/large scale operation as evidenced by presence and nature of specialist equipment*
- *Exposure of drug user to the risk of serious harm over and above that expected by the user, for example, through the method of production or subsequent adulteration of the drug*
- *Exposure of those involved in drug production/cultivation to the risk of serious harm, for example, through method of production/cultivation*
- *Exposure of third party parties to the risk of serious harm, for example, through the location of the drug-related activity*
- *Attempts to conceal or dispose of evidence, where not charged separately*
- *Presence of others, especially children and/or non-users*
- *Presence of weapons, where not charged separately*
- *Use of violence (where not charged as separate offence or taken into account at step one)*
- *Failure to comply with current court orders*
- *Offence committed on licence or post sentence supervision*
- *Offending took place in prison (unless already taken into consideration at step 1)*
- *Established evidence of community impact*
- *Use of sophisticated methods or technologies in order to avoid or impede detection*
- *Use of indoor growing system (hydroponic method) to increase the growth and harvesting period and THC in the plants*
- *Growing for personal use but supplying to others on a non-commercial basis*
- *Period over which the offending has continued*
- *Estimated value of crop, if available*
- *Assumed yield or the weight of dried cannabis*
- *Supply to others on a non-commercial basis in category 4*

Factors reducing seriousness or reflecting personal mitigation

- *Involvement due to pressure, intimidation or coercion falling short of duress (as opposed to being a willing party), except where already taken into account as step one. Acting under duress or undue influence.*
- *Isolated incident*
- *No previous convictions or no relevant or recent convictions*
- *Offender's vulnerability was exploited*
- *Remorse*
- *Good character and/or exemplary conduct*

- *Determination and/or demonstration of steps having been taken to address addiction (whose offending sits at the lower end of the scale in terms of seriousness) or offending behaviour*
- *Serious medical conditions requiring urgent, intensive or long-term treatment*
- *Age and/or lack of maturity*
- *Mental disorder, impairment or diminished responsibility short of insanity or learning disability*
- *Personal circumstances, sole or primary carer for dependent relatives only in relation to category 4*
- *Assumed yield or the weight of dried cannabis*
- *Sales are infrequent and of limited extent in category 3.*

10. Relying on the Seru v State (supra) FCA sentencing guideline, the extent of **culpability** of the accused Kitione Draunidalo is of a ‘**lesser role**’, and level of **harm** is of ‘**Category 1**’ with the corresponding sentencing range of 7 to 12 years imprisonment and starting point of 9 years imprisonment.

11. With the starting point of 9 years, I add 3 years for the following aggravating factors:

- a) The quantity of the *Cannabis sativa* seized, that is, 199 plants (39890g) and 12 plant materials (238174g) with a total weight of 278064 grams or 278.064 kilograms was intended for commercial supply and substantial monetary gain.
- b) In his record of interview dated 19/05/2023 (Disc 01) Part 01, Kitione Draunidalo admitted that he was lured into cultivating the marijuana as means of generating and gaining substantial sum of money, and was informed that a marijuana plant needs to be harvested twice, and one harvest of a substantial number of marijuana plants can fetch an estimated value of approximately FJ\$97,000.00.
- c) The clandestine manner and effort by Kitione Draunidalo and accomplices in cultivating the marijuana on native land belonging to Kitione Draunidalo’s cousin brother at Lomai Lovu.
- d) Furthermore, that particular native land which is communally owned but in the custody of Kitione Draunidalo’s cousin brother, has somewhat been severely tainted by the unlawful

cultivation of the marijuana on that land, and at the same time violating the trust of the true landowners that that land is sacrosanct in the strict sense that it will only be used for cultivation of non-illicit crops for legitimate purposes of subsistence or cash, or both. In this aspect one would therefore perceive Kitone Draunidalo's unlawful action and that of the accomplices as being negligent, reckless and devoid of any veneration or respect for the sanctity, value and utility of indigenous land.

- e) Cultivating the *Cannabis sativa* at Lomai Lovu in Lovu village on the island of Gau in the province of Lomaiviti exposes the locals and inhabitants to the risk of easily accessing, using and being harmed by this illicit drug, and concurrently counterproductive to the concerted effort by the police and community in combatting illicit drugs such as marijuana.
- f) Prevalence of cultivation of *Cannabis sativa* or marijuana in Fiji, and scourging effect of this illicit drug on our society as a whole.

12. I reduce the 12 years by 1 year for the mitigating factors considering that Kitone Draunidalo has no prior conviction, 52 years with three children aged 21, 8 and 4 although separated from his wife, and a farmer residing at Lovu village on the island of Gau in the province of Lomaiviti.

13. Although Kitone Draunidalo's guilty plea is not an early one being made five days before commencement of trial on 17 June 2024, however by saving the Court's time and resource, I make a further deduction of 1 year, resulting thus far to an interim custodial term of 10 years.

14. I further reduce the 10 years by 11 months 23 days for time spent in custody, resulting in the head sentence of 9 years 7 days.

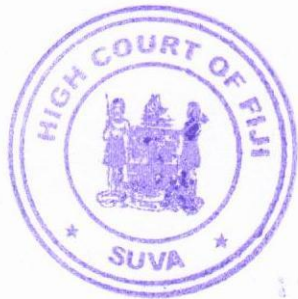
15. Based on the above reasons, I hereby convict Kitone Draunidalo of the offence of *Unlawful cultivation of illicit drugs* contrary to section 5(a) of the Illicit Drugs Control Act 2004, and sentence him to a custodial term of 9 years 7 days with a non-parole period of 8 years imprisonment.

16. Furthermore, I hereby grant prosecution's request for an order to destroy the relevant marijuana plants and plant materials after the lapse of the 30 days appeal period.

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

Orders of the Court

- 1) Kitione Draunidalo is convicted of the offence of *Unlawful cultivation of illicit drugs* contrary to section 5(a) of the Illicit Drugs Control Act 2004, and sentenced to a custodial term of 9 years 7 days with a non-parole period of 8 years imprisonment.
- 2) Pursuant to section 30(5)(b) of the Illicit Drugs Control Act 2004, I hereby order that the 199 plants (39890g) and 12 plant materials (238174g) of *Cannabis sativa* kept in police custody be disposed of by incineration, or such other safe means of destruction.
- 3) A certificate or report of the disposal of the marijuana be made accordingly, pursuant to section 30(6) of the Illicit Drugs Control Act 2004.



.....
Hon. Mr. Justice Pita Bulamainivalu
PUISNE JUDGE

At Suva

17th September 2024

Solicitors

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for the Accused