

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**APPELLATE JURISDICTION**

**CRIMINAL APPEAL CASE NO: HAA 061 of 2008**

**BETWEEN:**

**ILIASERI SAQASAQA**

***Appellant***

**AND:**

**THE STATE**

***Respondent***

**Counsel:** Ms S Vaniqi (Duty Solicitor) for Appellant  
Ms S Puamau for State

**Date of Hearing:** 29<sup>th</sup> June 2009

**Date of Judgment:** 03<sup>rd</sup> July 2009

**JUDGMENT**

- [1] On 25<sup>th</sup> January 2008, Mr Iliaseri Saqasaqa was convicted and sentenced to 6 months imprisonment suspended for 12 months. In addition, he was fined \$100, and given 28 days to pay, in default, he would be imprisoned for 30 days.
- [2] The charge was being "FOUND IN POSSESSION OF DANGEROUS DRUGS", contrary to section 8(b) of the Dangerous Drugs Act 114, as amended by Decree Number 4 of 1990, and Amendment Decree No. 1 of 1991. The particulars of offence were as follows, ..... "ILIASERI SAQASAQA, on the 9<sup>th</sup> day of June 2000, at Lami in the Central Division, was found in possession of 0.5grams of Dangerous Drugs, namely Indian Hemp..."
- [3] Mr Saqasaqa filed an appeal on the same day i.e. 25<sup>th</sup> January 2008. He appealed against conviction, and advanced numerous grounds. His grounds could be distilled into two. First, although the drugs was found on him, at the material time, he didn't have the necessary "mens rea". Second, when he was charged on 19<sup>th</sup> August 2005, it was not an offence in law.
- [4] On the 1<sup>st</sup> September 2008, Mr Saqasaqa appeared in the High Court. He said, he was applying for legal aid from the Legal Aid Commission. Between the 3<sup>rd</sup> of October 2008 to 27<sup>th</sup> May 2009, the Court awaited the outcome of Mr Saqasaqa's Legal Aid application. On 29<sup>th</sup> June 2009, the Court was advised that Mr Saqasaqa's application was not successful.
- [5] On 29<sup>th</sup> June 2009, Mr Saqasaqa had already served his 6 months prison sentence, suspended for 12 month. He hadn't paid his \$100 fine. He abandoned his appeal against conviction, and indicated he was appealing against the \$100 fine only, as it was "harsh and excessive".

- [6] State Counsel conceded that, the \$100 fine was harsh and excessive, given the circumstances surrounding the case. First, this was the accused's first drug conviction. Second, the amount of drugs found on him, was small. Third, he had served his 6 months prison sentence, suspended for 12 months. Fourth, disregarding his 10 years old previous convictions, he only offended twice in the last 10 years.
- [7] I agree with State Counsel. The additional sentence of a \$100 fine on Mr Saqasaqa was harsh and excessive. I discharge Mr Saqasaqa from the \$100 fine imposed on him, in the Magistrate Court, on the 25<sup>th</sup> January 2008. The appeal succeeds to that extent.

.....

Salesi Temo

**ACTING JUDGE**

At Suva

3<sup>rd</sup> July 2009.

