

**IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION**

Traffic Criminal Case No: 15 - 2019

**STATE**

-v-

**ADRIU WAQA**

Before : RM Fotofili L.  
For Prosecution : WPC Chand A. [ Police Prosecution ]  
Accused : In Person, Waived Right To Counsel  
Date of Sentence: 29<sup>th</sup> October 2019

**SENTENCE**

1. **ADRIU WAQA**, you have pleading guilty to the following charge:

*Statement of Offence*

**Driving Motor Vehicle Whilst There Is Present in the Blood a Concentration of Alcohol In Breach of Zero Alcohol:** Contrary to section 105 ( 1 ) ( a ) and 114 of Land Transport Breathe Test and Analysis Regulation 2000.

*Particulars of Offence*

**ADRIU WAQA** on the 20<sup>th</sup> day of March, 2019 at Tavua in the Western Division, being a provisional license holder drove a motor vehicle registration number LR5350 on Kings Road Tavua town whilst there was present in 100 milliliters of his blood a concentration of 136.4 milligrams of alcohol which was in excess of zero limit.

2. I am satisfied that your guilty plea and your admission in court is voluntary and that you understand the consequences of your plea. The evidence tendered in support of your plea supports your position.
3. I have found you guilty and I convict you of the charge accordingly.

4. You are 25 years old. You drove the vehicle and parked at a shopping centre. It was about 10 pm. Police received information that you were believed to be drunk. The police approached you and demanded your license. It was discovered that you had a provisional license. You were arrested and escorted to the police station to be tested on a breathalyser machine 7110. The result showed that you had 62 micrograms of alcohol per 100 millilitres of your breath.
5. The prescribed concentration of alcohol or legal limit for provisional license holders is zero.
6. The reading on a breath analysing instrument in microgrammes of alcohol per 100 millilitres of breath is to be multiplied by 2.2 in order to arrive at the number of milligrams of alcohol in 100 millilitres of blood [ section 3 ( 3 ) of the **Land Transport ( Breath Tests and Analyses ) Regulations 2000** ].
7. You exceeded the legal limit by approximately 136.4 milligrams.
8. Even if you held a normal driving license, you would have still exceeded the legal limit by approximately 56.4 milligrams.
9. When you were questioned by police in relation to the incident, you admitted drinking 6 bottles of rum and cola which is 600 millilitres per bottle. Your friends asked you to bring them to town and you drove to town where police then took you to the police station.
10. You have no previous conviction.
11. You have not spent any time in remand.
12. You are 25 years old. You are an electrician. Your wife is due to deliver a baby in November 2019. You are the sole breadwinner.

#### **MAXIMUM SENTENCE**

13. The law allows a court to impose a fine on you which can be up to \$2,000 and or you can be imprisoned up to 2 years and mandatorily disqualify you from driving between 3 months even up to 2 years.

**SENTENCING RANGE or SENTENCING TARIFF**

14. The courts have not set any sentencing preference or tariff for this type of offence and so the final sentence in each case will be determined by the circumstance of each case.

**Starting Point**

15. Considering the objective seriousness of the offence, I select a starting point of 2 months imprisonment.

**Aggravating Factor**

16. You exceeded the prescribed zero limit by 136.4 milligrams.
17. Your sentence is increased to 3 months and 10 days imprisonment.

**Mitigating Factors**

18. You have no previous conviction.
19. You will receive some reduction for cooperating with the police when they questioned you.
20. You have a family to look after.
21. Your sentence is reduced to 1 month and 15 days imprisonment.

**Guilty Plea**

22. You have pleaded guilty early.
23. Your sentence is reduced to a 1 month imprisonment term.

### **Suspended Term , Disqualification and Non-conviction**

24. I can suspend your sentence whether in whole or in part pursuant to section 26 ( 1 ) and ( 2 ) ( b ) of the **Sentencing and Penalties Act 2009**, if your sentence is below 2 years imprisonment.
25. The length of time a person can be disqualified from driving can be determined by assessing the standard of driving shown, any previous traffic violations, the need to protect the public from dangerous or drunk drivers, good character of the defendant and whether there is any serious hardship to the family and whether driving is a source of income [ **State v Joel Sahaj** Case No. HAAR 002 of 2017 (29<sup>th</sup> August 2017)].
26. Your sentence is aimed at deterrence and is to punish you adequately.

### **SUMMARY**

27. Your final sentence is this:

**It is 1 month imprisonment.**

**There will be no further reduction in sentence as you did not spend any time in remand.**

**I will wholly suspend your 1 month imprisonment term.**

**Your 1 month imprisonment term is suspended for the next 1 year.**

**Do not commit any other offence punishable with imprisonment in the next 1 year. If you do, this 1 month imprisonment term held in waiting maybe activated.**

**You are fined \$200 to be paid in 42 days. In default, you risk up to 10 days imprisonment.**

**You are disqualified from holding or obtaining a driving license for 4 months effective from today.**

**[ surrender your license ]**

28. 28 days to appeal.



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Lisiate T.V. Fotofili  
**Resident Magistrate**

Dated at TAVUA this 29<sup>th</sup> day of October, 2019