

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

Criminal Case CF 65 - 2020

STATE

-v-

KITIONE YABAKI

Before : RM Lisiate Fotofili
For Prosecution : A/CPL Chand A. [Police Prosecution]
Accused : Mr. Samy A. [LAC]
Date of Sentence : 30th November 2021

SENTENCE

1. **KITIONE YABAKI**, you have pleaded guilty to the following charge:

Statement of Offence

DISOBEDIENCE OF LAWFUL ORDER: Contrary to section 202 of the Crimes Act No. 44 of 2009.

Particulars of Offence

KITIONE YABAKI on the 28th day of February, 2020 at Tavua in the Western Division, disobeyed the lawful order of PC Jone Usumate.

2. I am satisfied that your guilty plea is voluntary and that you understand the consequences of your plea. The evidence tendered in support of your guilty plea and your admission, supports your guilty plea.
3. I have considered sections 15 and 16 of the **Sentencing and Penalties Act 2009** particularly whether or not you should be convicted and I find you guilty and I convict you of the charge.
4. Police were conducting traffic operations or bookings in town at around 6.30pm. It was suspected that you were carrying excess passengers. Police stopped your vehicle

in front of a school in town. Your license was demanded by a police officer which is lawful pursuant to regulation 6(1) of the Land Transport (Driver) Regulations 2000. You refused to give your license. The officer demanded for it again. You refused again. You then drove your vehicle and made a 'U turn' and drove away.

5. You were arrested a day later. You were interviewed under caution by police. You admitted that you were driving and transporting students to school. You were stopped by police who demanded for your license. You refused and told police that you will be booked if you give your license. You also admitted that your license was expired and that is also why you did not give your license to police. You then drove away from police.
6. You have no previous conviction.
7. You have not spent any time in remand.
8. You are 31 years old. You are residing in the village. You have 3 children with the eldest being 6 years and the youngest is 2 years old. You are a farmer. You earn \$150 monthly. 150 monthly. You have entered an early guilty plea. You seek forgiveness. You seek leniency and a non-custodial sentence. You promise not to reoffend. You have been issued a \$250 Traffic Infringement Notice [TIN] for carrying excess passengers.

MAXIMUM SENTENCE

9. For disobeying a lawful order, section 202 of the Crimes Act 2009 prescribes that you can be imprisoned for up to 2 years if there is no other specific punishment provided.
10. For failing to produce your license upon demand, a specific punishment is provided for in schedule 2 of the Land Transport (Fees and Penalties) Regulations 2000 which I must adopt.
11. Under the regulation, you are liable to be issued a fixed penalty or a fine of \$25 with up to a maximum of a \$200 fine and or imprisonment of up to 30 days with the discretion to award 3 demerit points against the offender.

SENTENCING RANGE or SENTENCING TARIFF

12. I am not aware of any specific tariff for this offence of disobeying a lawful order more particularly for refusing to provide your driving license upon the lawful demand of a police officer.
13. It may be worthwhile considering some of the sentences imposed on offenders who disobeyed lawful orders contrary to section 202 of the **Crimes Act 2009** or the **Penal Code Cap 17** where the general maximum sentence imposable is up to 2 years imprisonment.
14. A person who was operating his vehicle on hire, had parked his vehicle at a public parking spot. He was ordered to move his vehicle by a police officer but the person refused. The driver was arrested and later convicted by a Magistrate's Court for breaching a lawful order and sentenced to pay a \$200 fine [**Sattar v State** [2000] FJHC 150; Criminal Appeal 83 of 1999 (10 January 2000)]. His appeal was unsuccessful. The sentence was passed when the **Penal Code Cap 17** was in force. The punishment of up to 2 years imprisonment was the same under the repealed **Penal Code Cap 17**.
15. In **State v Mataiasi Kalou** Tavua CF 311 – 18, Mr. Kalou was not supposed to be driving and was disqualified from driving due to his earlier traffic offence for driving with excess alcohol in his blood above the legal limit. Within 5 days of being disqualified, Mr. Kalou was seen driving again in town. Mr. Kalou was sentenced to 2 months and 5 days imprisonment. He was ordered to serve 19 days imprisonment and the remainder of his imprisonment term was suspended for 18 months imprisonment.
16. In **State v Umesh Prasad** High Court Criminal Review HAR 02 of 2019 (27th April 2020), the High Court said that generally, suspended terms of imprisonment even up to 6 months imprisonment can be imposed for disobedience of a lawful order which attracts up statutory maximum of up to 2 years imprisonment. On review by the High Court, Mr. Umesh Prasad was fined \$300 to be paid in 60 days. In justifying a fine, the High Court had found that Mr. Prasad's breach in interfering in judicial proceedings even though he was a court officer was an administrative one and that some time had elapsed since the inception of the case.
17. In **State v Arieta Marama** Tavua CF 119 – 20, Ms Marama had come to town at about 10.15pm to buy eggs as she was hungry. She was supposed to be indoors at 10pm due to the national curfew. She was sentenced to 7 days imprisonment which was wholly suspended for 12 months. She was also ordered to pay a fine of \$50. She

had spent some time in remand and so the court did not require her to serve her suspended term or pay her fine.

18. Mr. Kitone Yabaki, I can suspend your sentence [if there is any imprisonment term] whether in whole or in part pursuant to section 26 (1) and (2) (b) of the Sentencing and Penalties Act 2009, as long as your imprisonment term does not exceed 2 years imprisonment.
19. I have considered whether you should do some community work.
20. For community work, if the offence is punishable with 2 years or more, you can be ordered to complete between no less than 20 hours of community work with up to 400 hours of community work [section 3 (2) (a) of the Community Work Act 1994.
21. However, a court shall not sentence a person to community work unless:
 - a. The offender consents;
 - b. The court is satisfied that the offender is a suitable person to perform the community work;
 - c. That community work is available and;
 - d. There are satisfactory arrangements for the supervision of that person's performance of the work

[section 4 (a) (b) (1) (ii) (iii) of the Community Work Act 1994].

22. The above factors are not met. For instance, you have not consented to any community work.

INSTINCTIVE SYNTHESIS APPROACH

23. **KITONE YABAKI**, particularly because there is no sentencing tariff, I will adopt an instinctive synthesis approach when sentencing you.
24. There are some significant factors in your case which I will emphasise before pronouncing your final aggregate sentence.
25. Aggravating your offending is that you were driving without a driving license at the time. Further, time and resources had to be expanded to have you arrested after you had driven home or away from police.

26. However in your favour, you are a first offender, you cooperated with police when interviewed, you are remorseful and you have a young family to support. I have also considered that you have spent 3 days in police custody before you were produced in court.
27. You have pleaded guilty early.
28. There will be no reduction in your sentence for any time spent in remand as you have been bailed since the inception of your cases.

SUMMARY

29. **KITIONE YABAKI**, your sentence will be aimed at deterrence and is to punish you adequately.
30. I decline awarding any demerit point against you in relation to your license or account.
31. I decline imposing any immediate term of imprisonment.
32. Particularly because you have spent some time in police custody before you were produced in court, I order that you only pay a fine of \$60 and you have 28 days to pay this fine. You default and you risk up to 2 days imprisonment.
33. You will be discharged off your bail obligations when you pay your fine.
34. 28 days to appeal if any party is dissatisfied with the sentence.



At TAVUA this 30th day of November, 2021

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Lisiate T.V. Fotofili
Resident Magistrate