

IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION

Traffic Case No. 33/2023

BETWEEN: **STATE**

PROSECUTION

AND: **SUNIL DUTT**

ACCUSED

Counsel: PC 5647 Pranil Nair for Police Prosecution
 Accused in person.

Date of Trial: 3 December 2024
Date of Judgment: 6 January 2025

JUDGMENT

Introduction

1. Mr. Sunil Dutt ("the Accused") was issued with a Traffic Infringement Notice ("TIN") being TIN No. 4600771 on 15 April 2023. The Accused was charged for the following offence:

Statement of Offence

Conduct of Conductors: *Contrary to Regulations 28(1)(g) and 58 of the Land Transport (Public Service Vehicles) Regulations 2000.*

Particulars of Offence

Sunil Dutt on the 15th day of April 2023 at Ba in the Western Division being the driver on LM 401 at Ba Town behaved in an uncivil and disorderly manner whilst carrying out his duty.

2. On 3 May 2023, the Accused filed a Notice for Disputed TIN disputing the TIN issued against him.
3. On 20 May 2024, the Accused pleaded Not Guilty to the charge with Trial then being fixed for 3 December 2024.
4. On 3 December 2024, Trial proceeded. Prosecution called 2 witnesses and thereafter closed its case. The Court found that a case was made out against the Accused to sufficiently require him to make a defence in respect of the charge. The Accused gave evidence and closed his case.
5. Having considered the evidence of both Prosecution and Defence, I now pronounce my Judgment.

Burden of Proof

6. It is imperative to highlight that as a matter of law, the onus or burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no burden on an accused to prove his or her innocence as an accused is presumed to be innocent until proven guilty.

7. It is for the prosecution to prove the accused's guilt beyond a reasonable doubt. If there is doubt, so that the court is not sure of the accused's guilt, or if there be any hesitation in the court's mind on any of the ingredients or on the evidence led by prosecution, the accused must be found not guilty of the charges and accordingly acquitted.

Summary of Evidence

8. WPC Ruci testified that on 15 April 2023 whilst she was on duty at the Varoka Police Post, she had seen the driver of a Viti Mini get off from the driver's seat and open the passenger door at the back. WPC Ruci stated that a lady passenger got off and as this passenger got off, the driver was swearing at the passenger, which was a disorderly and uncivil conduct of a PSV driver.
9. PC Aman, who was the Traffic Standby at the time, had been called in by WPC Ruci and when he arrived at Varoka Police Post, he was informed of the Viti Mini driver's disorderly and uncivil conduct as such he issued a TIN. The TIN was tendered as 'PEX1'.
10. The Accused categorically denies that he behaved in a disorderly and uncivil manner on 15 April 2023. He testified that he was driving his Viti Mini from Lautoka. He testified that as he left the Lautoka base, a passenger put his leg beside him so he asked the passenger to put his leg down. It was at this point that this passenger started swearing and saying things to the Accused. The passenger was sitting at the back of the Accused. This passenger then started poking the back of the Accused's head. Another passenger intervened and told this other passenger to stop.
11. The Accused testified that when he reached Coffee Hub in Ba, most of his passengers got off. It was at this point that the passenger who had been swearing at the Accused started swearing and shouting at the Accused. A female passenger also started shouting and swearing as well. The Accused then drove to Varoka Police Post to seek assistance but instead the Accused was issued with a TIN for behaving in a disorderly and uncivil manner.

Evaluation of Evidence

12. The Court will need to evaluate the evidence by Prosecution to determine the testimonial trustworthiness of the evidence which will be done by evaluating the credibility – the correctness or veracity of the evidence and the reliability of evidence – the accuracy of the evidence - vide State v Prasad Criminal Case No. HAC 72 of 2021 (20 June 2024). In doing this, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (vide State v Moroci Criminal Case No. HAC 161 of 2023 (26 April 2024)).
13. For a proper analysis of the evidence, it is imperative for the Court to turn its mind to the elements for Conduct of Conductors, which are:
- i. the accused
 - ii. being a conductor of a road service vehicle
 - iii. when performing his/her duties
 - iv. behaved in an uncivil and disorderly manner.
14. From the outset there is no issue with the identification of the Accused as the Accused admits that he had been driving his Mini Van on 15 April 20223 and that he was present at

the Varoka Police Post when the alleged incident took place. The Court will need to ascertain whether the Accused was a conductor of the Mini Van and that whilst performing his duties he behaved in an uncivil and disorderly manner.

15. The evidence led by Prosecution through WPC Ruci was that on 15 April 2023, she had seen the Accused – being the driver of the Viti Mini get off the vehicle from the driver's seat and open the passenger door at the back. WPC Ruci then testified that a female passenger then alit the van and it was at this point that the Accused swore at this passenger. WPC Ruci testified that this was a disorderly and uncivil conduct of a PSV driver, driving a Viti Mini, which was a public transport full of passengers.
16. The Court is mindful of Regulation 2 of the Land Transport (Public Service Vehicles) Regulations 2000 defines a conductor as *"a person employed by the holder of a permit to perform the functions under regulation 28 and includes a security officer or inspector employed by the holder of a permit"*.
17. A perusal of Regulation 28 of the Land Transport (Public Service Vehicles) Regulations 2000 outlines various duties and responsibilities of a conductor. One such duty/responsibility is neither to distract the attention of the driver without reasonable cause when the vehicle is in motion nor to converse with the driver unless it is necessary to give directions as to the stopping or parking of the vehicle (see regulation 28(1)(a)). Another duty/responsibility of a conductor is not to direct the driver of the vehicle to stop on a road no longer than reasonably necessary to pick up or set down passengers except for sufficient reason (see regulation 28(1)(d)).
18. It is, thus, evident that Regulation 28 of the Land Transport (Public Service Vehicles) Regulations 2000 deals with a separate person other than the driver of the road service vehicle.
19. The evidence of Prosecution is that the Accused was the driver of the Viti Mini and not the conductor of the road service vehicle.
20. Consequently, the Court finds that Prosecution failed to discharge its burden beyond a reasonable doubt.

Determination

21. I find that Prosecution has failed its burden in proving all the elements of Conduct of Conductor beyond reasonable doubt.
22. I, therefore, find the Accused, Sunil Dutt, not guilty as charged and hereby acquit him forthwith.
23. Further, the Traffic Infringement Notice ('TIN') being TIN No. 4600771 issued against Sunil Dutt on 15 April 2023 is dismissed.
24. Any party aggrieved with this decision has 28 days to appeal to the High Court.


N. Mishra
Resident Magistrate

