

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

Criminal Appeal No: HAA015 of 2013

BETWEEN : **LUKE QIRINIU**
Appellant

AND : **THE STATE**
Respondent

BEFORE : **HON. MR. JUSTICE PAUL MADIGAN**

Counsel : Mr. J. Savou (L.A.C.) for the appellant
Mr. L. Fotofili for the State

Date of hearing : 29 April and 16 May 2013
Date of Judgment : 18 June 2013

JUDGMENT

[1] In the Magistrates' Court at Suva, the Appellant was charged with dangerous driving in that he was alleged to have driven a motor vehicle on the 21st October 2012 on the Laucala Bay Road in a manner that was dangerous to the public.

[2] On the 18th March 2013 he entered an unequivocal plea of guilty to the offence, admitted a set of facts and was sentenced to a fine and was disqualified from driving for a period of 6 months.

[3] The appellant initially appealed against both conviction and sentence but before this Court his counsel sought to withdraw the appeal against conviction relying solely on the appeal against sentence.

- [4] The facts of the case presented to the accused (appellant) and admitted below, were that on the 21st October 2012 at about 5.20am, police received information that a taxi, registered no. LT3952 had gone off the road at Laucala Bay Road. Police attended the scene and found the appellant who they believed to be intoxicated. The appellant was arrested and escorted to Raiwaqa Police Station. At that station he was unable to be formally tested for his level of intoxication because the testing machine had not been adapted to comply with the new hours of daylight-saving. The appellant was interviewed at the Station where he admitted the allegation.
- [5] Apart from the very unfortunate circumstances of the drink/driving testing apparatus not being available at the time to take a reading of the appellant's alcohol level, it is also very unfortunate that the summary of facts which the appellant admitted in the Court below do not disclose this or any other offence.
- [6] A report had been made to the Police that a vehicle had gone off the road and the facts state that the Police attended the scene. At the scene they apprehended this drunken appellant but NO mention is made whatsoever of the state of the vehicle or even if the vehicle was there or not. There is no basis to the allegation that his taxi vehicle had been driven dangerously or in any other manner because the facts make no reference whatsoever to any vehicle. The facts go on to say that at Raiwaqa Police Station, this appellant admitted to (sic) the allegation, without saying what the allegation was. The facts refer to "Q&A 17-20" which presumably is a portion of the caution interview. However there is no copy of the caution interview on either the Magistrate's file or on this Court's file. It would seem that it was never produced by the Police Prosecutor below.
- [7] There being nothing in the summary of facts which the appellant had admitted below to substantiate the offence of dangerous driving, the

conviction for the offence cannot stand. The concessions of the then accused in the Court below that he was drunk and that he drove the vehicle in question at the time are of no effect if there is no evidence before the Court that the vehicle had been driven dangerously.

[8] Despite the appellant's attempt to abandon his appeal against conviction, I cannot allow that to be, and his appeal against conviction on this charge must succeed, there being no factual basis whatsoever to substantiate the charge.

[9] The appeal against conviction succeeding means that the appeal against sentence, so intricately argued by Mr. Savou, falls away. The sentence passed below is quashed and the conviction set aside.

[10] This appeal raises two matters of great importance to all those serving in Judicial Office:

- i) Before relying on a set of facts to substantiate a plea of guilty it must be seen that the facts which the accused is asked to admit DO in fact disclose the offence in question. If they don't the Court can either call for new facts or refuse to convict on the facts before it;
- ii) If part of the facts refer to admissions made in a caution interview conducted by the accused before the court, this interview **MUST** be sighted, read and checked to confirm that the interview does in fact confirm what is being submitted in court.

[11] The appeal against conviction is revived and allowed.

[12] The appellant now serving a month sentence in lieu of payment of fine is to be released immediately.

Paul K. Madigan
JUDGE

At Suva
18 June, 2013