

IN THE HIGH COURT OF FIJI

AT SUVA

REVISIONAL JURISDICTION

Review Case No. 064 of 2014

STATE

v.

MARIKA VEISAUNIGAUNA LEWAQAI

Respondent

Counsel: Mr. S. Nath for the State
Respondent in person

Dates of hearing: 4 August, 12 September, 9 & 20 October and
4 & 15 December 2014

Date of judgment: 20 February 2015

JUDGMENT ON REVIEW

- [1] On the 30th June 2014, the respondent entered a plea of guilty in the Suva Magistrate's Court to one charge of dangerous driving. On hearing the mitigation of the respondent the Court then found the respondent guilty of the lesser charge of careless driving and sentenced him to a fine of \$500 and with **no conviction to be recorded.**

- [2] Pursuant to section 259 of the Criminal Procedure Decree 2009 this Court has called for the file from the Magistrate's Court for the purpose of assessing the propriety of the order below to not record a conviction against the accused. Any review under this section does not necessarily mean that this Court will alter the decision made below, nor does it imply censure of the tribunal making the finding. It is a safe-guard measure to ensure that proper procedures are followed and appropriate orders are being made below.
- [3] The facts agreed below reveal that on the 31st August 2013 at about 3.20am on Central Street in Suva, a police officer on patrol noticed a mini-bus driven by the accused run over a round-about island in the middle of an intersection. The driver was taken to Totogo and interviewed under caution where he freely admitted the driving charge.
- [4] In mitigation it was submitted by the accused that he had no previous convictions in his 41 years. He is married with 4 children and runs a vehicle hire business on Denarau. He earns \$6,000 per month and was at the time hoping to be elected as a member of parliament. He told the Court that he was standing as a candidate for the SODELPA party and he asked the Court to consider his aspirations. He promised to follow the road rules from thereon in, and said that coming from the Western Division, he was not familiar with the Suva roads and lanes. He had been driving in the wrong lane and had become stranded at the island. He had been a driver for 25 years and had come from Nadi. He earned about \$150 per week on average.
- [5] In her judgment/sentence the learned Magistrate reduced the charge in the circumstances to one of careless driving. She considered a fine, the maximum penalty being a fine of \$500, and she said this in her sentencing remarks:

“I note this is his first offence. He submits that he came from Nadi and is not familiar with Suva lanes. Regardless of which part of Fiji, he is from, the traffic rules are the same throughout Fiji and that is no excuse. He further submits that the Court consider his aspiration become a member of Parliament. As an aspiring Member of Parliament, he should be more vigilant in his observance of the law. However the Court notes that the accused is of previous good character and this is a minor offence. In the circumstances, the rehabilitation of the offender should be promoted.”

She then went on to order that no conviction be entered against him and that he pay a fine of \$500.

- [6] In a submission by way of letter to this Court on review the respondent submitted that there was no injury to property or person and that he had no previous convictions. He also submitted that a conviction may jeopardise his intention to resume “active flying” and that this Court should consider that possible jeopardy.
- [7] Counsel for the State, unfortunately missing the point of the review, argues that the sentence being the maximum for the offence is excessive and this Court, on review, should “make the accused’s sentence to be more lenient to the current conviction.” The counsel for the State appeared not to realise that there was no conviction and did not address this Court on the propriety of not entering a conviction against the accused.

Discussion

- [8] The fact that the accused ran over an island in the middle of the road at 3.20 in the morning when no person was abroad and when there was no other traffic on the road would validate the Magistrate’s decision to reduce the dangerous driving charge to one of careless driving.

- [9] The fact that the accused was a first offender and was unfamiliar with Suva's particular road markings was perhaps reason for treating him leniently.
- [10] What is not appropriate is the suggestion that he aspired to be a SODELPA member of Parliament would be reason at all to influence the final decision in this matter. It is not clear from the sentence whether that aspiration did actually influence the mind of the Magistrate and it is this Court's view that such a suggestion should have been immediately dismissed in strong terms from the Magistrate. Equality before the law is enshrined in section 26(1) of the Constitution (2013) and every Judicial Officer in Fiji must make clear to the public that he or she is giving force to that principle. The Chief Justice Gates C.J. in Batiratu HAR 001.2012 went further and said that no matter who you are or what you claim to be you should be treated the same as the next person for the same offence.
- [11] Had the accused not submitted that he aspired to be a SODELPA candidate in the elections, the result of the case may well have been the same, but this additional component of the accused's mitigation should have been dealt with in further terms than "an aspiring member of parliament should be more vigilant in his observance of the law." It would have been more appropriate for the Magistrate to say that being a candidate for parliament makes not one iota of difference to the sentence or the usage of words in similar vein.

Conclusion

- [12] It being ambiguous whether the Member of Parliament component influenced the learned Magistrate's mind, this Court on review must give the benefit of the doubt to the unrepresented respondent who had a clear record, including not one driving offence in 25 years. To recognise that along with his easy co-

operation with the authorities and his plea of guilty, this Court will exercise its power of review **not** to disturb the orders made below.



At Suva
20 February, 2015

A handwritten signature in black ink, appearing to read "P. Madigan". The signature is written in a cursive style with a large, looping initial "P".

P.K. Madigan
Judge