

## EDWARD O'CONNOR

v

## THE STATE

[HIGH COURT, 1993 (Sadat J), 5 February]

## Revisional Jurisdiction

- B** *Crime-procedure-bail pending trial- conditions of- driving ban and surrender of licence- whether the Court has power to impose- Traffic Act (Cap 176) Section 48.*

The Applicant pleaded not guilty to driving with excess alcohol. The Resident Magistrate granted bail to the applicant on the condition that he surrender his driving licence and cease driving until the trial. The High Court HELD: there is no jurisdiction to impose such conditions upon a grant of bail pending trial.

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Case cited:

*R v Emmanuele Kwame* 60 Cr. App. R. 65

- D** *A. Patel* for the Applicant  
*I. Wikramanayake* for the Respondent

Review by the High Court.

**Sadat J:**

- E** On 4th January 1993 at Lautoka Magistrate's Court the applicant was charged with the offence of a driving motor vehicle whilst there was present in the breath a concentration of alcohol in excess of the prescribed limit contrary to Section 48(1)(a) of the Traffic Act Cap. 176 as amended by Section 2 of the Traffic (Amendment) Act 1986 (No. 2 of 1986).

- F** The particulars of the offence were that the applicant on 31st December 1992 at Lautoka in the Western Division drove a motor vehicle registered No. CF975 on Naviti Street whilst there was present in 100 millilitres of his breath a concentration of 82 microgrammes of alcohol which was in excess of the prescribed limit.

- G** The applicant pleaded not guilty to the charge and the Magistrate Surendra Prasad Esq. adjourned the case until 3rd May 1993 for hearing and imposed a condition in the bail bond that the applicant surrender his driving licence to Court and not to drive before the hearing.

Counsel for the applicant referred this matter to this Court in its revisional jurisdiction stating that the Magistrate erred in imposing such a condition before conviction. The learned prosecutor conceded that the Magistrate should not

have imposed such a condition and in fact the prosecution did not ask for the imposition of bail conditions. The applicant was not represented before the Magistrate's Court. I do not know what were the reasons which led the Magistrate to impose this somewhat unusual condition.

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The minimum penalty for this offence under Section 48 is a fine not exceeding \$400 and mandatory disqualification from holding or obtaining a driving licence for a period of not less than three months nor more than two years.

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Upon conviction the trial Court would have no option but to impose a penalty on the applicant and a disqualification of not less than three months. As a result of that condition imposed prior to conviction the applicant would be disqualified not for the minimum period of three months but for rather over seven months assuming the applicant got convicted on the date set for trial in May. The applicant would be disqualified for a longer period than the minimum of three months. Both counsel were troubled by this apparent injustice and went on to state that this particular Magistrate was the only one imposing such conditions. Similar situation had arisen in the case of R v Emmanuele Kwame 60 Cr. App. R. 65 where Court of Appeal stated - "It may not be appreciated by justices and others who have thought it right or necessary to impose this condition of bail, that its imposition may sometimes have unexpected and possibly unjust results. That is a consideration which magistrates' courts may well wish in future to take into account in consideration whether or not such a condition should be imposed." The Court of Appeal did not specify the unjust or unexpected results of the imposition of such a condition but clearly the imposition would be unjust if there was a possibility of acquittal. Where a court is likely to impose only minimum obligatory period of disqualification, a condition not to drive while on bail has the effect of adding to that period, as the period of disqualification imposed by court can only begin to run when a person is sentenced.

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May I say that in the instant case the Magistrate was very much aware of the observation made by Court of Appeal in Kwame Case but for reasons best known to himself has imposed such a bail condition. Magistrates when considering such a condition should understand that its imposition may sometimes have unexpected or unjust results. It must also be understood that a condition not to drive while on bail would be no reason for reducing the obligatory period of disqualification when sentence is given by a court - as there is no such provision in the Act. The situation is different where an accused person has been in custody awaiting trial, the court when imposing a term of imprisonment would always take into account the fact that he has spent some time in custody. This sentencing practice has been in existence for a long time and in some countries it has been given statutory recognition.

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In the exercise of the revisional jurisdiction of this Court the bail condition imposed on the applicant that he refrain from driving a motor vehicle pending

trial and that he surrender his driving licence to the Magistrate's Court are revoked.  
All other terms of the bail remain in force unaltered.

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*(Application allowed)*

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