

**IN THE MAGISTRATE'S COURT AT LABASA**

**CRIMINAL JURISDICTION**

*Traffic Case No. 3040 of 2014*

**STATE**

v

**NIRAJ PAL**

Appearance : **PC Abinesh** for the prosecution  
**Mr Sharma. S** for the accused

Judgment : **24 July 2020**

**JUDGMENT**

1. The accused, Niraj Pal is charged for *Breach of Zero Alcohol Limit* contrary to *section 105(1)(b)(2)* and *114* of *Land Transport Act*.
2. The particulars of the offence are that Niraj Pal on the 8<sup>th</sup> day of November 2014, at Labasa in the Northern Division drove a public service vehicle registration number LT 3515 along Naseakula road whilst there was present in 100 millilitres of your blood a concentration of 48.4 milligrams of alcohol which was in excess of the prescribed of 0.00 milligrams of alcohol.

3. The accused pleaded not guilty to the amended charge on 2 June 2020 before the closed of the prosecution case.
4. The case proceeded to trial on 2 June 2020. The Prosecutor called two witnesses. There was no witness called to the stand for the defence case.

**Law**

5. Section 105 of the Land Transport Act state;-

"(1)No person who is a holder of a .....public service vehicle driver's licence shall, whilst the concentration of alcohol in the blood of that person is more than 0.00 grams per 100 millilitres of blood, drive or attempt to drive-

.....

(b)in the case of a holder of a ....public service vehicle licence.....a public service vehicle.

(2) A person who contravene subsection (1) commits an offence.

6. The elements of the offence are ;-
  - a. the accused,
  - b. is a holder of public service vehicle licence
  - c. drives a public service vehicle,
  - d. when concentration of alcohol in his blood is more than 0.00 grams per 100 millilitres of blood.
7. The burden of proof is on the prosecution to prove all the elements of the offence beyond reasonable doubt.

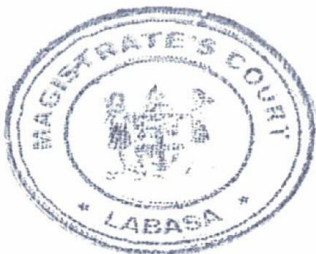
### **Analysis and determination**

8. The accused was identified in court by both the prosecution witnesses.
9. PC 4557 Tuiwainikau is the first witness for the prosecution case. He is the arresting officer for this case. He arrested the accused from Waisavulu junction when the accused was driving taxi LT 3515 on 8 November 2014. When they stop the taxi, he went to check the taxi and saw the accused seating on the driver's seat. He informed the accused that he wanted to test him. The accused agreed. He tested the accused using alcotest 7410. The accused blow on the alcotest 7410 which shows a result of 25 micrograms of alcohol. He informed the accused that he will be arrested and taken to Labasa Police Station for another test. They took the accused to the Labasa police station and he hand over the accused to WPC Talica to conduct further test.
10. Wsgt 3263 Talica is the second witness for the prosecution case. She stated that she is an authorised Dragger operator. She tendered her certificate of authority as prosecution exhibit 1. She stated, before conducting the test, she explained all the procedures to the accused. He tested the accused on the Dragger Alcotest 7110. The accused blow resulted in 22 micrograms of alcohol per 100ml of breathe. The Dragger Alcotest 7110 result was tendered as prosecution exhibit 3 (A).
11. The accused exercised his rights to remain silent and call no witness to the stand. There will be no adverse inference

drawn against the accused in exercising his rights in that regard.

12. The prosecution evidence has established that the accused was driving the taxi LT 3515 on 8 November 2014 along Naseakula road when present in his blood 22 micrograms of alcohol per 100 millilitres of breath.
13. The Prosecutor failed to adduce evidence to establish and prove that the accused is a holder of public service vehicle licence. There was no evidence led to say that taxi LT 3515 is a public service vehicle. The Prosecutor failed to clarify the evidence of 22 micrograms of alcohol present in the accused blood on its equivalent in grams. No evidence led to say that 22 micrograms is more than 0.00 grams.
14. With the lack of evidence on the elements of the offence discussed in paragraph 13 above, I find that the Prosecutor was not able to adduce evidence to support the elements of the offence discussed above. The Prosecutor was not able to discharge the burden of proof required as there are some doubts as discussed above.
15. In this judgment, I find the accused not guilty as charged and I acquitted the accused accordingly.

**28 days to appeal**



C. M. Tuberi  
**Resident Magistrate**