

IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION

Traffic Case No. 46/2025

BETWEEN: **STATE**

PROSECUTION

AND: **SIMIONE NABURE**

ACCUSED

Counsel: WCPL 4897 Venu Singh for Police Prosecution
 Ms. S. Singh (LAC) for the Accused.

Date of Sentence: 5 December 2025.

SENTENCE

Introduction

1. Mr. Simone Nabure, on 3 December 2025, you pleaded guilty to 1 count of Failure to Undergo Breath Analysis Upon Direction of a Police Officer contrary to section 103(1)(b) and 114 of the Land Transport Act 1998, 1 count of Driving Motor Vehicle without being a Holder of a Valid Drivers Licence contrary to section 56(3)(a)(6) and 114 of the Land Transport Act and 1 count of Breach of Order Suspended Sentence contrary to section 28(1) of the Sentencing and Penalties Act. The particulars of the offences are:

Count 1
Statement of Offence

Failure to Undergo Breath Analysis Upon Direction of a Police Officer: Contrary to Section 103(1)(b) and 114 of the Land Transport Act 1998.

Particulars of Offence

Simione Nabure, on the 2nd day of November 2025 at Ba in the Western Division upon being required by a Police Officer namely PC 5538 Amar failed to provide a specimen of breath which is sufficient to enable the test or the analysis to be carried out to satisfactorily achieve the objective of the test analysis.

Count 2
Statement of Offence

Driving Motor Vehicle without being a Holder of a Valid Drivers Licence: Contrary to Section 56(3)(a)(6) and 114 of the Land Transport Act 1998.

Particulars of Offence

Simione Nabure, on the 2nd day of November 2025 at Ba in the Western Division drove a motor vehicle registration number EN128 at Kings Road, Yalalevu, Ba without being a holder of a valid driver's licence in respect of the said vehicle with the licence expired on 23 December 2023.

Count 3
Statement of Offence

Breach of Order Suspended Sentence: Contrary to Section 28(1) of the Sentencing and Penalties Act 2009.

Particulars of Offence

Simione Nabure, on the 2nd day of November 2025 at Ba in the Western Division during the operational period of suspended sentence of imprisonment vide CF 66/23 committed another offence punishable by imprisonment.

2. Satisfied that you have fully comprehended the legal effect of your plea and that your plea was voluntary and free from influence, I now convict you and proceed to sentence you for all offences.

Circumstances of the offending

3. According to the Summary of Facts you admitted in Court, on 2 November 2025 at about 3:12am at Namosau Road, PC Thomas and RSO Kolinio with their team were on mobile patrol when they received a phone call that the driver of motor vehicle registration number EN128 was believed to be drunk.
4. They managed to intercept the vehicle along Chatur Singh Road. PC Thomas with the help of RSO Kolinio stopped you in motor vehicle registration number EN128 and demanded for your licence for inspection purpose. It was discovered that your licence expired on 23 December 2023.
5. After inspecting your licence, you were tested on the ALCO TEST 5820 where the reading was 86mg. You were then arrested and escorted to Ba Police Station where you were tested on the Dragger 9510 but you did not provide sufficient breath as such the machine was not able to provide results.
6. Upon further investigation, it was discovered that you were on a suspended sentence in Ba CF 66/23 and you had breached your suspended sentence which was issued on 14 June 2023. You were interviewed under caution and charged for this matter.

Objective Seriousness

7. Driving under the influence is dangerous and can be harmful as alcohol impairs a driver's judgment and coordination which can have serious repercussions or consequences, I therefore find the objective seriousness of this crime is high.

Sentencing Purpose

8. Considering that the primary purpose of this sentence is founded on the principle of deterrence, it is the responsibility of the Court to deter others from committing such offences of the same or similar nature as well as to protect the community from those who commit such offences.
9. A deterrent sentence for such offences of this nature demonstrates the gravity of the offence and reflects the society's immediate denouncement of such crimes.

Sentencing Regime

10. The maximum penalty for the offence of Failure to Supply Sufficient Breath Sample for Breath Analysis upon Direction of a Police Officer is the same penalty as section 103(1)(a) which is a fine of \$2,000.00 or 2 years imprisonment and a mandatory disqualification from 3 months to 2 years for a first offence.
11. The prescribed penalty for driving without a valid licence is as follows:
 - (a) First offence - \$200/30 days
 - (b) Second offence - \$1000/6 months and disqualification for 12 months.
12. The maximum penalty for the offence of Breach of Order Suspending Sentence is a fine not exceeding \$10,000 and in addition the court must restore the sentence or part sentence held in suspense and order the offender to serve it which is pursuant to section 28(4) of the Sentencing and Penalties Act 2009.
13. There is no set sentencing preference or tariff for the above offences. Thus, the sentence in each case is dependent on its own set of facts and is to be within the maximum penalty imposed by the law.

Mitigating and Aggravating Factors

14. The Court notes the mitigation offered by your counsel.
15. The Court is aware that you took an early guilty plea which highlights your remorse for your actions and this is evident from your cooperation with the Police during the time of your interview.
16. Further, the Court was informed that you have a previous conviction for Driving Motor Vehicle whilst there was present in the blood a concentrate of Alcohol in Excess of the Prescribed Limit and Dangerous Driving in Ba CF 66/23 where you were sentenced on 14 June 2024 to 16 months imprisonment suspended for 3 years with a 6 month disqualification of your Drivers Licence.
17. It is evident from your previous conviction that you have not reformed yourself. Moreover, you have not provided the Court with any evidence of any significant contributions made by you to your community. As such, considering section 5 of the Sentencing and Penalties Act 2009, the Court is unable to provide you any discount for your previous character.
18. The aggravating factor is that you drove the motor vehicle to go to the shop to buy more alcohol.

Sentence

19. Considering section 17 of the Sentencing and Penalties Act, I prefer to impose an aggregate sentence for Counts 1 and 2. Considering the objective seriousness and the purpose of this Sentence, I select a starting point of 6 months imprisonment. I will add 3 months for the aggravating factor making it a total of 9 months imprisonment.

20. For your mitigating circumstances, I will deduct 1 month. For your early guilty plea, I will deduct a further 3 months leaving you with a balance of 5 months imprisonment.
21. Section 26(1) of the Sentencing and Penalties Act allows a court to make an order suspending the whole or part of the sentence if it is satisfied that it is appropriate to do so in the circumstances whilst section 26(2)(b) provides the Magistrates Court with the discretion to suspend a sentence where the sentence does not exceed 2 years.
22. However, the Court does not find that this is a case where a suspended sentence or even a partly suspended sentence is warranted as at the time of the offending, you had a previous conviction for a traffic offence for which you were on suspended sentence. You were sentenced for this offence on 14 June 2024, and it is evident that this suspended sentence has done nothing to allow you to rehabilitate yourself (vide **State v Chand** [2002] FJCA 50; AAU0027U.2000S (1 March 2002) citing **R v Petersen** [1994] 2 NZLR 533).
23. Thus, you are to serve your 5 months imprisonment term forthwith.
24. Now turning to the offence of Breach of Order Suspending Sentence, it was submitted on your behalf that you are a cane cutter and that you earn \$200.00 per fortnight. Sufficient information was not provided to the Court regarding your financial situation as such the Court will not order a fine.
25. After considering the facts and the circumstances of the case herein, the Court finds no exceptional circumstances which would justify not to restore a sentence in suspense which is pursuant to section 28(4)(a)-(c) of the Sentencing and Penalties Act. Rather pursuant to section 28(5) of the Sentencing and Penalties Act, the Court finds that you are to immediately serve your sentence - the sentence of 16 months vide Ba Criminal Case No. 66/23 which will be consecutive to the sentence of 5 months imprisonment for the offences of Failure to Supply Sufficient Breath Sample for Breath Analysis upon the Direction of a Police Officer and Driving Motor Vehicle without being a Holder of a Valdi Drivers Licence herein.
26. Thus, you are to serve 21 months with immediate effect.
27. Section 18(3) of the Sentencing and Penalties Act provides the Court with the discretion to fix a non-parole period if the imprisonment term is less than 2 years but more than 1 year. However, considering that you have not done anything to rehabilitate yourself which is evident from your previous conviction, your non-parole period will be for a period of 12 months effective forthwith.
28. Further, the Court is mindful that you have been in custody from 2 November 2025 until the date of this Sentence which is 33 days.
29. Considering section 24 of the Sentencing and Penalties Act, 1 month will be considered as time served by you.
30. Thus, your actual sentence to be served is now 20 months imprisonment with a non-parole period of 11 months.

31. Further, it is mandatory for the Court to disqualify you from driving or holding or obtaining a driving licence for the offence of Failure to Supply Sufficient Breath Sample for Breath Analysis upon Direction of a Police Officer. In the case of ***State v Prasad*** [2003] FJHC 146; HAA0038J.2003S (16 October 2003) Her Ladyship Justice Shameem highlighted the following factors that are to be considered when determining the length of disqualification:

- i. The standard of driving shown in the offending.
- ii. Any previous convictions for traffic offences.
- iii. The need to protect the public from dangerous/careless/drunken drivers.
- iv. Good character.
- v. Serious hardships to the family.
- vi. Driving providing the source of livelihood for the offender.

32. Considering the factors outlined in ***Prasad*** [supra] with the following facts in your matter:

- i. you have 1 previous conviction for a traffic offence as stated in paragraph 16 herein;
- ii. your earning ability is not tied to you holding a driving licence; and
- iii. there is a need to protect the public especially other road users from drunk drivers such as yourself;

thus, the Court finds that the appropriate length of your disqualification ought to be for a period of 12 months effective from the date of your release from Prison.

33. Any party aggrieved with this decision has 28 days to appeal to the High Court.



N. Mishra
Resident Magistrate

