

**IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION**

Traffic Case No. 25/2018

BETWEEN: STATE

PROSECUTION

AND: LOG NADAN

ACCUSED

Counsel: Ms. S. Naibe for the State
Mr. N. Padarath for the Accused

Date of Prosecution's Case: 29 November 2024
Date of NCTA Ruling: 25 July 2025
Date of Defence's Case: 9 September 2025
Date of Judgment: 29 January 2026
Date of Sentence: 27 February 2026

SENTENCE

Introduction

1. Mr. Log Nadan, on 29 January 2026, the Court found you guilty for 1 count of Dangerous Driving Occasioning Death. The particulars of the offence are:

Count 1
Statement of Offence

Dangerous Driving Occasioning Death: Contrary to Section 97(2)(c), 6(a), 8 and 114 of the Land Transport Act No. 35 of 1998.

Particulars of Offence

Log Nadan, on the 1st day of March 2018 at Ba in the Western Division drove a motor vehicle registration number EZ 682 on Kings Road, Yalalevu in a manner which was dangerous to another person involved in an impact occasioning the death of Mohammed Talim.

2. I now convict you for the above offence and proceed to sentence you.
3. The brief facts are as follows:
 - a. You had been driving motor vehicle with registration number EZ 682 on 1 March 2018 along Kings Road, Ba going to Ba Industries. Mohammed Talim ('the deceased') with his passenger Aman Avneet Prasad ('Mr. Prasad') were on the deceased's motorcycle returning from Dominion Wires & Cables.
 - b. Just before the deceased and Mr. Prasad reached Ba Industries, your motor vehicle – a G Touring crossed into their lane before the Ba Industries entrance.
 - c. The Rough Sketch and Fair Sketch Plans tendered as 'PEX1A' and 'PEX1B' shows that your vehicle had not even made it into the entrance of Ba Industries when the impact occurred. The position of your vehicle in the Sketch Plans shows your vehicle at a slight diagonal before the entrance.

- d. Further, the video tendered as 'DEX3' showed your vehicle approaching and turning towards Ba Industries and the motorcycle approaching, then crashing into your vehicle and Mr. Prasad being thrown over the vehicle and then getting up and running.
- e. Dr. Kumar conducted the post-mortem examination of the deceased on 2 March 2018 and prepared the Post-Mortem Report tendered as 'PEX2'.
- f. Dr. Kumar testified that there was a direct injury to the brain tissue because of the head injury which could have been caused by an impact of vehicle or turf or both or even due to high velocity impact. He explained that the cause of death was multiple skull fractures which resulted in traumatic brain injury which led to the deceased's death.

Objective Seriousness

4. Considering the prevalent nature of this offence especially on our roads in the country which undoubtedly affect families and communities, I find the objective seriousness of this crime is high.

Sentencing Purpose

5. 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.
6. 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

7. The maximum penalty for the offence of Dangerous Driving Occasioning Death is \$10,000 or 10 years imprisonment and disqualification for any period up to life.
8. In **Kumar v State** [2014] FJHC 775; *Criminal Appeal 172.2014 (27 October 2014)* His Lordship Justice Madigan referred to the following cases when determining the tariff for Dangerous Driving Occasioning Death was 2 to 4 years imprisonment:

*"The maximum penalty for this offence under the Land Transport Authority Act 1998 is ten years' imprisonment. This Act replaced the old Penal Code Offence for which the maximum penalty was only 5 years. The relevance of this increase in penalty by the legislature was addressed by Shameem J in **Sharma v. State** [2005] FJHC 464, a case referred to by the learned Magistrate in which the Honourable Judge said:*

*"In 1998 Parliament passed the Land Transport Authority Act and increased penalty for causing death by dangerous driving to 10 years' imprisonment. There can be no clearer parliamentary intention as to sufficiency of penalty. To reflect such parliamentary intention, I held in **lowane Waqairatavo** that the tariff for such offences must increase to 2 to 4 years imprisonment."*

*Once more in the case of **Benjamin Padarath** HAC 13 of 2004 Shameem J affirmed that the appropriate sentence for this offence be from 2 to 4 years."*

9. In **Waqairatavo v State** *Criminal Appeal No: HAA 127 of 2004S (11 November 2004)* stated that "...a non-custodial sentence for this offence must be the exception rather than the rule. Indeed, a starting point should be picked from between 2 years and 4 years imprisonment,

depending on the gravity of the offending. The gravity of the offending is to be assessed on circumstances such as the numbers of deaths, and the seriousness of the fault, which led to the offending”.

Mitigating and Aggravating Factors

10. The Court notes the mitigation offered by your counsel on your behalf; however, personal circumstances and family background holds very low mitigatory value.
11. The Court was informed that you are a first offender.
12. The character evidence adduced through Mr. Viliame Fukaake with respect to you being a humble, supportive and hospitable person, who goes beyond the call of service to others is noted.
13. Further, the evidence of your younger brother – Dr. Dur Samy, who is also your Doctor is also noted by the Court especially with respect to the illnesses that ail you in your old age.
14. In submissions, your counsel has impressed on the Court that your case warrants the most lenient penalty under the law being a minimum fine in the sum of \$1,000.00 and 6 months disqualification of your driving licence. Alternatively, your counsel has submitted that any term of imprisonment ought to be fully suspended and has referenced the case of *State v Apted High Court Review Case HAR 002 of 2015 (11 September 2015)* wherein at the very first instance the Accused had pleaded guilty to the offences charged for and was subsequently granted a fully suspended sentence considering his special circumstances with a total fine of \$10,000.00 and disqualification from driving for the remainder of his life.
15. The State submitted the aggravating factors in their submissions as there being a death and your driving falling below the standard of a prudent driver. However, these are factors subsumed in the elements of the offending. Further, State submitted that the lifelong trauma to the deceased’s family and friends as an aggravating factor, however, there was no evidence and/or impact statements tendered to highlight this.
16. I find that the aggravating factors are that from the impact between your vehicle and the deceased’s motorcycle, the deceased had been thrown over your vehicle and landed about 13 meters away from the point of impact. This shows that the magnitude of the accident was quite horrific. Further, from the Post-Mortem Report, the deceased was only 30 years at the time of his demise – his life was taken away prematurely due to your highly negligible act.

Sentence

17. Considering the objective seriousness, I take a starting point of 24 months imprisonment. I will then add 20 months for the aggravating factors making it a total of 44 months imprisonment.
18. For your mitigating circumstances being that you are 75 years with no prior convictions being criminal and/or traffic related, I will deduct 12 months. For the administrative delay in having your matter concluded within a reasonable period, I will deduct a further 8 months leaving you with a balance of 24 months imprisonment.

19. 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.
20. However, the Court does not find that this is a case where a fully suspended sentence is warranted given the sentencing purpose and because a life has been lost due your highly negligible act which was not due to a brief error of judgment as submitted. Rather, considering your advanced age with your previous good character and your chances of rehabilitation, a partly suspended sentence is warranted. You are required to serve 4 months with immediate effect and the remaining 20 months will be suspended for a period of 4 years.
21. If you commit any crime during the 4 years, you are liable to be charged and prosecuted for an offending pursuant to section 28 of the Sentencing and Penalties Act.
22. Further, it is mandatory for the Court to disqualify you from driving or holding or obtaining a driving licence as prescribed this offence. In the case of **State v Prasad** [2003] FJHC 146; HAA0038J.2003S (16 October 2003) Her Ladyship Justice Shameem (as she then was) 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/drunk drivers.
 - iv. Good character.
 - v. Serious hardships to the family.
 - vi. Driving providing the source of livelihood for the offender.
23. Considering the factors outlined in **Prasad** [supra] with the following facts in your matter:
- i. the driving standard shown by you in this offending was highly negligible and could have been easily avoided had you not crossed into the oncoming lane before reaching the Ba Industries entrance;
 - ii. you have no previous convictions for traffic offences; and
 - iii. your earning ability is not tied to you holding a driving licence
- the Court finds that the appropriate length of your disqualification ought to be for a period of 36 months or 3 years effective from the date of your release from Prison.
24. Any party aggrieved with this decision has 28 days to appeal to the High Court.



N. Mishra
Resident Magistrate