

IN THE CENTRAL MAGISTRATE COURT
IN THE SOLOMON ISLANDS



Criminal Case No. 371 of 2022

In the Criminal Jurisdiction

BETWEEN: REGINA

AND: KADIMAEEL KWAIFI

Before: Michael Fagani

Mr. Tei. M for Prosecution

Defendant self-represented

Date of sentencing and mitigation: 30th of August 2022

Date of sentence: 30th of August 2022

SENTENCE

1. The defendant Mr. Kadimael Kwaifi is charged with one count of using unlicensed motor vehicle and driving uninsured motor vehicle and upon being arraigned, he had entered a guilty plea to both offences. I now enter conviction against the defendant and this is my ruling.
2. The facts before me shows that on the 15th of August 2022 between 1200hr to 1300hrs, the Traffic Operation Team did a mount check-up along the Kukum High way road at Panatina. During the check-up, PC Namokira checked a motor vehicle to wit a sprinter short boot registration No: T2475 at the check point and found out that the vehicle licence display on the front screen was expired. The defendant then was escorted to MID for further dealings. At the MID, police checked the JIMS system and confirm that the vehicle was expired. The defendant was then arrested and charged with one count of using unlicensed motor vehicle contrary to section 7(1) of the Traffic Act [Cap 131] and driving uninsured motor vehicle contrary to section 8(1)(2)(b) of the Motor Vehicle (Third Party Insurance) Act [CAP 83].
3. The maximum penalty for using unlicensed motor vehicle is a fine of \$5,000.00- or 6-months imprisonment or both such fine or such imprisonment pursuant to the *Penalties Miscellaneous Amendment Act 2009*¹. The maximum penalty for driving uninsured motor vehicle contrary to section 8(1)(2)(b) of the Motor Vehicle (Third Party Insurance) Act [CAP83] is a fine of \$150- or 4-months imprisonment or to both such fine and such imprisonment.
4. It is trite law that the maximum penalty is reserve for worst type of offending and each case must be dealt with its own set of facts.
5. The aggravating factors can be seen in this case is as follows:

¹ Penalties Miscellaneous Amendment Act 2009.

- 5.1 The maximum penalty of the offence. There is a huge increase of the offence of using unlicensed motor vehicle from \$500 to \$5,000 fine in 2009 under the *Penalties Miscellaneous Amendment Act*. This speaks for itself that this offence is serious under the law once committed.
- 5.2 No care attitude towards the law. The defendant knew that his vehicle was expired but still drive it on the public road. This is clearly showing no care attitude towards the law.
6. In our jurisdiction, the offence of using unlicensed motor vehicle and driving uninsured motor vehicle range from good behaviour bond, fine or imprisonment depending on the circumstances of the case.
7. Having carefully considered the aggravating factors and the circumstances surrounding this case, the Court is of the view that the appropriate starting point for this case is as follows:
- 7.1 Count 1: Using unlicensed motor vehicle - a fine of \$700.00**
- 7.2 Count 2: Driving uninsured motor vehicle - a fine of \$100.00**
8. For mitigating factors, the Court take into account the following mitigating factors. The defendant entered an early guilty plea at the first place. He is a first-time offender. The defendant's personal circumstance that he is married with 3 children and he is the only sole breadwinner. All the mitigating factors will be taken into account in this sentence.
9. In terms of sentencing consideration, I will deduct \$200.00 from the starting point of count 1. This is to reflect the 25% discount stated in the case of *Qoloni*². Therefore, the resulting sentence is as follows:
- 9.1 Count 1: Using unlicensed motor vehicle – a fine of \$500.**
- 9.2 Count 2: Driving uninsured motor vehicle – a fine of \$100.**
10. The Court believe that this sentence should deter the defendant from committing the offence again in the future. Not only that, but send out message to the public to any likeminded person who thought of committing such an offence to stop.
11. Thus, having weighed the circumstances and entirety of this matter, I now order as follows:

ORDER

- (1) I convict the defendant on one count of using unlicensed motor vehicle contrary to section 7(1) of the Traffic Act [Cap 131] and driving uninsured motor contrary to section 8(1) of the Motor Vehicle (Third Party Insurance) Act;
- (2) Imposed a fine of \$500 for count 1 and a fine of \$100 for count 2;
- (3) Ordered a total fine of \$600-00 to be paid by 13th of August 2022. In default, 20 days imprisonment;
- (4) 14 days right of appeal;
- (5) Order Accordingly.

Dated this 30th day of August 2022.

THE COURT

MICHAEL FAGANI
Magistrate

² *Qoloni v Regina* [2005] SBHC 73; HCSI-CRC 076 of 2005 (21 June 2005).