IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

APPEAL CASE NO. 6/87

BETWEEN : PHILEMON ISMAEL
(Appellant)

AND : PUBLIC PROSECUTOR
(Respondent)

Mr Kalkot Matas Kelekele for Appellant.
Public Prosecutor for Respondent.

JUDGMENT

On the 15th June 1987, the Appellant pleaded guilty to driving whilst under the influence of alcohol and driving without insurance before the learned Chief Justice sitting as a Magistrate.

He was fined 50,000VT or 4 months imprisonment on the first count and 30,000VT or 4 months imprisonment on the second. The total fines were ordered to be paid in two consecutive monthly instalments of 40,000VT. No order of disqualification was made.

The Appellant appeals against those sentences on two grounds:-

1. That the sentence was manifestly excessive in that the Court failed to take proper account of the Appellant's past good record.

2. That the terms of the payment of the fine were manifestly harsh in that the Court failed to take proper account of the Appellant's earning capacity.

The facts showed little to distinguish this from many similar cases. The Appellant was seen to be driving along the middle of the road and, when followed and stopped by the police, was found to be under the influence of alcohol.

He told the police that he had two boxes of wine, presumably with the friends with whom he was later stopped, and then drove. He agreed with the learned Chief Justice that he would not have known in those circumstances what he was doing.

He had one previous conviction for drunk and incapable for which he was fined only 5 months before the driving in this case.

When an appellate Court considers the record of the lower Court in a case such as this, it is important it should bear in mind that the trial Magistrate may well have more information before him than appears in the record and may also have formed a clear opinion of the attitude of the man from his appearance in Court. It would appear that this must be such a case because the sentence imposed was well above the general level of penalty imposed in the Magistrates

.../2

Courts for this type of offence.

From the record, there were factors which would make this a serious case. Drunk driving too often appears before the Courts and must be regarded as a highly irresponsible and dangerous act. This Appellant made that even worse by the extremely large amount of alcohol consumed and by the fact that, should an accident have occurred, he was uninsured. That in itself would entitle the Court to look to the upper range of penalties. Here, the Appellant had also, only a few months before, appeared before the Courts for an offence involving alcohol and appears to have learned nothing from that.

Thus, I accept this was a serious case. Having reached that conclusion, the Court must decide the appropriate penalty for the offender involved. It appears, from the record and from the note of the learned Public Prosecutor, that no enquiry was made as to the means of the Appellant before the large fines were imposed and the order of payment by instalments was made.

Had that enquiry been made, the Court would have discovered that the Appellant has a monthly income of 23,000VT from his employment as a driver, he lives with a woman who does not work and they have a child under medical treatment.

I feel those facts make a total fine of 80,000VT manifestly excessive in the circumstances of this case and the terms for payment equally harsh.

In all the circumstances, I feel the gravity of this offence would be adequately marked by a much lower fine.

The appeal is allowed, the fines are quashed and the following fines substituted therefor:-

Count 1 - 25,000VT or 2 months.
Count 2 - 15,000VT or 1 month.

Those fines to be paid at 10,000VT per month commencing at the end of March.

Dated at Vila this 3rd day of March, 1988.

Gordon Ward

Gordon Ward
Judge of the Supreme Court

REPUBLIC OF VANUATU
COUR SUPREME COURT

8th March 1988
I have had it pointed out that I have exceeded the maximum default term.
I have therefore amended the ruling to a maximum default period of 90 days.
Mr. [illegible] & Mr. [illegible], who brought it to my attention agree.
[signature]
8-3-88