



by the police-sergeant who appeared for the prosecution, was admitted by the appellant. The appellant attributed the commission of the offence to her forgetfulness. Further, a plea of mitigation was submitted to court by way of an apology and she applied for leniency of court.

4. The District Officer, Rotuma, who was a 2<sup>nd</sup> class Magistrate, found that the appellant was a first offender and that she had not paid the licence fee or the wheel-tax for three months. There is no complaint about these conclusions by the learned Magistrate. The learned Magistrate ruled that:

*'I have taken into consideration the high rate of traffic offences committed in Fiji and Rotuma and that you also failed to pay your licence for quite a while. With your role in the village, people will learn from you and that you should know your responsibilities as the owner of a motor vehicle.'*

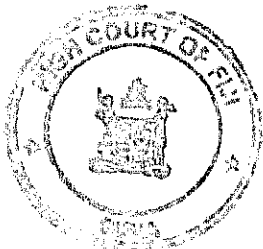
5. In sentencing remarks, the learned Magistrate said:

*'I am giving you a fine of \$500.00 in accordance with the Land Transport Authority Act. 35 of 1998 contrary to Section 49(3) and 87. 2 Demerit points also will be deducted from your driving licence. Failure to do the above will activate a 3 month community service within the Government Station.'*

6. At the hearing before me, the appellant submitted that the imposition of \$ 500 and 2 de-merit points on her driving licence were too harsh and disproportionate in the circumstances of the case. It was also submitted that the Magistrate, being a 2<sup>nd</sup> class magistrate, did not

have jurisdiction to impose \$500 as a fine; and, the maximum fine that could have been imposed was only \$200.

7. Learned Counsel, appearing for the State conceded that the sentencing Magistrate did not have jurisdiction to impose the fine of \$ 500; and, the maximum fine, that could have been imposed, was only \$ 200. Learned counsel er submitted that the appellant being a first offender, further leniency should have been extended to the appellant. Moreover, the learned State Counsel relied on '*Vilimone vs State*' [2008]FJHC 12; HAA 131-132/2007 and submitted that the learned Magistrate has not accorded due concession to the early guilty plea of the appellant. She submitted that an early guilty plea made the appellant entitled to the reduction of the sentence by one third of the maximum punishment. She submitted that, having taken into account all mitigatory factors, a further reduction of the fine by \$ 50 and de-merit points by one, would be an appropriate sentence.
8. I accept these submissions and rule that there is merit in the appeal in the above circumstances.
9. I set aside the fine of \$ 500 and substitute in its place a sum of \$ 150 as the fine and impose only one de-merit point on the licence of the appellant.
10. Whilst agreeing with the remarks made by the learned Magistrate concerning the appellant, as quoted in paragraph 4, I allow the appeal.
11. The Appeal is allowed and orders are accordingly made to the extent as set-out above.



*Priyantha Nawana*  
**Priyantha Nawana**  
**Puisne Judge**

**02/07/2010**