

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

*Traffic Case No. 13/2020*

**BETWEEN: STATE**

**PROSECUTION**

**AND: DIPAK DIPESH NAND**

**ACCUSED**

**Counsel:** Sergeant 4971 Veni Vunaki for Police Prosecution  
Ms. A. Kumar for the Accused

**Date of Hearing:** 23 October 2025

**Date of Judgment:** 29 January 2026

**JUDGMENT**

**Introduction**

1. Mr. Dipak Dipesh Nand ("the Accused") was issued with a Traffic Infringement Notice ('TIN') being TIN No. 3923716 on 25 March 2020 for the offence of Exceeding Speed Limit.
2. On 23 April 2020, the Accused filed a Notice of Disputed TIN disputing the TIN issued against him.
3. The matter was subsequently fixed for Trial on 23 October 2025. On the date of Trial, Prosecution amended the charging section of the offence. The particulars of the offence are as follows:

*Statement of Offence*

***Exceeding Speed Limit:*** *Contrary to Regulation 24(1)(b)(4)(c) and 87 of the Land Transport (Traffic) Regulation 2000.*

*Particulars of Offence*

***Dipak Dipesh Nand*** *on the 25<sup>th</sup> day of March 2020 at Ba in the Western Division drove a motor vehicle registration no. HL 096 on the Kings Road, Yalalevu at a speed of 93km/hr such speed being in excess of the maximum speed limit namely 60km/hr being 33km/hr.*

4. The Accused pleaded Not Guilty and thereafter Prosecution called 1 witness and then closed its case. The Court found that there was a case to answer and then explained to the Accused the procedure under section 179 of the Criminal Procedure Act. It was also explained to him that he had a right to remain silent. The Court was informed that the Accused would remain silent and not call any witnesses.
5. Prosecution informed the Court that they would rely on the Court Record while the counsel for the Accused sought time to file Closing Submissions. Closing Submissions were subsequently filed by the counsel for the Accused on 21 November 2025.

6. Having read the submissions and considered the evidence presented by Prosecution, I now pronounce my Judgment.

#### Burden of Proof

7. It is imperative to highlight that as a matter of law, the onus or burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no burden on an accused to prove his or her innocence as an accused is presumed to be innocent until proven guilty.
8. It is for the prosecution to prove the accused's guilt beyond a reasonable doubt. If there is doubt, so that the court is not sure of the accused's guilt, or if there be any hesitation in the court's mind on any of the ingredients or on the evidence led by prosecution, the accused must be found not guilty of the charges and accordingly acquitted.

#### Summary of Evidence

9. On 25 March 2020 PC 6515 Rajneel Karan ('PC Rajneel') with PC Pritesh had been on nightshift doing radar operation along Kings Road, Yalalevu. He stated that PC Pritesh had been doing the radar operation and that they had stopped the Accused's vehicle as it was travelling at 93km whilst the speed limit in the area was 60km. He explained that a TIN with a \$60.00 fine was subsequently issued. The TIN being TIN Number 3923716 was issued to the Accused who had been driving HL 096 and was tendered as 'PEX1'.

#### Evaluation of Evidence

10. It is important to note that the Accused chose to remain silent and not call any witnesses, the Court is mindful that no adverse inference can be made against the Accused in this regard.
11. The Court will now need to evaluate the evidence by Prosecution. The evidence presented will be evaluated to determine the testimonial trustworthiness of the evidence which will be done by evaluating the credibility – the correctness or veracity of the evidence and the reliability of evidence – the accuracy of the evidence - vide *State v Prasad Criminal Case No. HAC 72 of 2021 (20 June 2024)*. In doing this, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (vide *State v Moroci Criminal Case No. HAC 161 of 2023 (26 April 2024)*).
12. For a proper analysis of the evidence, it is imperative for the Court to turn its mind to the elements for Exceeding Speed Limit, which are:
  - i. the accused
  - ii. drove a motor vehicle
  - iii. on a public street
  - iv. outside a city or town at a speed exceeding 80km/hr
  - v. which exceeded the speed limit more than 30km/hr.
13. From the outset, it is evident that there is no dispute to the Accused driving his motor vehicle HL 096 on 25 March 2020 along Kings Road, Yalalevu and that he had been issued with a TIN being TIN Number 3923716.

14. The issue that needs to be determined is whether the radar used during the radar operation was legislated as required under law.
15. As per PC Rajneel, he testified that the Accused's vehicle was stopped as it had been travelling at 93km whilst the speed limit in the area was 60km.
16. In cross examination, PC Rajneel confirmed that PC Pritesh had checked and tested if the radar was operational when he had received it but he also explained that the radar gun was self-calibrated. He further explained that there was no training with respect to the use of the radar gun and that the operation of the radar is in the manual. When questioned to identify the regulation that allows Police Officers to use the radar, PC Rajneel stated that section 79 of the Land Transport Act allowed for the same. When questioned if there was any regulation with respect to using the radar, PC Rajneel replied that he was not aware.
17. The counsel for the Accused submits that aside from the radar not being prescribed as stated in section 79 of the Land Transport Act, Prosecution has also failed to provide a Certificate of Calibration with respect to the radar, which creates a further doubt as to the terms of its functionality and accuracy of reading.
18. The counsel for the Accused invites the Court to consider the decision of Resident Magistrate Ms. Nasedra in the case of **State v Dayal** Traffic Case No. 4/20 (13 December 2023) wherein the Accused was charged for the same offence and subsequently acquitted on the basis that the speed measuring device used namely the radar was not prescribed by law which accordingly created a reasonable doubt in terms of the accuracy of the results of the speed of the Accused therein.
19. Turning to section 79 of the Land Transport Act, the Court will reproduce the same for convenience purposes. Section 79 states:

*Use of equipment*

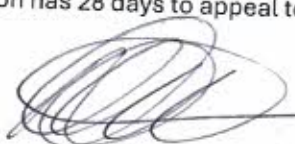
*79 A police officer or authorised officer, in the performance of a duty under this Act, may use any equipment prescribed by regulations for the enforcement of the provisions of this Act.*

20. Now turning to the offence herein. The offence which the Accused stands charged for is encompassed within Part 2 Division 5 of the Land Transport (Traffic) Regulation 2000 which has a heading of 'Speed'. Within this Division there are 3 regulations being regulations 24, 25 and 26. Regulation 24 titled 'Speeding' is the offence creating regulation whilst regulation 25 is titled 'Exemption from speed limits which exempts drivers of certain vehicles from regulation 24. Regulation 26 titled 'Detectors of speed measuring devices' is the last regulation within the Division. Regulation 26 prohibits the use of devices which can detect or interfere with electromagnetic radiations from a speed measuring device. Thus, the equipment used to detect speed as per the regulation is known as a speed measuring device. These regulations do not prescribe the speed measuring device as required in section 79 of the Land Transport Act. Further, regulation 26 prohibits the public using detectors of speed measuring devices.
21. Upon perusal of the principal Act as well as the subsidiary legislation, the Court was unable to find any such regulation which prescribed the usage of speed measuring devices for the purposes of measuring or detecting speed.

22. Admittedly, the decision of Resident Magistrate Ms. Nasedra is merely a persuasive decision and is not binding on this Court. However, this Court is in agreement with the decision in *Dayal* [supra].
23. It is evident that there is no prescribed regulation with respect to the speed measuring device used in the matter herein. Moreover, as there is no prescribed regulation with respect to speed measuring device, there are no regulations, provisions, policies or standards with respect to facilitating proof of accuracy of results and the compliance with the operation, testing and calibration requirements of speed measuring devices.
24. The Court is mindful of the *dicta* by the President of Court of Appeal Justice Mataitoga in the case of *Bale v State Criminal Appeal No. AAU 0040/24 & AAU 0044/24 (10 April 2025)* with respect to the accreditation of laboratories which are '*critically important in ensuring the competency and reliability of results of investigation it produces*' and that '*the high standards of beyond reasonable doubt will be difficult to meet without and an (sic) independent verification process that is certified by the government*'.
25. In absence of regulation to allow the proper usage of speed measuring devices, the Court finds that the result obtained in the matter herein that the Accused was travelling at a speed of 93km/hr in an area where the speed limit is 60km/hr cannot be considered credible and reliable beyond a reasonable doubt.
26. Thus, considering the evidence of Prosecution in totality, the Court find that Prosecution has failed to discharge its burden beyond a reasonable doubt that the Accused drove his motor vehicle with registration number HL 096 on the Kings Road, Yalalevu at a speed of 93km/hr with such speed being in excess of 33km/hr in an area with a maximum speed limit of 60km/hr.

#### **Determination**

27. I find that Prosecution has failed to discharge its burden in proving the offence of Exceeding Speed Limit against the Accused beyond a reasonable doubt
28. I, therefore, find the Accused, Dipak Dipesh Nand, not guilty for Exceeding Speed Limit and acquit him forthwith.
29. I, further order pursuant to regulation 7 (1C) of the Land Transport (Traffic Infringement Notice) Regulations 2017 that the Land Transport Authority must refund the payment of any fixed penalty and/or late payment fee paid by the Accused with respect to TIN Number 3923716 and that any entry with respect to TIN Number 3923716 be retracted from the Accused's record with the Land Transport Authority.
30. Any party aggrieved with this decision has 28 days to appeal to the High Court.

  
N. Mishra  
Resident Magistrate

