

Between:

THE DIRECTOR OF PUBLIC PROSECUTIONS

and

MOSESE KOLINAITINI

Mr. S. Chandra for the Appellant  
Respondent in Person

JUDGMENT

On the 14th May 1980 the respondent was on his own plea convicted of the following offences:

" FIRST COUNT

Statement of Offence

UNLAWFUL USE OF MOTOR VEHICLE: contrary to Section 325 of the Penal Code.

Particulars of Offence

MOSESE KOLINAITINI, on the 22nd day of December, 1979 at Navua in the Central Division, unlawfully and without colour of right, but not as to be guilty of stealing, converted to his own use, drove a motor vehicle, the property of WALLACE RAM s/o Raja Ram.

SECOND COUNT

Statement of Offence

DRIVING MOTOR VEHICLE WITHOUT A DRIVING LICENCE: contrary to Section 23(1) and 85 of Traffic Ordinance.

Particulars of Offence

MOSESE KOLINAITINI, on the 22nd day of December, 1979 at Navua in the Central Division, drove a motor vehicle on Queens Road at Wainiverau without being the holder of a driving licence in respect of the said vehicle.

THIRD COUNTStatement of Offence

DRIVING MOTOR VEHICLE IN CONTRAVENTION OF THIRD PARTY: contrary to Section 4(1)(2) of the Motor Vehicle (Third Party Insurance) Ordinance.

Particulars of Offence

MOSESE KOLINAITINI, on the 22nd day of December, 1979 at Navua in the Central Division, drove a motor vehicle on Queens Road at Wainiverau when there was not in force in relation to the use of the said motor vehicle a Third Party Policy Risk, as complies with the provisions of this Ordinance."

Upon his convictions as aforesaid the respondent was sentenced respectively to pay a fine of \$10 or five days' imprisonment on the first count, \$25 or fifteen days' imprisonment on the second count and \$40 or thirty days' imprisonment on the third count in addition to which the respondent was disqualified from holding or obtaining a driving licence for a period of three months from the date of conviction.

Under section 4(2) of the Motor Vehicles (Third Party Insurance) Ordinance where a conviction is entered pursuant to section 4(1) of the said Ordinance a disqualification from holding or obtaining a driving licence is mandatory for a period of at least twelve months unless there are special reasons to do otherwise.

The respondent did not give evidence on oath although this is necessary where special reasons are claimed by the respondent as to why the Court should not order the respondent to be disqualified from holding a driving licence for a period of twelve months or more. In my opinion in failing to receive evidence on oath on the matter the Court below acted without jurisdiction in purporting to make an order of disqualification against respondent for a period of less than twelve months, namely in this case three months.

The appeal will therefore be allowed. The order of

disqualification for a period of three months is set aside and in lieu thereof I substitute an order of disqualification for a period of twelve months.



(T.U. Tuivaga)  
Chief Justice

Suva,

31st October 1980.