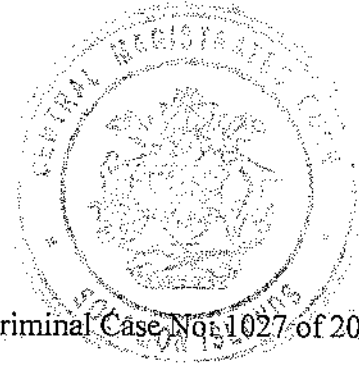


**IN THE CENTRAL MAGISTRATES COURT
IN THE SOLOMON ISLANDS**



Criminal Case No. 1027 of 2020

In the Criminal Jurisdiction

BETWEEN: REGINA

V

AND: CHARLES GWATA (FIRST DEFENDANT)

TONY TONISI BAURA (SECOND DEFENDANT)

Ms Florence Hiroshachi for Police Prosecutions

Defendants self-represented

Date of sentencing submissions: 3rd of November 2020

Date of sentence: 4th of November 2020

SENTENCE

1. Mr Charles Gwata and Mr Tony Tonisi Baura, you are both charged for traffic related offences.
2. I read your respective charges to the both of you, on the 3rd of November 2020. Following this, I recorded guilty pleas for each of the counts against you. The summary of facts was tendered and read to you in pidgin, to which you agreed. Since you are both unrepresented, I gave you both the opportunity to give your side of the story. Hence, having heard the summary of facts and the stories given on your part, I then entered conviction against the both of you.
3. For purposes of this sentence, I will outline the counts contained in each of your charges, hence, they are as follows:

Gwata:

- (a) Count 1: careless and inconsiderate driving, contrary to section 40 (1) of the Road Transport Act.
- (b) Count 2: Presence of alcohol in a person's blood, contrary to section 43A (1) (a) of the Road Transport Act (as amended by the Police and Transport Legislation) (Amendment) (Alcohol Testing) Act 2016.
- (c) Count 3: Motor vehicle to be licensed, contrary to section 7 (1) of the Road Transport Act.

(d) Count 4: drivers to be licensed, contrary to section 20 (1) of the Road Transport Act.

Baura:

(a) Count 1: permitting unlicensed motor vehicle, contrary to 7 (1) of the Road Transport Act.

(b) Count 2: permitting unlicensed driver, contrary to section 20 (2) of the Road Transport Act.

Maximum penalties

4. The maximum penalties for each of these offences are as follows:

- (i) Careless and inconsiderate driving: 5000 penalty units¹ or six months imprisonment or both²;
- (ii) Presence of alcohol in a person's blood: 10,000 penalty units or twelve months imprisonment or both³;
- (iii) Motor vehicle to be licensed: 5000 penalty units⁴ or six months imprisonment or both⁵;
- (iv) Drivers to be licensed: 5000 penalty units⁶ or six months imprisonment or both⁷;
- (v) Permitting unlicensed motor vehicle: 5000 penalty units⁸ or six months imprisonment or both⁹; and
- (vi) Permitting unlicensed driver : 5000 penalty units or six months imprisonment or both

5. It is obvious to say that the more serious an offence is, the more higher its maximum penalty. Parliament, in the year 2009 and 2016, has made some drastic changes to the previous maximum penalties for all of these offences. While maximum penalties, in my view, are imposed to warn people from doing unlawful actions, people continue to disregard our traffic laws and regulations. The prevalence of traffic offences is an indication of how the courts are not able to fully disseminate the message of deterrence to an individual offender and the public at large. Further to this, it also shows the urgent need for tougher approaches to be taken by our Police officers in this regard.

6. The continuous ignorance of members of the public towards our traffic laws and regulations needs to be stopped. This all comes down to the need to restructure individual mindsets and attitudes. The fact that people continue to commit these offences with minimal fear, is something that needs to be addressed without further delay.

Facts

7. The facts pertinent to the charges at hand can be summarised as follows:

- (i) On the 5th of October 2020, you Mr Charles Gwata, was driving a Pearl Toyota Corolla along the road leading to Vavaya Ridge. The registration number of the

¹ Penalties and Miscellaneous Amendment Act 2009.

² Section 40 (1) of the Road Transport Act.

³ 43A (1) (a) of the Road Transport Act (as amended by the Police and Transport Legislation) (Amendment) (Alcohol Testing) Act 2016.

⁴ Above n1.

⁵ Section 7 (1) of the Road Transport Act.

⁶ Above n1.

⁷ Section 20 (1) of the Road Transport Act.

⁸ Above n1.

⁹ Section 20 (2) of the Road Transport Act.

said vehicle is, MB-9707. The time was around 17:30 hours (5:30 pm), and as you were driving, the vehicle could not climb the hill, as a result, the vehicle reversed and eventually ended up ditching in the drain.

- (ii) Police then attended to the scene and escorted you to the Central Police Station. At the Central Police Station, you were tested for presence of alcohol in your blood. Further to that, investigations were also carried out in relation to the vehicle license and your driver's license. With respect to the tests for presence of alcohol, a reading of 0.165g/100ml was shown, followed by another reading of 0.147g/m100ml.
- (iii) Further to this, it was found that the vehicle was registered to one Tony Tonisi Baura, and that the vehicle licence had already expired on the 30th of September 2020. As for your driving license, investigations reveal that there is no record of you owing a driving license. Hence, you were both charged for the offences at hand.

Analysis

8. I will first of all address the counts regarding you Mr Gwata before moving on to Mr Baura.
9. In terms of the offence of careless driving, section 40 (1) of the Road transport Act states: *"If a person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road, he shall be guilty of an offence and liable to a fine of five hundred dollars or to imprisonment for six months¹⁰".*
10. The key words in this section are: **without due care and attention, or, without unreasonable consideration**. These words are not defined under section 2 of the Road Transport Act, as well as the Interpretations and General Provisions Act, however, from previous cases, one would note that these words relate significantly to the manner of driving of an individual driver, and is not necessarily confined to when and where a traffic accident occurs.
11. The explanation given by the both of you was that, the vehicle could not travel uphill, hence, it ended up reversing and eventually ditched into the drain. The reason why the vehicle could not travel uphill, was because there was not enough ambient fluid. It was quite fortunate that no accidents occurred, since the time of offending is one where the road in question is usually packed by vehicles going up to Vavaya Ridge and Stone Field, and those returning via the same route, as well as those who take on the short route going past the Advanced Technologies and the ITA Hardware.
12. The question is, if you knew that the ambient fluid was low, why would you want to risk going up the hill, as opposed to travelling along the main road? Your decision making was so poor, so to say that there was a high chance of causing an accident that could have incurred damages or even serious injuries to people.
13. Moving on to the offence of presence of alcohol in a person's blood, you stated that you knew it was wrong for you to drive the vehicle when alcohol is present in your blood, but you had to drive to return the vehicle home. First and foremost, you have made a blatant decision to drive the said vehicle when you knew what you were doing was wrong. Second,

¹⁰ Above n2.

there was no sense of emergency that justifies why you had to drive when you knew you had been drinking alcohol.

14. Your decision alone, has posed threat to the lives of other road users, including yourself. The results shown from the breath test conducted on you are way above the prescribed level of 0.050g/100ml¹¹. I would describe you as a very ignorant and arrogant man. You obviously do not respect our traffic laws and regulations, let alone, the lives of other road users. It is due to such kind of ignorance, arrogance and poor decision making, that our legislators have come to pass laws such as the one at breach.
15. As a Solomon Islander, I know you are fully aware that alcohol is one of the prime factors behind most of our traffic accidents. Currently there people serving time in prison for driving whilst alcohol is present in their blood, and ending up in accidents that claim the lives of innocent people. The case of **Cheffers v Regina**, clearly highlights the reason why drivers should not engage in this kind of offending. In his words, Daly CJ, as he was then, stated and I quote:
"Driving whilst under the influence of liquor is an extremely serious offence. Anyone who drives in such a state has deliberately than a course of action that puts his own and far more seriously, other people's lives at risk. However carefully he may attempt to drive, his reactions if confronted with an emergency will not be as effective as when he has taken no alcohol"¹².
16. I hope you put on your thinking cap and never engage in this offending ever again.
17. In terms of the offence of vehicle to be licensed, Mr Baura, stated that you were supposed to go and pay for the vehicle inspection fee at the Ministry of Infrastructure and Development (MID). He said that he did not want to apply for a permit from the Kukum Traffic Department given the long process and high chances of following a queue. These reasons put together, do not add up. According to him, he had sent you in the morning and expects you to be at MID. On the other hand, you stated that you had been drinking before attempting to return the vehicle. Further to this, the incident occurred at about 5:30 pm, obviously, you were not returning from MID, but was returning from where you had been consuming alcohol. You decided to follow your own program and eventually ended up in a far worse situation. With this, I do not fully accept the explanations given and wish to emphasise on the responsibility that was neglected in this regard.
18. In relation to the count of drivers to be licensed, facts shows that there is no record of you ever owning a driver's license. According to you, your license had expired, but if this was true, then the expiry date should have been stated in the facts tendered by Prosecutions. Ms Hiroshachi states that unless your driver's license was under a different name then what you stated is not true. Mr Baura had stated that you have been driving the vehicle for over a month, which means that you have been driving without a valid license for some time, and had it not been for the incident leading to your arrest, you would have continued with this ignorant and arrogant act. Your actions clearly shows how you do not have any respect for the law, and others who continue to comply with our traffic laws, in this regard. It is

¹¹ Part a, section 111A, Police and Transport Legislation) (Amendment) (Alcohol Testing) Act 2016.

¹² (Unrep. Criminal Case No. 11 of 1989)

because of people like you, that the courts should take more tougher and strict approaches to address the prevalence of this offence.

19. There are laws regulating our actions, please do yourself a favour and comply with our laws, to avoid such encounters in the future.
20. Moving on to you Mr Baura, I do not fully accept the explanations given on your part. Clearly you have failed to take up the responsibility that a vehicle owner is obliged to carry. You stated that you did not intend to break the law, and that you gave Mr Gwata permission to drive the vehicle to MID for the purpose of paying for the inspection fee. No evidence of this was tendered, hence I would not know if Mr Gwata had indeed gone to MID or not. From the explanation on the part of Mr Gwata and the time of the incident, I am not of the view that the exemptions under section 8 of the Road Transport Act would apply in these circumstances.
21. In terms of permitting an unlicensed driver, you failed to question whether or not Mr Gwata has a valid driver's license. While I understand that renewing a driver's license, or obtaining a driver's license, is the responsibility of an individual driver, you failed miserably in doing your part. According to you, you stated that you did not think things will end this way. I fail to understand why you may not have taken issue about those driving your vehicle, especially if they have a valid driving license, or not. From what has transpired, I would describe you as an irresponsible vehicle owner, one who from now on, should be taking his responsibilities as a vehicle owner seriously.
22. Overall, I would say that this matter is one that had stemmed out from your poor decision makings. I hope you both will take this as a lesson and acknowledge the existence of our laws. Note that our laws are made to protect us, and not to destroy us.
23. This afternoon, I will ensure that whatever sentence I impose on the both of you, should be one that signals the significant need to respect and adhere to our traffic laws and regulations.
24. Prosecutions has referred me to cases previously dealt with by the court. This is to allow for consistency and uniformity on the part of the court¹³. On the other hand, while there is a prevalence in all these offending's and the fact that this is not the first case to come before this court in this regard, no case should be determined based on another case. It will be in the interest of justice that cases be heard and decided based on their own set of facts and circumstances.
25. The purpose of sentences are not only confined to punishing offenders, but also aims to assist the offender to recognise his or her wrongdoings and to turn away from the actions and behaviours that renders him or her to be in conflict with the law. This was the same view taken in the case of **R v ball**, where the court stated, and I quote:
"In deciding the appropriate sentence a Court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the

¹³ CMC-CRC NO: 1297 OF 2015 & 27 OF 2016.

supposition, that if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter the particular criminal from committing a crime again, or induce him to turn from a criminal to an honest life. The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living' as referred to in Anna Langley v R (supra)¹⁴”.

26. In terms of protecting the public interest, this court acknowledges that to do so would mean, disseminating all the existing sentences theories. This includes messages of both specific and general deterrence. The fact that these offending's are prevalent, means stronger and tougher messages of deterrence be sent to both the offender and the general public as a whole. Further to this, is the need for rehabilitation, prevention and retribution.
27. In any given case, it is important that the sentence imposed by the court, should be proportionate to the nature and circumstances of the offence or offences involved.
28. This afternoon, I will give credit for the early guilty pleas entered, the fact that you are both first time offenders, the fact that you have both waived your right to be legally represented, and the personal circumstances on your part. I understand that since March of this year, many of us have been greatly affected with the measure taken to avoid the corona virus from entering our shores. Now that we have recorded a good number of cases, people should be mindful of their actions, and should further note that the corona virus is not and will never be a good excuse to assist them from facing any harsh decision imposed by the courts.
29. Having stated this, I will now move on to identify the aggravating factors, with the seriousness of each offending as the first one. I say that these offences are serious with support from their maximum penalties. Further to that, I also take into account the level of culpability associated to the both of you. Clearly, your presence in court is a reflection of your deliberate and blatant decision making, which in my view, puts the both of you at the upper hand of the seriousness involved.
30. You are both fully grown adults, obviously, you have both acted in a way that does not speak well about the two of you, and moreover, it would be correct to say that you are not showing a good example to those who look up to you. Please refrain from such kind of pure ignorance and arrogance and do what is expected of you.
31. With the circumstances involved, I believe that the appropriate sentence I should impose on the both of you, is that of a fine. As stated in the case of **Joel Likilia & Allen Kokolabu v Regina**, sentencing does not follow a fixed set of mathematical rules, this is because people and facts vary¹⁵. This means that while this court has imposed fines on previous occasions, it should focus primarily on the circumstances involved in any given case to determine the suitable amount. In terms of the fine, default periods must be served separately, hence the need for fines to be imposed consecutively.

¹⁴ [1951] 35 CrAppR 164.

¹⁵ 1998/89] SILR.

32. Hence, with the basic calculations applied to reflect both the mitigating and aggravating factors, as well as the sentencing theories identified earlier, I now order as follows:

ORDERS

(1) Gwata

- (i) For the count of careless and inconsiderate driving, I sentence you to a fine of SBD1300.00, due by the 4th of December 2020, in default, 2 months' imprisonment;**
- (ii) For the count of presence of alcohol in person's blood, I sentence you to a fine of SBD \$2800.00, due by the 4th of December 2020, in default six months imprisonment;**
- (iii) For the offence of vehicles to be licensed, I sentence you to a fine of SBD \$1200.00, due by the 4th of December 2020, in default, 2 months' imprisonment;**
- (iv) For the offence of drivers to be license, I sentence you to SBDS2000.00, due by the 4th of December 2020, in default, 3 months' imprisonment;**
- (v) A total fine of SBD \$ 7300.00, due by the 4th of December 2020, in default 12 months imprisonment;**
- (vi) Section 29 (1) and (8) of the Road Transport Act is invoked for a period of 12 months, starting from this day.**

(2) Baura

- (i) For the count of permitting unlicensed motor vehicle, I sentence you to a fine of SBD \$ 1300.00 due on the 19th November 2020, in default 2 months imprisonment;**
- (ii) For the count of permitting unlicensed driver, I sentence you to a fine SBD \$1900.00 due by the 19th November 2020, in default, 3 months' imprisonment;**
- (iii) A total fine of SBD \$3200.00, due by the 19th November 2020, in default, 6 months' imprisonment.**

- (3) Right of appeal applies to any party that is aggrieved to the conclusions reached, within 14 days from today.**

Dated this 4th day of November 2020.

