

IN THE CENTRAL MAGISTRATES COURT  
OF SOLOMON ISLANDS

*Criminal Jurisdiction*

Criminal Case No. 403 of 2023

REX

v

SELESTINE ANIFAEOLO OGALI



Date of Plea: 7 June 2023

Date of Sentencing Hearing: 12 June 2023

Date of Sentence: 15 June 2023

Prosecutions: *PC John Saugaro (PPD)*

Defendant: *In person*

**SENTENCE**

- 1) Mr Selestine Anifaeolo OGALI, you were charged with one count of *Presence of Alcohol in the person's blood* contravening section 43A(1)(a) of the *Road Transport Act Cap.131* as amended by the *Police and Transport Legislation (Amendment) (Alcohol Testing) Act 2016*.
- 2) You pleaded guilty to this offence on 7 June 2023. I enter conviction on your guilty plea and your admission to the facts submitted by the Prosecutions. You now appear for your Sentence.

**The Charge and Maximum Penalty**

- 3) Section 43A(1)(a) of the *Road Transport Act. Cap 131* creates an offence if alcohol concentration in the blood of the person's driving a motor vehicle is of 50mg or more in 100ml of blood. It expressly states as follows:

*"43A Presence of alcohol in person's blood*

*(1) A person commits an offence if, while there is present in the person's blood a concentration of alcohol of 50milligrams or more in 100 millilitres of blood, the person:*

- (a) drives or is in charge of a motor vehicle; or*
- (b) ..."*

- 4) The prescribed penalty for this offence is as follows:

*(b) if the person is convicted in the Magistrates' Court:*

*(i) for a first offence – 10,000 penalty units or imprisonment for 12 months, or both;*

*(ii) for a second or subsequent offence – 20,000 penalty units or imprisonment for 2 years, or both.*

- 5) The *prescribed level* as defined in s.111A of the Act “means a concentration of 50 milligrams or more of alcohol in 100 millilitres of blood (0.05%)”. This means result of blood alcohol concentration above 0.05% is deemed as an offence committed under s.43A(1)(a) of the said Act.
- 6) The amendment and insertion of this provision in the *Road Transport Act* is a crucial move by the Legislators in our Parliament. It addresses the prevalence of the social issue of *drink-driving* causing risk of accidents not only on public road but to everything adjacent to the public roads.

### **Facts**

- 7) You agreed and accepted the following facts as true account of what happened on 13 May 2023. This court will therefore rely on it in your sentence.
- 8) The facts revealed that between 12:14am and 12:45am on 13 May 2023, you drove a Silver Toyota Corolla, a motor vehicle with registration no. T-2284 along the Mendana Avenue road at Honiara City Council roundabout. MID Traffic Police was conducting vehicle check at that time. You were pulled over by the Police and had a strong smell of alcohol. The Police suspected you were driving under the influence of alcohol, so they did an initial breath test on you. A concentration of 0.236% alcohol was found present in your blood, this was more than the prescribed level of 0.05%.
- 9) You were taken to and kept under observation at the MID Traffic Centre for breath analysis test to be carried out. You were observed for ten minutes before the breath analysis was conducted. Your face was pale, and you had sleepy eyes. A concentration of 0.223% alcohol in your blood resulted after you went through the second breath test. You were arrested for the offence of *Presence of Alcohol in person's blood* contrary to section 43A(1)(a) of the *Road Transport Act*. Your driver's licence, vehicle licence and third-party insurance were valid upon checking. You cooperated well with the police at MID Traffic whilst undergoing the breath test.

### **Allocutus**

- 10) You have asked this court for mercy and apologised by saying sorry for what you had done wrong and promised you will not repeat it.

### **Personal Circumstances and mitigating factors**

#### **11) Family Circumstance:**

- a. You are a 51-year-old married man with five children. Four of your children are still under your care, and you also provide for your daughter who is married. Your wife is employed and you both support your family.

#### **12) Employment and Financial Status:**

- b. You are self-employed as a taxi driver and have been driving taxi for a while now. You earn about \$300 to \$400 per day before any deductions.

- c. You are supported by your wife who is employed by the Solomon Islands Government, who is also committed to loan repayment.
  - d. Both you and your wife are school fee payers for your children.
- 13) **First-time offender**: You are a first-time offender with no record of previous convictions against you. This is the first time in your 51 years as a law-abiding citizen, to have a brush with the law.
- 14) **Cooperation with Police**: Prosecutions submitted, and the facts confirms that you cooperated well with the Police during the arrest.
- 15) **Early guilty plea and remorseful**: You have pleaded guilty at the first reasonable opportunity which really saves the court's time and resources for a trial. Your apology to the court for your wrong doing shows you are remorseful and reflects your acceptance of responsibility for committing this offence.

**Aggravating Features**

- 16) Prosecutor Saugaro submitted several features aggravating in your case to which I agree as follows:
- a. **Risk to road users and bystanders**: I could not agree more that drink-driving is the riskiest act that a driver does. It creates risk to all road users when a drunk driver is behind the wheels. There are other vehicles on the road that you could have collided with or other pedestrians or bystanders. Although no accident happened whilst you were driving under the influence that night, being intoxicated still pose a possible risk of motor vehicle accident at any point.
  - b. **High alcohol concentration of 0.236%**: The level of alcohol concentration in your blood was 0.186% higher than the prescribed level of 0.05%. This is aggravating and the consequences of having such a relatively high concentration of blood alcohol content is impairment on your coordination and capability to drive properly.
  - c. **The incident occurred at night**: This is an expansion on the first aggravating feature, it is even more aggravating because you drove your motor vehicle at night time when it was dark.
  - d. **Prevalence**: There is an increase in the number of drink and drive incidents in this country. The prevalent nature of such offending becomes a feature that this court must consider as aggravating.

**Tariff and starting point**

- 17) The offence of *Presence of Alcohol in the person's blood* that you are charged with carries a maximum penalty of \$10,000.00 or twelve-months imprisonment, or both. The maximum penalty reflects the seriousness of the offence. The Prosecutor submitted that

a fine is appropriate in your case. He further submitted that a sentence range of \$2000 to \$3000 should be considered by this court. To determine the appropriate starting point, I must consider the sentence range in other case authorities that had previously been determined for this offence and weigh the mitigating and aggravating factors present in your case.

- 18) Since its enactment in 2016, the courts have dealt with numerous incidents of this offence and have imposed sentences of fine and/or imprisonment. I am also mindful that for any sentence imposed, each case must turn to its own facts and circumstances. There is no mathematical rule involved in sentencing, as expressed in *R v Simpson*:

*“Sentencing is neither a science nor a mere exercise in creative mathematics. Sentencing is an art ...”<sup>1</sup>*

- 19) In *R v Parsad*<sup>2</sup>, the defendant pleaded guilty to one count of *Presence of Alcohol in the person's blood* contrary to section 43A(1)(a) of the *Road Transport Act*. The court set a starting point of \$4000.00 and deducted a \$1300 to reflect the mitigating factors. The defendant was ordered to pay a resulting **fine of \$2700.00** to be paid a little over a two weeks period, in default a six months imprisonment. The defendant was also disqualified under s.29 of the *Road Transport Act* from holding or obtaining a licence to drive a motor vehicle, for a period of twelve months.

- 20) Similarly, in another 2021 case of *R v Fanasia*<sup>3</sup>, the defendant was charged with one count of *Presence of Alcohol in the person's blood*. He pleaded guilty to the charge and was sentenced to a **fine of \$3000.00**. Like your current case, the defendant in *Fanasia* was pulled over by the Police during a traffic check at Police Station. The blood alcohol concentration initially tested on him was 0.216g/100ml. The second breath test resulted in a 0.213g/100ml of blood alcohol concentration level on the defendant. The court considered his personal circumstances including the mitigating factors like your case.

- 21) The defendant in *R v Soniluvu*<sup>4</sup>, was one of the first defendants to have been charged under the legislation amending the *Road Transport Act* to include the offence of *Presence of Alcohol on the person's blood*. He was charged with one count of this offence and one count of *Careless Driving* contrary to section 40(1) of the *Road Transport Act*. He was sentenced to a **fine of \$4000.00** for the offence of *Presence of Alcohol in person's blood*. In contrast to your case, the defendant was careless in his manner of driving whilst intoxicated and was charged with two different offences. The test result showed a blood alcohol concentration of 0.329%, and the second test showed a result of 0.294% of blood alcohol concentration.

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<sup>1</sup> (2001) 126 A Crim R 525 (NSW CCA)

<sup>2</sup> [2021] SBMC 5

<sup>3</sup> [2021] SBMC 13

<sup>4</sup> [2016] SBMC 25

- 22) The court in *R v Furai*<sup>5</sup> set a starting point of \$5000.00 fine on the defendant who had pleaded guilty to the charge of *Presence of Alcohol in the person's blood*. The defendant was pulled over by the Police during a Police Check operation. The court reduced \$1700.00 from the fine to reflect his early guilty plea and deducted \$1000.00 to reflect the other mitigating factors. The court went on to add \$1200.00 to reflect the aggravating features. The total sentence imposed was a fine of \$5500.00, in default of payment, six months imprisonment.
- 23) The defendant in *R v Marau*<sup>6</sup> was sentenced to \$5000.00 fine, in default six months imprisonment. The defendant was not disqualified from driving because the nature of his job requires him use his vehicle back and forth, hence, he was exempted under "special reasons" expressed in s.29(1) of the *Road Transport Act*. The defendant was a first-time offender and pleaded guilty to the charge. I would like to reiterate what the court in expressed when sentencing the defendant for one count of *Presence of Alcohol in person's blood*.

*"Drunk driving offences is too prevalent in Honiara and even in other parts of our country. Despite the introduction of the breathalyser test, the number of cases for this offence continues to increase at an alarming rate. This, in my view, shows the ignorance of vehicle users to adhere or comply with traffic rules and regulations."*

#### **Discussion on Sentence**

- 24) There is a huge increase in the breach of our traffic laws as shown in the number of cases being adjudicated by courts. I see it appropriate to say this at this stage, drink-driving is becoming normal to certain drivers. The Parliament as lawmakers have tried their best to address the prevalent nature of these kinds of offending by amending the laws with tougher penalties. However, there is still a grave ignorance of the laws that regulates traffic, hence, such callous attitude and lack of respect for the traffic laws will not be tolerated by this court. The level of disobedience to awareness about drink driving is common not only in Honiara but other parts of the country. The traffic police have been reminding drivers time and time again on the risks of driving under the influence of alcohol.
- 25) Accordingly, the sentence that I will impose must serve as deterrence on you, that if you ever think of repeating the same mistake in the future, you will be punished for it and the court will not tolerate your ignorance of the law. It also serves as a general warning for other motor vehicle drivers who are currently doing such practice or are planning to do such. You should learn from your mistake and think about the effects it bears to your family and the stress that you will go through.
- 26) You have a family to look after and children who look up to you as a father and role model. Your actions in driving your vehicle whilst being under the influence of alcohol

<sup>5</sup> [2020] SBMC 20

<sup>6</sup> [2017] SBMC 7

- 26) You have a family to look after and children who look up to you as a father and role model. Your actions in driving your vehicle whilst being under the influence of alcohol is not a reflection of a good role model to your children. You should have thought of your family and the impacts of your actions will have on them before committing the offence.
- 27) These are not the only cases that have dealt with the offence to which you have been charged. I consider the above cases because of the similar facts in your case. I consider your case akin to *R v Fanasja*. The sentence of fine imposed in these cases ranged from \$2700.00 to \$5000.00 fine for the offence of Presence of Alcohol in the person's blood.
- 28) In considering the circumstances in its entirety, I fix a starting point of \$4000 as fitting in your case. I give credit for your early guilty plea and impose a 25% discount, which is a deduction of \$1000.00. I am inclined to further deduct \$500.00 fine for being a first-time offender and family circumstance. Furthermore, I consider the aggravating features and add another \$500.00 to reflect the prevalence of such offending, bearing in mind the continuous ignorance by drivers on awareness discouraging drink-driving.
- 29) You are hereby sentenced to pay a total fine of \$3000.00 within the next thirty days, which is due on 15 July 2023. In default, six months imprisonment.
- 30) I note that you have been a taxi driver for over twenty years and rely on the daily takings from your taxi to support your family and your survival. A disqualification from licence to drive under s.29(1) of the *Road Transport Act* is troublesome on your family's survival, especially your children. Your daily job as running a taxi service will assist you in your expenses. For this reason, I consider your case to fall within the domains of "special reasons" and will not invoke s.29(1) of the *Act* on you.

**Orders:**

- 1) Defendant, **Selestine Anifaelo Ogali** is convicted on one count of *Presence of Alcohol in the Person's blood* contrary to section 43A(1)(a) of the *Road Transport Act*.
- 2) The defendant is sentenced to a total fine of \$3000.00 to be paid within the next 30 days, which is due on 15 July 2023, in default, six months imprisonment.
- 3) Right of appeal applies to any aggrieved party within 14 days from today.
- 4) Order Accordingly.

Dated 15 June 2023



**Elma Veenah Rizzu Hilly – Principal Magistrate**