

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
*(Criminal Appellate Jurisdiction)*

**Criminal Appeal**  
**Case No. 20/2489 SC/CRAC**

**BETWEEN: Collin Attison**  
Appellant

**AND: Public Prosecutor**  
Respondent

*Date of Hearing:* 2 December 2020  
*Before:* Justice V.M. Trief  
*In Attendance:* Appellant – Mrs P.K. Malites, holding papers for Ms L. Bakokoto  
Respondent – Ms M. Taiki  
*Date of Decision:* 7 December 2020

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**JUDGMENT**

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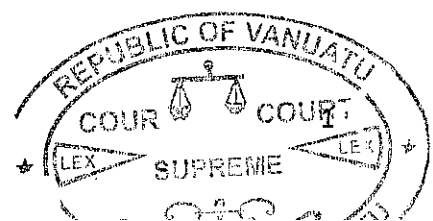
**A. Introduction**

1. The Appellant Collin Attison pleaded guilty to one charge of driving under the influence of alcohol contrary to s. 16 of the *Road Traffic (Control) Act* [CAP. 29] (the 'Act'). The Magistrate sentenced him to a fine of VT6,000 and 12 months' disqualification from driving. Mr Attison appeals on the ground that his driving disqualification is manifestly excessive. This judgment determines the appeal.

**B. The Law**

2. Section of the Act provides:

16. *It is an offence for any person to drive on the public road when under the influence of alcoholic liquor or a drug to such an extent that the driver is incapable of properly controlling his vehicle. A police officer shall be empowered without warrant to arrest any person contravening this section.*



3. Subsection 53(3) of the Act provides:

53. ...  
(3) *Any person convicted by a competent court of offences against section 16, 41(1), 51 or 52 shall be liable to a fine not exceeding VT100,000 or imprisonment not exceeding 1 year, or to both such fine and imprisonment.*

4. Section 55 of the Act provides:

55. (1) *Where any person is convicted of an offence against section 12, 13, 14, 16, 41, 52 or this section, the court may, in addition to any punishment it may impose, disqualify that person from driving a motor vehicle for a period not exceeding 5 years.*
- (2) *Where a person is disqualified from driving under this section, the court shall endorse his driving licence accordingly.*
- (3) *Any person who drives his motor vehicle whilst disqualified from so doing under this section shall be guilty of an offence, and shall be liable to a fine not exceeding VT100,000 or to imprisonment for a term not exceeding 1 year or to both.*

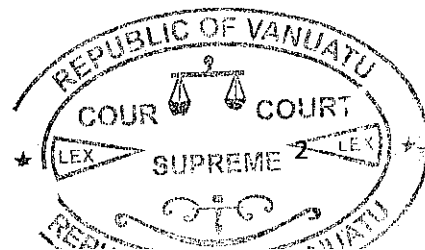
C. Background

5. On 19 April 2020, Mr Attison drove a red Kia car registration number 11784 along the Teouma public road while under the influence of alcohol. He lost control of the vehicle leading to a road accident.
6. Mr Attison said under caution to the Police that he had drunk a "Golden Eagle" alcoholic drink and had no clear memories of what happened. He only realized he was involved in an accident when the Police were calling him at the scene of the accident.
7. Mr Attison pleaded guilty to the one charge against him.
8. The Prosecution and defence counsel made oral sentencing submissions. No written submissions were filed. The Magistrate's sentencing decision is dated 8 September 2020.

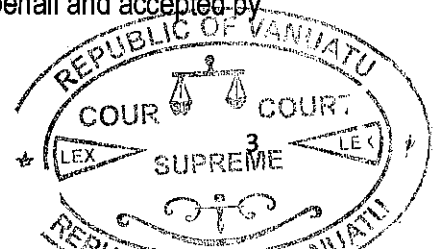
D. Discussion

9. Mrs Malites relied on the following judgments:

- *Public Prosecutor v Tom* [2017] VUMC 3 involving 2 charges. The vehicle was damaged causing loss of public funds yet no order for disqualification was made;
- *Public Prosecutor v Alick* [2018] VUSC 94 involving 2 charges. One passenger died. The Court imposed a suspended sentence and 18 months disqualification from driving; and



- *Public Prosecutor v Lui* [2020] VUSC 115 involving 2 charges. There was 1 death and 2 passengers suffered serious injuries. The Court imposed a suspended sentence, 120 hours community work and 6 months disqualification from driving.
10. It was submitted for Mr Attison that his accident resulting in no injuries and very minor damage to property is a case that does not warrant a disqualification. It was suggested that a fine is appropriate punishment and sufficient to send a message of specific and general deterrence.
  11. I do not agree. The cases cited involved damage to property, death and/or serious injuries with the sentences imposed ranging from no order for disqualification from driving to 6-18 months disqualification from driving. Mr Attison did not injure anyone or seriously damage property but he drove when under the influence of alcohol to such an extent that he lost control of his vehicle, resulting in an accident.
  12. Mr Attison actually lost control of his vehicle. Moreover, he was so affected by alcohol that by his own admission, he had no clear memories of what happened. He only realized that he had been involved in an accident when the Police called him to at the scene of the accident. Mr Attison was lucky that he had not injured or killed anyone.
  13. I agree with Ms Taiki's submission that in the circumstances, the fine imposed by the Magistrate was lenient. However, it was in all of the circumstances entirely within range.
  14. The Magistrate referred to the danger or risk that Mr Attison's offending posed to road users (at para. 11) and stated that the sentence imposed was necessary to deter Mr Attison and other would-be offenders from drinking and driving, and to give him time to rehabilitate and prevent him from reoffending in the near future (at para. 15).
  15. Section 55 of the Act empowered the Magistrate to disqualify Mr Attison from driving for a period not exceeding 5 years, in addition to any punishment it may impose. There is no restriction on the circumstances in which this provision may be used. I do not find any error in the Magistrate's exercise of discretion to order that Mr Attison be disqualified from driving for 12 months.
  16. It was also submitted for Mr Attison that this Court must consider Mr Attison's relative youth (22 years old) and his prospects for rehabilitation. It was submitted that the caselaw emphasizes the importance of rehabilitation of young offenders and the need to reintegrate into society. Further, that a disqualification is unnecessary given Mr Attison's lack of previous convictions and good prospects of rehabilitation.
  17. The Magistrate took into account Mr Attison's youth, his prospects of rehabilitation and graphic design business (at para. 8). There was no evidence before the Magistrate as to the impact a disqualification would have on Mr Attison's business. The mitigating factors set out in para. 8 of the Sentence were submitted on Mr Attison's behalf and accepted by the Court.



18. I agree with Ms Taiki's submission that the Magistrate in exercising her discretion properly considered and imposed a punishment that deterred Mr Attison while also giving him the chance to rehabilitate. This accords with the principle that young offenders be rehabilitated and encouraged to grow up to become responsible, law-abiding members of society. The sentence imposed achieved the twin purposes of deterrence to Mr Attison and others, and to encourage Mr Attison to reform and rehabilitate. The ground of appeal is not made out.

E. Result

19. The appeal is **dismissed**. There is no order as to costs.

DATED at Port Vila this 7<sup>th</sup> day of December 2020  
BY THE COURT

  
.....  
Viran Molisa Trief  
Judge

