

**IN THE MAGISTRATES COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION**

Criminal Case No: 157 - 2017

**STATE**

-v-

**SAVENACA NASARA**

For Prosecution: Sgt Samy [ Police Prosecution ]  
Accused : In person, waived right to counsel  
Date of Sentence: 24<sup>th</sup> day of August 2018

**SENTENCE**

1. 1. **SAVENACA NASARA**, you have pleading guilty to the following charge:

*Statement of Offence*

**Driving Motor Vehicle Whilst There Was Presence in the Blood a Concentration of Alcohol In Excess Of The Prescribed Limit:** Contrary to section 103 ( 1 ) ( a ) and 114 of Land Transport Act No. 35 of 1998.

*Particulars of Offence*

**SAVENACA NASARA**, on the 15<sup>th</sup> day of January, 2017 at Tavua in the Western Division drove motor vehicle registration number DL 654 on Kings Road Tavua town whilst there was present in 100 millilitres of his blood a concentration of 138.6 milligrams of alcohol which was in excess of the prescribed limit.

1. 2. I am satisfied that your guilty plea is voluntary and that you understand the consequences of your plea.
1. 3. I have found you guilty accordingly.
1. 4. You admitted the facts which revealed that police at a snap road block noticed you driving by. Police followed you and stopped you. During your conversation with the police, they smelt liquor on you and suspected that you were drunk. You were arrested and brought to the Tavua Police Station to be tested on dragger alcotest 7110. There was 63 micrograms of alcohol per 100 millilitres of your breath.
1. 5. The prescribed concentration of alcohol or legal limit is 80 milligrams of alcohol in 100 millilitres of blood.
1. 6. The reading on a breath analysing instrument in microgrammes of alcohol per 100 millilitres of breath is to be multiplied by 2.3 in order to arrive at the number of milligrams of alcohol in 100 millilitres of blood [ section 3 of the **Land Transport ( Breath Tests and Analyses ) Regulations 2000**.
1. 7. After calculation, you exceeded the legal limit by approximately 58 milligrams.

1. 8. When you were questioned by police in relation to the incident, you said that you were drinking yaqona and beer on the day in question. You then drove your sisters' car in-order to drop a family member at a village and that is when police stopped you. You and others were drinking 3 cartons of beer ( long neck ).
1. 9. You have previous convictions for larceny, damaging property and being found in possession of illicit drugs. Although these were convictions in the late 1990's, I will not disregard them or consider them irrelevant.
1. 10. I don't accept that you have learnt from your past. You keep getting into trouble.
1. 11. I will not regard you as a person having a good history.
1. 12. When you appeared in this traffic case, I don't see that you were remanded at any time.
1. 13. In your mitigation you seek forgiveness and promise not to re-offend. You are farming but you say that you will still be able to pay a fine. You support your wife and 2 children.

#### **MAXIMUM SENTENCE**

1. 14. In your case Mr Nasara, you can be fined up to \$2,000 and or imprisoned up to 2 years and mandatory disqualification between 3 months to 2 years.

#### **SENTENCING RANGE or SENTENCING TARIFF**

1. 15. There is no set tariff for this type of offence as far as I am aware.
1. 16. A fine of \$1,000 together with a 16 month imprisonment term and being disqualified from driving for 12 months for a person who was drunk and in control of a government vehicle has been accepted to be appropriate. This was for a first time offender [ Orisi Serutanoa v The State Criminal Appeal No. HAA 007 of 2012 ( 31<sup>st</sup> May 2012 ) ].

#### **Starting Point**

1. 17. In your case Mr Nasara, I select a starting point of 2 months imprisonment.

#### **Aggravating Factor**

1. 18. You exceeded the prescribed limit by 58 milligrams.
1. 19. You were driving around others in the vehicle in your drunken state, which makes it dangerous for you and them.
1. 20. Your sentence is increased by 2 months imprisonment.
1. 21. Your interim sentence now sits at 4 months imprisonment.

### **Mitigating Factors**

1. 22. You will receive no discount or reduction as you don't have a good history.
1. 23. You will some reduction for cooperating with the police when they questioned you.
1. 24. You have a family to look after and this I will take into account as mitigation.
1. 25. Your sentence is reduced by 1 month .
1. 26. Your interim sentence now sits at 3 months imprisonment.

### **Time In Remand / Custody**

1. 27. No time will be deducted for time in custody as you did not spend any.

### **Guilty Plea**

1. 28. You have pleaded guilty early.
1. 29. Your sentence is further reduced by 1 month because of this.
1. 30. This brings your interim sentence to 2 months imprisonment.

### **Suspended Term.**

1. 31. I can suspend your sentence whether in whole or in part pursuant to section 26 ( 1 ) and ( 2 ) ( b ) of the **Sentencing and Penalties Act 2009**, if your sentence is below 2 years imprisonment.
1. 32. Considering the circumstance of your case, I'm inclined to suspend your sentence but I will order a fine.
1. 33. I will order that you be disqualified from driving too.

### **SUMMARY**

1. 34. Your final sentence is this:

**2 months imprisonment.**

**This is suspended for the next 2 years.**

**You are fined \$200 to be paid in 60 days. In default, 7 days imprisonment.**

**You are disqualified from driving for 3 months effective from today.**

**[ surrender your license ]**

1. 35. Commit any other offence in the next 2 months and your suspended term may be activated.

**[ suspended term explained to the defendant ]**

1. 36. **Your sentence in this case is concurrent to your sentence for dangerous driving occasioning bodily harm in Tavua Traffic CF 35 – 18.**

1. 37. 28 days to appeal.

.....  
Lisiate T.V. Fotofili  
**Resident Magistrate**

Dated at TAVUA this 24<sup>th</sup> day of August, 2018.