

Sean + A.

IN THE SUPREME COURT OF TONGA
 APPELLATE JURISDICTION
 NUKU'ALOFA REGISTRY

AM 06 of 2021

[Mag No. TG 14/2021]

BETWEEN : POLICE
 Appellant

A N D : TAMALINE TU'IFUA
 Respondent

BEFORE : HON ACTING JUSTICE TUPOU

Counsel : Mr Tevita 'Aho for the Appellant
 Ms Alyssa Kafoa for the Respondent

RECORD OF HEARING

1. When the appeal was called today 22 June 2021 for hearing, Counsel for the Appellant Mr Tevita 'Aho said that he had nothing more to add to the Notice of Appeal; -
 - (i) That the Learned Magistrate erred by failing to take into consideration the provision of section 48 (1) of the Traffic Act where the offence is complete upon the Respondent failing to show her driver's license to the Police Officer who had requested it.
 - (ii) That the Learned Magistrate erred by failing to take into consideration that the Respondent did not go to the police station within the prescribed 48 hours to produce her drivers' license so that the matter can be disposed of.
2. Counsel for the Respondent, Ms Alyssa Kafoa had filed her submissions opposing the appeal. Her main ground was that the police had not informed the Respondent of her right to produce her driver's license to a police station within 48 hours to avoid liability under section 48 (i) of the Traffic Act.
3. Ms Kafoa raised an additional ground in opposition to the appeal in that there was no proof that the police had lodged a duplicate copy of the Notice of Infringement with the clerk of the Magistrate Court within 48 hours as required by section 48 (3). Mr 'Aho accepted that he had no proof of this.

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4. I indicated that based on the facts before me and on the principle of fairness and natural justice the appeal must fail. Both counsel accepted my finding and agreed on costs for the Respondent of \$200.00.
5. However, because of the importance of this decision to the work of the police. I will write my judgment giving reasons and recommendation to the future conduct of the police in regard to making a charge under section 48 (1) – not producing a driver’s license on demand.

DISCUSSION

6. The charge of the Respondent is brought under section 48 (1) of the Traffic Act which, relevant to this case state:

“The driver of a motor vehicle shall stop at the request or signal of any of any Police Officer in uniform and on demand shall give their name and address and shall produce their license.” If the driver fails to produce their driver’s license when requested, the driver shall be guilty of an offence unless such driver’s license is produced to a police station within 48 hours of being so demanded.

7. As the case was decided by the Magistrate on a no case to answer submission, no witness was called and all that we have to go with are the Notice of Infringement form issue on 28 October 2020 against the Respondent for the offence of failing to produce her driver’s license under section 48 (i) of the Traffic Act, the summons issued on 4 December 2020 and the short record of the hearing in the Magistrate Court on 4 March 2021.
8. From these record we can safely accept that the Respondent was stopped by the police on 28 October 2020, failed to produce her driver’s license and was issued with the Notice of Infringement for not producing her driver’s license.
9. The Notice of Infringement gave the Respondent the option of paying the fine set out in the notice to a Magistrate Court within 21 days or contest the notice – section 54 of the Traffic Act. There is no indication that if she produces her driver’s license to a police station within 48 hours she will avoid liability.
10. Section 54 (3) requires the police officer who issues the Notice of Infringement under subsection (i) to (shall) lodge a duplicate notice within 48 hours with the clerk of the Magistrate Court for the district.
11. Obviously, the Notice of Infringement was lodged with the clerk of the Magistrate Court because a summon was issued on 14 December 2020 by the Nukunuku Magistrate Court against the

Respondent in respect of the offence against section 48 (1). But there is no evidence that the Notice was lodged within 48 hours by the police as required by section 54 (3).

12. Section 48 (1) clearly state that a driver, on demand by a police officer in uniform must produce his driver's license and if he fails to do so, he is guilty of an offence UNLESS such driver's license is produced to a police station within 48 hours.
13. There is no requirement under section 48 for the police to give notice to the accused of his right to produce his driver's license within 48 hours to a police station.
14. Counsel for the Respondent relevantly state that an ordinary person would not be aware of his right to produce his/her driving license to a police station within 48 hours if he/she was not notified by the police.
15. There is a presumption in law that everyone knows what the law is. But this is only a presumption which in my view does not apply to the facts of this case.
16. When the Respondent failed to produce her driver's license she was handed the Notice of Infringement. She had no knowledge of her right to produce her driver's license within 48 hours and the Notice of Infringement only refer to her offence and given 21 days to pay the set fine of \$300 or contest the charge. This is the only document she is given and there is no notice in it of her right to produce her driver's license within 48 hours to avoid liability.
17. Failing to give notice of her right under section 48 (1) is plainly not fair and a breach of natural justice and this is made worse by the only document given to her, the Notice of Infringement without any reference therein to her right under section 48 (1).
18. There is no blame to be made against the action taken by the police in this case. They were only doing their job in accordance with section 48 and section 54 of the Traffic Act.
19. The remedy is to give legal directions by the Minister of Police or Commissioner of Police making it a duty of the police when charging a person under section 48 (1) of the Traffic Act to inform the driver of this right to produce his driver's license to a police station within 48 hours. This can be given orally or better in writing.
20. I leave it to the Minister of Police to see how this can be done in practice, but a notice to the offender of his right under section 48 (1) is a must to avoid repetition of what happened in this case.

CONCLUSION

21. Based on what has been discussed above, I have come to the conclusion that the appeal must fail.
22. Based on the above also, I recommend to the Minister of Police to consider and give direction for the informing of an offender of his rights when charged under section 48 (1) of the Traffic Act for failing to produce his driver's licence.

RESULTS

23. The appeal is dismissed.
24. The order made by Magistrate Ma'u on 4 March 2021 is confirmed with some variation.
25. A recommendation is made to the Minister of Police to order police officers to give notice of the right of an accused, where charged with the offence of not producing his driver's license under section 48 (1) of the Traffic Act.
26. Alternatively, the Minister of Police may wish to amend section 48 (1) to include a sentence saying that the police officer must notify the accused of his rights.
27. As agreed by both Counsel, costs is awarded to the Respondent of \$200.00.

NUKU'ALOFA: 22 June 2021

The seal of the Supreme Court of Tonga is circular, featuring a central emblem with a crown and a shield, surrounded by a wreath. The words "SUPREME COURT TONGA" are inscribed around the perimeter of the seal.
A handwritten signature in blue ink is written over the seal.
Tupou J
ACTING JUDGE