**Public Prosecutor**

**vs**

**Alek Jefferi bin Othman**

---

**(High Court of Brunei Darussalam)**
**(Criminal Appeal No.11 of 2015)**

---

**Pg Hjh Rostaina bte Pg Hj Duraman, J.C.**
**27th June 2015**

*Sentence --- Driving a motor vehicle without being insured --- insurance policy has expired for 5 days prior to the offence --- financial difficulties --- special reasons --- section 3(1) and 3(2) of the Motor Vehicles Insurance (Third Party Risks) Act, Cap 90 --- section 40 of the RTA, Cap 68 --- disqualified from driving a Class 3 vehicle for 12 months.*

**Cases refer:**

*R.V. Crossen (1939) I N.I. 106.*
*Whittall vs Kirby [1947] 1KB 194.*
*Public Prosecutor vs Pg Hj Ismail bin Pg Hj Sabtu [1991] JCBD 115.*
*Public Prosecutor vs Lim Jin Lee and Salina binti Mohd Salleh (C.A. 25 of 2000) 2 JCBD 217.*
*Public Prosecutor vs Zunnur Amni binti Awang Damit, (C.A. 49 of 2003) JCBD 95.*

**Facts**

The facts as stated in the brief facts were that the Respondent, who has a valid driving licence was stopped by the police on the 21st June, 2014. He was found to have driven whilst the motor vehicle licence (road tax) of the said vehicle had expired since 31st May, 2014. Further investigation revealed that he was not covered by Third Party Risks insurance. The insurance policy has expired since 16th June, 2014.

On the 1st April 2015, the Respondent was convicted on his own pleas of the above two traffic offences and was sentenced accordingly. However, the Magistrate did not impose a disqualification order as he was persuaded there were special reasons.

The Public Prosecutor appealed against the sentence for the second charge on the ground that a disqualification order ought to have been imposed as there were no special reasons for not imposing it.

**Held,** allowing the appeal:

1. The offence under section 8(1) of the Road Traffic Act, Chapter 68 and punishable under section 8(2) of the same which prescribed a fine of $4000 and imprisonment for 3 months.

2. The offence under section 3(1) and punishable under section 3(2) of the Motor Vehicles Insurance (Third Party Risks), Chapter 90 which prescribed a fine of $10,000 and imprisonment for 12 months, with a mandatory disqualification of 12 months unless there are "special reasons".

3. Unless a defendant can forward "special reasons" for the Magistrate not to disqualify, see *Public Prosecutor v Lim Jin Lee and Salina binti Mohd Salleh [C.A. No.25 of 2000] 2 JCBD 217 and other authorities*.

4. By virtue of section 40 of the Road Traffic Act, Cap 68, the disqualification imposed on the Respondent be limited to the driving of a motor vehicle of the same class in relation to which the offence was committed.

5. The Respondent was advised to write to the Registrar, Subordinate Court to ask the Magistrate concerned to consider the removal of the disqualification order under section 44(1) of the Road Traffic Act, Cap 68, at any time after the expiration of 6 months from the date of the order and apply to the court before which he was convicted to remove the disqualification order.

DPP Dk Didi-Nuraza bte Pg Hj Abd Latiff for the Public Prosecutor/Appellant.
Respondent in person. Unrepresented.

**Pg Hjh Rostaina, J.C. :**

On the 1st April 2015, the Respondent was convicted on his own pleas of two traffic offences, which are as follows:

1st charge

That you did at about 1220 hours on the **21st day of June, 2014**, at the vicinity of Jalan Jangsak towards Beribi roundabout in Brunei Darussalam, being the driver of a motor vehicle registration number BY 4837 (Hyundai Getz), whilst the motor vehicle licence (road tax) of the said vehicle **expired on 31st day of May, 2014** and that you have thereby committed an act contrary to section 8(1) of the Road Traffic Act, Chapter 68 and punishable under section 8(2) of the same.

2nd charge

That you did at about 1220 hours on **the 21st day of June, 2014** at the vicinity of Jalan Jangsak towards Beribi roundabout, in Brunei Darussalam, being the driver of a motor vehicle registration number BY 4837 (Hyundai Getz), did use the said motor vehicle on the road when the **insurance policy has expired since 16th day of June,** 2**014** and that you have committed an offence under section 3(1) and punishable under section 3(2) of the Motor Vehicles Insurance (Third Party Risks Act), Chapter 90.

Accordingly, for the 1st charge, the Respondent was fined $250 in default 1 week imprisonment and for the 2nd charge, he was fined $500 in default 3 weeks imprisonment. These fines were to be paid by way of instalments of $100 per month from the date of conviction which was 1st April, 2015.

The mandatory disqualification order of not less than twelve months was not imposed by the Magistrate.

Before me, the Appellant appealed against the decision made by the Magistrate on the ground that a disqualification order ought to have been imposed as there were no special reasons for not imposing the order.

The penalty prescribed for the second charge is a fine of $10,000 and imprisonment for 12 months, with a mandatory disqualification of 12 months unless there are "special reasons".

The Magistrate had decided not to impose a disqualification order. He had accepted, "the Respondent's insurance had only expired 5 days prior to the date of the offence as dated in the charge sheet and the Respondent had financial difficulties" as "special reasons".

SPECIAL REASONS

The Deputy Public Prosecutor went on to submit that these matters could not amount to "special reasons" and referred to the decision in *the case of* ***Public Prosecutor v Lim Jin Lee and Salina binti Mohd Salleh [C.A.No.25 of 2000] 2 JCBD 217*** where Silke J.A., said that, "… to be "special reasons" the reason must be an extenuating or mitigating circumstance; it must not amount in law to a defence".

In the decision of Lord Goddard in ***Whittall v Kirby [1947] 1KB 194*** **…** goverens what is and what is not a special reason. There, Lord Goddard approved and adopted that which was said in the Northern Ireland decision of ***R.V. Crossen (1939) I N.I. 106*** **saying:**

> *"….. a special reason within the exception is one which is special to the facts which constitute the offence. It is, in other words a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence and one which the Court ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender, as distinguished from the offence, is not a "special reason" within the exception."*

It is clear from the facts put forward by the Respondent, that he has financial difficulties. He earns his living as a bus driver. He is also supporting a wife and 7 out of 10 children. If his driving licence is taken away from him, he will be greatly inconvenienced by not being able to drive to work.

As his job requires him to drive to his work place and from there he will change vehicle and drive the bus to send the school children to school.

Much as I may sympathise with him, it is established by previous cases that "special reasons" must relate to the commission of the offence itself and not to the hardship which may be caused to a defendant by the disqualification.

I find the Magistrate was in error when he found the Respondent financial position and the fact that his insurance had expired 5 days prior to the date of the offence to amount to special reasons.

I had also observed the Respondent's driving licence. He has in his possession a valid driving licence until 13th November 2015, for classes 3, 6, 5, 11, 2 and 4.

I now turn to **section 40 of the Road Traffic Act, Cap 68**, which says as follows:

> "Any court before which a person is convicted of an offence in connection with the driving of a motor vehicle may –
>
> (a) If the person convicted holds a driving licence, suspend the licence for such time as the court thinks fit, or…. and declare the person convicted disqualified from obtaining another licence for a stated period, …..;
>
> (b) ...;
>
> (c) …;
>
> (d) …;
>
> Provided that, if the court thinks fit, any disqualification imposed under this section may be limited to the driving of a motor vehicle of the same class or description as the vehicle in relation to which the offence was committed."

In this circumstance, the Respondent was caught for not renewing his own motor vehicle's insurance. It had expired for 5 days. He earns his living as a bus driver which is a Class 6 vehicle.

I therefore, find it fit, if any disqualification is to be imposed on the Respondent, it to be limited to a Class 3 vehicle.

I allow the appeal and hereby order the Respondent be disqualified from driving a Class 3 vehicle for 12 months with effect from today.

The Respondent is also advised to write to the Registrar, Subordinate Court to ask a Magistrate to consider the removal of the disqualification order under section 44(1) of the Road Traffic Act, at any time after the expiration of 6 months from the date of the order and apply to the court before which he was convicted to remove the disqualification order.

**PG HJH ROSTAINA BTE PG HJ DURAMAN**
**Judicial Commissioner**
**27th June 2015**