

IN THE HIGH COURT OF FIJI AT SUVA
APPELLATE JURISDICTION

Civil Appeal No. HBA 19 of 2017
LTA Appeals Tribunal Appeal No. 31 of 2015

IN THE MATTER of an appeal under section 48 of the Land Transport Act from the decision of the Land Transport Appeals Tribunal made on the 16th day of June 2017.

BETWEEN: **NORTHLAND TRANSPORT COMPANY LIMITED**

APPELLANT

AND: **LAND TRANSPORT AUTHORITY**

RESPONDENT

AND: **LODONI TRANSPORT LIMITED**

NEMANI MOHAMMED
RAIZ MOHAMMED
DIVEND SINGH

INTEREST PARTIES

Before: **Hon. Acting Chief Justice Kamal Kumar**

Counsel: Ms N. Raikaci for the Appellant
Mr T. Stephens for the Respondent
Mr S. Nandan and Ms K. Maharaj for the Firstnamed Interested Party

Date of Judgment: 27 May 2020

RULING

(Application to Strike Out Appeal)

1.0 Introduction

- 1.1 On 19 July 2017, the Appellant filed Notice and Grounds of Appeal against the decision by Land Transport Appeals Tribunal (**“Appeals Tribunal”**) delivered at Suva on 16 June 2017, refusing Appellant’s Application for Leave to Appeal Out of Time the decision of Land Transport Authority (**“LTA”**) made on 16 October 2015, approving amendment to Road Route Licence No. RRL 19/2/94 on application of Lodon Transport Limited, Firstnamed Interested Party (**“Lodon Transport”**).
- 1.2 On 21 December 2017, Mishra Prakash & Associates filed Notice of Appointment of Solicitor on behalf of Lodon Transport.
- 1.3 On same day Lodon Transport filed Application to strike out and/or dismiss Notice and Grounds of Appeal for non-compliance with Order 55 of High Court Rules 1988 in that:-
 - “(a) The Appeal has not been brought by a Notice of Originating Motion as required;
 - (b) A Notice of Motion for the appeal has not been served on the Land Transport Authority Appeals Tribunal and/or on all interested parties to the appeal;
 - (c) The Appeal has not been entered within 28 days from the date of judgment/ruling of the Land Transport Appeals Tribunal; and
 - (d) The Appellant has not made any application for the Record of Proceedings of the Land Transport Appeals tribunal to be furnished to the High Court.”
- 1.4 On 26 January 2018, Appeal was adjourned to 16 March 2018, for service of Strike Out Application.
- 1.5 On 16 March 2018, all parties were directed to file Affidavits/Submissions.

1.6 Following Affidavits were filed by the parties:-

For Appellant

- (i) Affidavit in Opposition of Mohammed Saheed sworn on 4 June 2018, and filed on 5 June 2018 (**“Saheed’s 1st Affidavit”**);
- (ii) Affidavit in Opposition of Mohammed Saheed sworn on 4 June 2018, and filed on 5 June 2018 (**“Saheed’s 2nd Affidavit”**);

For Respondent

Affidavit of Rosa Naiveli Koroi sworn and filed on 21 May 2018 (**“Koroi’s Affidavit”**).

For Firstnamed Interested Party

Affidavit of Naresh Ravindra sworn on 20 December 2017 and filed on 21 December 2017 (**“Ravindra’s Affidavit”**).

1.7 Appellant, Respondent and Firstnamed Interested Party filed Submissions.

1.8 Strike Out Application and Appeal was heard on 14 August 2018, and adjourned for Ruling on Notice.

2.0 Background Facts

2.1 On or about 31 December 2014, Firstnamed Interested Party, Lodoni Transport Limited (hereinafter referred to as **“Lodoni Transport”**) made application to LTA for amendment to Road Route Licence No. RRL 12/9/94 (**“RRL 12/9/94”**).

2.2 Appellant with Secondnamed and Thirdnamed Interested Parties objected to the application for amendment.

2.3 Appellant filed Submissions with LTA.

- 2.4 On 16 October 2015, LTA Board resolved that RRL 12/9/94 be amended in terms of Lodoni Transport's application.
- 2.5 On 27 October 2015, Regional Manager Central Eastern of LTA wrote to Appellant informing it of Board's decision.
- 2.6 On 21 December 2015, Appellant filed Notice and Grounds of Appeal against Board's decision with the Appeals Tribunal.

3.0 Striking Out Application

- 3.1 Order 55 of HCR deals with appeals from Magistrates Courts, Tribunal or General Persons.
- 3.2 Order 55 Rule 3(1) of HCR provides that appeal to which Order 55 applies **must** be brought by Originating Motion.
- 3.3 There is no dispute Appellant has failed to comply with this mandatory provision.
- 3.4 Order 55 Rule 4(2) of HCR requires the notice to be served on the Chairman of the Tribunal, and every party to the proceedings.
- 3.5 Appellant had failed to file any Affidavit of Service to prove that the Notice and Grounds of Appeal was served on the Tribunal and LTA (Respondent).
- 3.6 Respondent only came on record after it was served with Striking Out Application by Solicitors for Lodoni Transport.
- 3.7 Order 55 Rule 4(2) of HCR provides that Notice must be served and appeal entered within 28 days after date of decision.

3.8 Decision by Appeals Tribunal was delivered on 16 June 2017, which means the Appellant should have filed and served Originating Motion to Appeal the decision by 14 July 2017.

3.9 Appellant instead filed Notice and Grounds of Appeal on 19 July 2017 (6 days out of prescribed time).

Notice and Grounds of Appeal was signed on 18 July 2017 (5 days out of time).

3.10 It is obvious that Appellant has filed Notice and Grounds of appeal in total disregard to Order 55 of HCR.

3.11 Also, Appellant should have sought Leave of this Court to file Appeal out of time for Courts determination before filing the Appeal.

3.12 This Court has no alternative but to dismiss and strike out the Appeal for non-compliance with mandatory provision of HCR in particular Order 55 Rules 3(1) and 4(2) of HCR.

3.13 Before I pronounce the Order I think it proper to look at the grounds of appeal in brief.

4.0 Grounds of Appeal

4.1 “(1) That the learned Tribunal had erred in law when he held that the Appellants motion for Leave to Appeal out of time made under section 61G(6) of the Magistrate Court (Amendment) Decree No. 24 of 2011 and Order XXXVII Rule 4 of the Magistrates’ Court Rules, was erroneously made, and that the Tribunal cannot deal with an application filed under the Magistrates’ Court Act or Decree.

(2) That the learned Tribunal had erred in law in failing to take in to consideration that where there is lacuna in the Land Transport Act 1998

on practice and procedure regulating the Lands Transport Appeals Tribunal, resort must be had to the Rules applicable in the Magistrates' Court.

- (3) That in arriving at his decision the learned Tribunal had erred in law when he failed to take into account that the Magistrates' Court (Amendment) Decree No. 24 of 2011 is the very legislation conferring upon a Magistrate to exercise jurisdiction and powers and perform any duties and functions of a statutory tribunal including the Land Transport Appeals Tribunal.
- (4) That the learned Tribunal had erred in law in failing to consider that since the LTA Appeals Tribunal is a statutory Tribunal, A creature of statute, without any provisions under the LTA Act prescribing Rules of practice and procedure regulating the filing of applications before it, the Tribunal cannot assume or invoke jurisdiction that it does not have under the Land Transport Act 1998.
- (5) That the learned Tribunal had erred in law in rejecting the affidavit evidence filed by the Committee President of Northland Transport Limited when the learned Tribunal has the power to admit the said evidence by virtue of Section 46(1)(d) of the Land Transport Act 1998.
- (6) That in arriving at his decision the learned Tribunal had erred in law in failing to consider that strict rules of evidence are not applicable when determining appeals before it.
- (7) That the learned Tribunal had erred in law in the exercise of his discretion to award cost to the interested parties that do not appear and take part in the hearing of the application.
- (8) That the learned Tribunal had erred in law in the exercise of his discretion in awarding costs of \$400.00 to each part to the proceedings which is not justified under the prevailing circumstance of the Appellant's Application."

4.2 Main ground of appeal is that Appeals Tribunal erred in law when he held that Application for Leave to Appeal out of Time pursuant to s61G of Magistrates

Court Rules 1945 and Order XXXVII Rule 4 of Magistrates Court Rules is wrongly made and he has not power to deal with the Appeal.

4.3 Section 61G of Magistrate's Court Rules 1945 is a transitional provision and does not give power or jurisdiction to Tribunal to extend time to Appeal LTA Board's decision.

4.4 Section 44(1) of Land Transport Act 1998 provide as follows:-

“No person may appeal to the Tribunal unless provision is made for such appeal in this Act.”

4.5 Section 45(1) of Land Transport Act 1998 provides as follows:-

“An appeal under this section shall be commenced by notice of appeal, in writing, which shall state specifically and concisely the grounds of appeal, and shall be lodged with, or forwarded to, the Secretary to the Tribunal not later than 14 days after the date of the decision in respect of which the appeal is brought or within such other period as may be provided in the regulations.”

4.6 LTA Board's decision was delivered on 16 October 2015.

4.7 Under s45(1) of Land Transport Act 1998, Appeal to Appeals Tribunal should have been filed by 30 October 2015.

4.8 Appellant in Saheed's 1st Affidavit stated that LTA wrote to Appellant on 27 October 2016, informing it about Board's decision.

4.9 He further stated that the letter was posted by LTA on 9 November 2015.

4.10 Even if that letter was posted on 9 November 2015, Appellant should have received the letter at the latest by 15 November 2015, and if it is so then

Appellant should have filed appeal with Appeals Tribunal by 29 November 2015.

4.11 No doubt the Appellant failed to file the Appeal against LTA Board's decision within the prescribed time.

4.12 Appellant's argument is that since Land Transport Act 1998 did not have any provision which gives power to Appeals Tribunal to extend time for filing of Appeal against Board's decision the Appeals Tribunal should have dealt with Application under Order 37 Rule 4 of Magistrates Court Rules 1945 ("**MCR**").

4.13 Order 37 Rule 4 of MCR provide as follows:-

“On the appellant failing to file the grounds of appeal within the prescribed time, he shall be deemed to have abandoned the appeal, unless the court below or the appellate court shall see fit to extend the time.”

4.14 This Court finds that the Appellant's Counsel is totally misconceived about the working of Order 37 Rule 4 of MCR.

4.15 Magistrates derive their Jurisdiction and Power from Magistrates Court Act 1945 or any other Acts of Parliament and does not have inherent jurisdiction.

4.16 Hence, power or jurisdiction to extend time for appeal a decision should be given to Magistrates under the Act that gives the Magistrates either as Magistrate or Statutory Tribunal to hear the Appeal.

4.17 If, power to extend time to appeal is given to the Magistrate as Statutory Tribunal without any provision setting down the practice and procedure to seeking extension of time to appeal then parties can utilize the practice and procedures laid down in Magistrate Court Rules.

- 4.18 Order 37 Rule 4 applies to Appeals from Appeals Tribunal (if Tribunal is not a Magistrate) to Magistrates Court.
- 4.19 The Appeal for which Appellant sought Leave for extension of time from Appeals Tribunal was Appeal from LTA Board's decision to Appeals Tribunal and as such Order 37 Rule 4 of MCR has no application.
- 4.20 Power to extend time for appealing against LTA Board's decision to Appeals Tribunal should have been provided for in Land Transport Act 1998.
- 4.21 It is apparent that no such power is given to LTA Appeals Tribunal under Land Transport Act 1998.
- 4.22 This Court has no alternative but to hold that Appeals Tribunal was absolutely correct in holding that he had no power under Land Transport Act 1998 to entertain Appellant's Application before him for extension of time.

5.0 Conclusion

- 5.1 Based on what is stated at paragraphs 3.1 to 3.11 of this Ruling, Appeal is dismissed and struck out for non-compliance with Order 55 Rules 3(1) and 4(1) of HCR.
- 5.2 Even if Appellant would have complied with Order 55 Rules 3 and 4 of HCR this Court would still dismissed the Appeal for reasons stated at paragraph 4.2 to 4.22 of this Ruling.

6.0 Costs

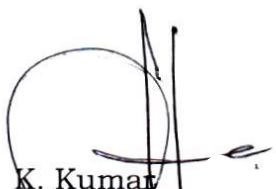
- 6.1 This Court takes into consideration that:-

- (i) Applicant, Respondent and Firstnamed Interested Party filed Submissions;
- (ii) Firstnamed Interested Party filed Striking Out Application because of non-compliance of Order 55 Rules 3 and 4 of HCR;
- (iii) Appellant has failed to comply with mandatory provision of HCR and Appeal was totally misconceived.

7.0 Orders

- (i) Notice and Grounds of Appeal filed on 19 January 2017, is dismissed and struck out;
- (ii) Appellant do pay Respondent's costs in the sum of \$500.00 within twenty-one (21) days from date of this Ruling;
- (iii) Appellant do pay Firstnamed Interested Party's (Lodoni Transport Limited) costs in the sum of \$1,000.00 within twenty-one (21) days from date of this Ruling.




K. Kumar
ACTING CHIEF JUSTICE

At Suva

27 May 2020

Ravono & Raikaci Law for the Appellant

Legal Officer - Land Transport Authority for the Respondent

Mishra Prakash & Associates for the Firstnamed Interested Party