

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBA 09 of 2018

BETWEEN : **LAND TRANSPORT AUTHORITY** a statutory body established under the Land Transport Act 1998 having its registered office at Lot 1 Daniva Road, Valelevu, Nasinu.

APPLICANT

AND : **MONIKA MONITA PRASAD** of Lot 70 Sekoula Road, Laucala Beach Estate.

RESPONDENT

Counsel : Ms. Dauvere E. for the Applicant
Mr. Sharma P. for the Respondent
Date of Hearing : 28 September, 2018
Date of Judgment : 08 October, 2018

JUDGMENT

INTRODUCTION

1. The Applicant filed this application seeking leave to appeal out of time on 12.6.2018. Land Transport Appeal Tribunal (LTAT) made a decision allowing an appeal from the Respondent directing to renew the taxi permit T5057. The Applicant does not wish to vary the final orders of LTAT, but desired to appeal against the reasoning of LTAT, made on 6th April, 2018.

ANALYSIS

2. Land Transport Act, 1998 grants right of appeal against a decision of LTAT to High Court only on a question of law.
3. There is no time period or procedure of the appeal process contained in the Land Transport Act, 1998 hence the procedure contained in Magistrates' Court Rule is adopted as a matter of practice.

4. Alternatively, any appeal against a decision should be made within a reasonable time period and reasonable time period is contained in the Magistrates' Court Rules.
5. In terms of the Magistrates' Court Rules, first step in an appeal is to notify the other party the intension to appeal. This can be done orally at the time of pronouncement of the order if the other party was present and if not within 7 days of the decision, by serving a Notice of Intension of the Appeal. The Grounds of Appeal is to be filed within one month. (See Magistrates' Court Rules, Order 37.1)
6. If the Grounds of Appeal is not filed within the time period time for filing of that can be extended by Magistrate's Court as well as High Court. (See Magistrates' Court Rules, Order 37. 3)
7. The Applicant has filed this application seeking extension in terms of Order 59 rule 10(1) of High Court Rules of 1988, and inherent jurisdiction and these provisions applies to a decision of Master of High Court and cannot be applied to decision of LTAT since it cannot be considered as a decision of High Court.
8. It should also be noted Master's final determination can be appealed as of right and it is not restricted to question of law only, as in the case of LTAT appeals to High Court.
9. In an application seeking extension of time Justice Calanchini in Singh V Hsina (decided on 27.1.2016) held that following grounds needs to be considered adopting Supreme Court decision (Per Gates CJ) in NLTB v Ahmed Khan and Another (CBV 2 of 2013; decided on 15.3.2013)
 1. The length of delay.
 2. The reasons for delay.
 3. Whether there is a ground of merit justifying appellat court's consideration or where there has been substantial delay, nonetheless is there a ground that will probably succeed
 4. If the time is enlarged Respondent be unfairly prejudiced.

10. The above decision was also applied in Court of Appeal (Per S.Chandra JA) in Civil Appeal No 87 of 2015 decided on 7.12.2016.

The Length of Delay

11. The length of delay is more than 2 months and it is substantial. There is no prospect of appeal being successful as the applicant does not seek to vary the final orders of the LTAT. So there is no prospect of success.

The Reasons for Delay

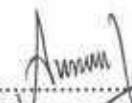
12. The Applicant's reason for delay is their own internal procedures for appeal and cannot be considered as a valid ground for such a long delay of more than two months when they needed to take a decision to appeal within a week and notify other party. Applicant is a statutory body and management of their resources is left to them.
13. There are no grounds of merits as LTAT has considered the conduct of the Applicant in similar situation where a taxi permit holder was serving a sentence in prison was granted the permit. The appeal to LTAT is a re-hearing and it had held that there cannot be discriminatory application of their policy, for taxi permits.
14. The Applicant does not seek to vary or set aside final orders of LTAT so appeal will not succeed.
15. The summons seeking "leave to appeal out of time" filed on 12.6.2018 is struck off. I will not award any cost considering circumstances.

FINAL ORDERS

- a. Summons filed on 12.6.2018 seeking extension of time is struck off.
- b. No costs.

Dated at Suva this 8th day of October, 2018.




Justice Deepthi Amaratunga
High Court, Suva