

**Land Transport Appeals Tribunal
Sitting @ Suva**

Appeal # 125 of 2017

Between: **Koromakawa Rentals and Tours**

[Applicant]

And: **Land Transport Authority**

[Respondent]

Wananavua Rentals

[Interested Party]

Appearances:

For the Applicant: Mr. F. Vosarogo.

For LTA: Mr G. Stephens.

For Interested Party: Mr R. Kumar.

Date of Hearing: 6th April 2018.

Ruling - Stay

Introduction

The Applicant, Koromakawa Rentals and Tours has filed a motion seeking stay against the decision of the LTA dated 13th October 2017 conveyed by letter dated 8th November 2017 to the Interested Party, Wananavu Rentals.

The LTA approved 5 hire permits in favour of Wananavu Rentals. The LTA decision is as follows:

"The Board have approved the applications for 5 new hire permits as the applicant have met all requirements pursuant to Regulation 5 (1) a-h and subject to confirmation from FRA and Town and Country Planning regarding the viability of the proposed base."

The Tribunal has noted that all parties to the proceedings have been served and are present. On 2nd March 2018 the Director of Wananavu Rentals, Mr Kevin Singh and LTA was given time to reply to affidavit. The Interested Party was given time to get counsel.

The Motion and Orders Sought

The Applicant through the motion has sought the following orders:

- "1. That the execution of the decision of the Land Transport Authority/1st Respondent ("LTA") dated 13th October 2017 conveyed by letter dated 8th of November 2017 to the 2nd Respondent be stayed until determination of this appeal; and*
- 2. That the Land Transport Authority/1st Respondent not be permitted to issue any further permits to the 2nd Respondent until this appeal is determined.*
- 3. Such further orders as this Tribunal deems just."*

The Motion was filed with an affidavit of Ashwini Prasad, the Director of Appellant Company. No affidavit in reply was filed by the LTA or the Interested Party.

The Function and Powers of the Tribunal

Section 40 (2) of the Land Transport Act provides for the function of the Tribunal, which is "to hear and determine appeals against decisions of the Authority relating to -

- (a) licensing of drivers under section 56;
- (b) any matter requiring a decision of the Authority under Part VI ; and any other matter prescribed by the Minister by regulations."

The powers of the Tribunal for the purposes of hearing and determining appeals according to Section 46 are to "(a) to issue a summons to a witness in the prescribed form; (b) to call for the production of books, plans and documents; (c) to examine witnesses on oath or affirmation; (d) to admit any evidence whether written or oral and whether or not such evidence would be admissible in civil or criminal proceedings; (e) to exclude any person if necessary so as to ensure the proper conduct of the appeal or to preserve order."

Furthermore, under Section 46 (2) "on an appeal under this Part the Tribunal may dismiss the appeal or make such order as it thinks just and reasonable in the circumstances directing the Authority to issue, transfer, or cancel any licence, certificate or permit, or to impose, vary, or remove any condition or restriction in respect of a licence, certificate or permit, and the Authority shall comply with that order."

And under Section 46 (3) "Upon the determination of an appeal under this section the Tribunal may make such order as it thinks just with the respect to the costs of the appeal, and any person to whom any such costs are awarded may recover the amount of those costs in any court of competent jurisdiction, as a debt due from the person against whom those costs are awarded."

According to Section 47 the Tribunal "for the purposes of the hearing and determination of any appeal the Tribunal shall have regard to those matters which the Authority is required to have regard to in considering an application under this Act."

Jurisdiction of Tribunal to deal with Stay Applications

Justice Jiten Singh has clarified on the power of the Tribunal to deal with stay application in *Pacific Transport Limited v. LTA, Ex Parte - Sunbeam Transport Limited* in 2004 where his Lordship stated that "**given such a wide power, it is only proper that the Tribunal should be able to direct a temporary stay of a decision pending appeal which is only a temporary measure. One has to give a purposive approach to interpreting section 46 (2) so parties are not compelled to go to the Tribunal on merits and ask for a stay pending appeal in the High Court because of some procedural defects.**"

The Submissions

In addition to the written submission the following oral submissions were made.

The **Applicant's submission** by Mr F Vosarogo - "Would not go through the law on stay. Tribunal is familiar with it. 1st annexure is the decision of the Authority - approval of the Board. Clause 2 a. - states met all requirements - subject to confirmation from FRA and TCP regarding viability of proposed base. Base letter for particular application. No base letter. Decision of LTA - fulfilled all requirements but to do something. See Para 8, 9 and 10 of affidavit in support. Application sped to Board meeting. No confirmation from TCP or FRA.

Affidavit is unchallenged. "Cart before the Horse" something not complied with. Complaint - matter not to be before the Board. Requirements for PSV requirement #23 see annexure "RP3". Checklist not complied with. Should not have been before the Board. Appellant has strong case. Para 12 - sponsoring companies "RP4" - competition - parking and picking passengers got photos. Stationed in direct competition to taxis. Evidence of breach of conditions of Hire permit.

PSV operators got petition see annexure 5. Classic case stay ought to be issued. Operator has taken licence of LTA. Affecting other operators from that area. Asking matter to be stayed. Other good grounds for appeal. Boa fides of appeal. Real issue of law. How could LTA suggest met all requirements and say you need to go and obtain other things. Public interest in proceedings. Affidavit in support. Also interest of other PSV operators. Not operating from base. Hire permit. Overall balance of convenience lies in favour of our client. Appended initial objection. We had said no need. No sponsors near Galoa. Has breached permit conditions. Strong merits to appeal. Affidavit not challenged. Unchallenged evidence before the Court."

LTA - G. Stephens - *"applicant has met Regulation 5. Applicant provided 7 binding contracts. Base issue. Registered base is Arts Village complex. Registered Office in Galoa. All met except base. Contracts are annexed to records. Contracts do not affect these companies. .*

Wananavua Rentals Submissions by Mr R. Kumar - *"Koromakawa has no base in Arts Village. Client met all requirements. NRLA on 4th August 2016 granted client confirmation. Estate Management given letter. No objection to Business Licences. In regards to*

affidavit filed "RP4" conflicting letter to that given to LTA. Not filed affidavit. Businesses operate late from 9pm to 10pm. After hours no transport. "RP5" petition. 2nd Respondent met all requirements. Financially affect clients loan repayments. He will suffer substantially. Unjust to my client vehicles been purchased with loans from the bank. Seeking stay be dismissed. "

Mr Vosarogo's Reply - "cannot twist our hands to validate loan. Original advertisement in 2017. Already had vehicles to be used. 4 vehicles. 1 vehicle to be purchased upon approval. Had vehicles all this while. Some clarity - no base letter. NRLA suggests anything but a base letter. Place does not belong to NRLA. No letter from that entity of allocation of base. Item # 23 is still outstanding. Existing Regulation 5 and checklist. Nothing to with Koromakawa. Not on spot. On spot is Wananavu rentals. No base letter. No confirmation where to operate from. Proposed address - Navua Rural. Balance of convenience favours Appellant.

The Law on Stay

In **Estate Management Services Ltd v Pagenstecher [2012] FJHC 1175**, Justice Balapatabendi stated that "the principles governing the grant or refusal of a stay application pending appeal are well settled. The principles' governing a stay has been stated thus in **Halsbury's Laws of England (4th Ed. Vol. 37 para 696)** :

"Two principles have to be balanced against each other as to whether a Stay of Execution pending the appeal should be granted: first that a successful litigant should not be deprived of the fruits of this litigation, and secondly, that an appellant should not be deprived of the fruits of a successful appeal."

The Court considering a stay should take into account the following questions. They were the principles set out by the Court of Appeal and approved subsequently and applied frequently in this Court. They were summarized in **Natural Waters of Viti Ltd v Crystal Clear Mineral Waters (Fiji) Ltd Civil Appeal ABU0011.04S 18th March 2005**. They are:

"(a) Whether, if no stay is granted, the applicant's right of appeal will be rendered nugatory (this is not determinative). See *Philip Morris (NZ) Ltd v Liggett & Myers Tobacco Co (NZ) Ltd* 1977 2 NZLR 41 (CA).

(b) Whether the successful party will be injuriously affected by the Stay.

(c) The bona fides of the Applicants as to the prosecution of the appeal.

(d) The effect on third parties.

(e) The novelty and importance of questions involved.

(f) The public interest in the proceedings.

(g) The overall balance of convenience and the status quo.""

Analysis

This Tribunal has noted all the submissions made on behalf of the parties. The Tribunal further notes that the above listed factors are not exhaustive and the consideration of the 'right of a successful litigant to have the fruits of a judgment and the need to preserve the position in case the appeal is successful' is not lost sight of by the Tribunal. This Tribunal further notes that the principles for stay applications have been developed overtime and applied in subsequent matters and are to be followed by the Tribunal when it deals with stay applications.

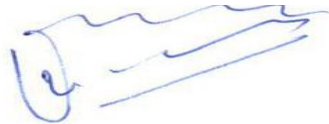
From the Tribunal's perusal of the material the Tribunal notes that the appeal is timely and the issues relate to the grant of the 5 hire permits to Wananavua Rentals, the Interested Party. A number of novel issues were raised by learned counsel of the Applicant, Mr Vosarogo which needs to be dealt with at the appeal stage and this Tribunal does not intend to deal with those in this application and novelty also favours granting of interim stay. The issues relate from the grant of the application when some requirements were pending to the contracts that were provided by the Interested Party in support of the application.

The effect on third parties in this case is the effect on the other Parties apart from the Applicant. The beneficiary of the LTA decision, Wananavu Rentals has not filed any affidavit outlining any effect on them. However, from the submissions made the Tribunal finds that the Interested Party will not be seriously affected if stay is granted. They already had 4 vehicles before the application was granted. There is clearly interest of other parties including other taxi permit holders as has been shown by the Applicant. Taxis in the area are shown to be affected due to illegal operation of Hire vehicles as Taxi's. The bona fides of the Applicant and the Interested Party are not seriously challenged as there are arguable grounds for appeal.

Having considered all the factors and the circumstances of this matter the Tribunal is inclined to grant an interim stay. The Tribunal would also direct that the timelines for the matter be agreed upon so that the appeal will be dealt within a reasonable time.

For the foregoing reasons the Tribunal makes the following **Interim Orders**:

1. The Interested Party, Wananavu Rentals is to immediately cease operations and use of the Hire Permits issued to it by the LTA.
2. That the execution of the decision of the Land Transport Authority/1st Respondent ("LTA") dated 13th October 2017 conveyed by letter dated 8th of November 2017 to the 2nd Respondent, Wananavu Rentals is stayed until determination of this appeal; and
3. That the Land Transport Authority is not to issue any permits to the 2nd Respondent, Wananavu Rentals until this appeal is determined.
4. Orders for costs reserved until hearing.



Chaitanya Lakshman

Land Transport Appeals Tribunal

13th day of April 2018

