

Land Transport Appeals Tribunal  
Sitting @ Suva

Appeal# **137 of 2018**

Between: **Waisake Eroni Delai Waqaituinayau**

Appellant

And: **Land Transport Authority**

Respondent

### Appearance and Representation

**Appellant:** Present - Mr V. Vosarogo (Mamlakah Lawyers).

**For LTA:** Mr G. Stephens.

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### **Judgment**

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#### Introduction

Waisake Eroni Delai Waqatuinayau, the Appellant has appealed the decision (dated 15<sup>th</sup> November 2016) of the LTA declining his request for the renewal of the Minibus Permit - MB200. The decision of the LTA is contained in a letter dated 1<sup>st</sup> December 2016.

#### The Decision

The LTA gave the following reasons for refusing to renew the minibus permit:

"...2. The Authority in the Public Service Vehicle (PSV) Board Meeting held on 15<sup>th</sup> November, 2016 at the Land Transport Authority (LTA) Valelevu Conference room has considered all the information put before it and has resolved to summarily dismiss the appeal for renewal of the expired minibus permit on the following justification:

- I. That the permit holder had ample time to lodge the renewal of Permit No. MB200.
- II. The need and demand from the Base/Stand has also changed."

### **The Grounds of Appeal**

The Appellant's grounds for appeal are as follows:

- "1. The Authority erred in fact and in law in holding that the permit holder had ample time to lodge the renewal of Permit No MB200 when such timeframe had not been communicated to the Appellant by the Respondent by virtue of its function and responsibilities according to law.
2. The Authority erred in fact and in law in suggesting that the need and demand from the Base/Stand has also changed without stating the basis of such decision and explanation of what the decision meant to the Appellant.
3. The Authority erred in fact and in law in holding that the Appellant had exceeded the redeeming period of MB200 without taking into account the reason as to why it was initially surrendered and the remedial process the Appellant had to do to recover the surrendered MB200, including but limited to humanitarian reasons peculiar to the Appellant.

4. The Authority erred in law and in fact in its reasoning for the Appellant to reapply when the freeze is over when the MB200 had not been reallocated to anyone by the Respondent through its process.

5. The Appellant further says that the Respondent has until to date, failed to provide the Appellant due process and natural justice and such failure led to a decision that was perverse and unfair in all the circumstances of the case."

### **The Function and Powers of the Tribunal**

Section 40 (2) of the Land Transport Act provides for the function of the Tribunal. It allows the Tribunal matters under Section 65 of the Act relating to licensing of drivers (Part V) and matters under Part VI involving public service vehicles licensing.

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."

### **Hearing**

The appeal was heard on 11<sup>th</sup> May 2018. Oral and written submissions were made.

### **The Submissions**

Mr V. Vosarogo - For the Appellant - "Letter by client to LTA. Timelines. Letter by Regional Manager - Central Eastern. Letter of 30<sup>th</sup> January 2015 refers to policy of 2<sup>nd</sup> September 2012. LTA took appellant on a ride until 2015. When they could have advised him on 18<sup>th</sup> October 2012 or around that time. Policy in place only 1 month time from his request.

LTA carried on that Appellant had legitimate expectation that it was still in process. Letter of town councils. Suva and Lautoka. Base letters. You pay for base letters. LTA for some reason or another gave appellant hope. LTA did not advise immediately they took 3 years to reply to the Appellant. Permit was surrendered to LTA. He was seeking its renewal. He was seeking it be re-instated. Was surrendered due to financial difficulties. Appellant did not illegally assign. A truthful appellant. As he was not able to continue. He surrendered. He wanted to turn it around. Some permits are illegally assigned. An honest appellant. LTA took him for a

run. He is being told to reapply. It was issued against a need. Lautoka to Suva. Not been assigned to anyone else."

Mr G. Stephens - For LTA - " got written submissions. Decision on 1<sup>st</sup> December 2016. Permit expired in 2009. Policy in place 1 month earlier. Board had 28 days policy. Financial standing. Need to be suitable. Capability to hold permit. Reissue and renew - financial standing. He did not meet policy."

Mr V. Vosarogo in Reply - "In 2009 LM 200 involved in an accident. Not able to put it on the road. He surrendered the plates because of financial difficulties. In 2009 expired on 10<sup>th</sup> October. At that time client out by 8 days since expiry. Para 6.8. Board Minutes page 4, annexure 5. Set period 3 years. Board practice. Looking at practice for genuine reason. Not exhaustive list. Not known to people. Merits of the case. Financial difficulty. Accident not able to put minibus on the road. He came to Authority the Authority should have heard him. His financial capability would be known. Not examined his finances. LTA contributed to the out of time period. Specific reasons not provided. Not statute. Guided by LTA."

### **Analysis**

The Tribunal has noted the grounds of appeal filed by the Appellant. The submissions by the counsels and the documents filed by the parties have been examined by the Tribunal.

The Tribunal will go over each ground of appeal in turn.

### **Ground One**

**The Authority erred in fact and in law in holding that the permit holder had ample time to lodge the renewal of Permit No**

**MB200 when such timeframe had not been communicated to the Appellant by the Respondent by virtue of its function and responsibilities according to law.**

The Appellant, Waisake Eroni Delai Waqaituinayau held a minibus permit- MB 200 from 11<sup>th</sup> October 2006 and it expired on 10<sup>th</sup> October 2009. Through a letter dated 18<sup>th</sup> October 2012 to the LTA, the Appellant sought to have the permit renewed. The Tribunal notes that the permit contained a note that the permit is to be renewed at least 28 days before the permit expired. This is also provided in Regulation 3 (6) of the Land Transport (Public Service Vehicles) Regulations 2000.

The Tribunal has noted that LTA had been lenient in the application of Regulation 3 (6) of the Land Transport (Public Service Vehicles) Regulations 2000. Reissue applications for permits have been made and granted for those that had expired even over 3 years. The LTA does not deny this.

The LTA's responded through a letter dated 9<sup>th</sup> April 2014. In its response LTA stated that *"Authority doesn't have powers to renew any permit which is expired more than three years. Your application will be table[d] in the next Board Hearing and you will be informed of the decision of the Board hearing."* This letter was signed by Deo Reddy (Acting Regional Manager Central Eastern - For Chief Executive Officer).

Later through another letter (dated 30<sup>th</sup> January 2015) signed by Paulini Tora (Regional Manager Central Eastern) the Appellant was informed as follows *"as per Ministry's directive and Board policy which was endorsed at the Board policy meeting on the 02.09.2012, renewal/re-issue of PSV permits to be within the three (3) years of expiry, beyond this period it*

*is deemed to be cancelled... This letter supercedes any letter sent earlier in regards to the above matter."*

The Appellant's request was considered by the Board at a meeting held on 16<sup>th</sup> November 2016. The Board took it that the permit had expired over 7 years before renewal was sought. From the letter of the Appellant to the LTA the Tribunal notes that the Appellant sought renewal of the permit on 18<sup>th</sup> October 2012. This made the application for renewal to be made after 3 years and 7 days. In fact LTA counted its delay of 4 years in dealing with the request for renewal as delay by the Appellant.

The Tribunal from the deliberations and the Minutes notes that *"the Board also note[d] that it has approved a few late renewals over 3 years with genuine reasons such as probate issues, base issues or pending legal processes. Late renewals with reasons of financial difficulties, mechanical problems is a clear indication of their incapability to be a permit holder."* The Board summarily dismissed the request for renewal of the permit by the Appellant.

The Tribunal finds that the Board took into consideration incorrect fact that the permit had expired over 7 years ago in summarily dismissing the application for renewal by the Appellant. The Board took it that the application was more than 7 years late. In fact it was 3 years 7 days late. While the LTA put in the permits that the permit should be renewed at least 28 days before expiry it accommodated late renewals. It is clear from the deliberations of the Board that they have been renewing permits which had expired even over 3 years.

Before resolving to dismiss the request by the Appellant for the renewal of the permit the Appellant should have been heard by the LTA. At no stage in the process of dealing with the

application for the renewal by the appellant, the LTA gave an opportunity to the Appellant to make a representation to LTA. On the issue of procedural justice in De Smith's Judicial Review, 6<sup>th</sup> Edition (2007) page 317, it is stated that *"an important concern of procedural justice is to provide the opportunity for individuals to participate in decisions by public authorities that affect them. Another is to promote the equality, accuracy and rationality of the decision-making process. Both concerns aim at enhancing the legitimacy of that process while at the same time improving the quality of decisions made by public authorities."*

In De Smith it is further stated that *"procedural justice aims to provide individuals with a fair opportunity to influence the outcome of a decision and so ensure the decision's integrity. It deals with issues such as requirement to consult, to hear representations, to hold hearings and to give reasons for decisions. It addresses the nature of those consultations, representations and hearings, so as to ensure that they are appropriate in the circumstances, meaningful, and that they assist and do not hinder the administrative process."*

The application was lodged in October 2012 the Board looked at it in November 2016. It was over 4 years since the Appellant applied for renewal that the Board considered the application. This time period and delay on the part of LTA to consider an application for renewal for a permit is unacceptable. No explanation is given by LTA for the delay in considering this matter.

## **Ground Two**

**The Authority erred in fact and in law in suggesting that the need and demand from the Base/Stand has also changed without stating the basis of such decision and explanation of what the decision meant to the Appellant.**

No reasoning is given by LTA how the needs and demands has changed. The needs and demand must be supported by data. No data is contained within the LTA deliberations to show that they considered the data to come up with the reasoning that need and demands have changed. The Tribunal finds this to be an assumption by the LTA. It is an attempt to add another reason and enhance the reasons for the decision.

### **Ground Three**

**The Authority erred in fact and in law in holding that the Appellant had exceeded the redeeming period of MB200 without taking into account the reason as to why it was initially surrendered and the remedial process the Appellant had to do to recover the surrendered MB200, including but limited to humanitarian reasons peculiar to the Appellant.**

The Appellant has stated that he was not able to repair his vehicle due to financial constraints and therefore surrendered the permit to LTA. Sometime later he raised enough money for a new van and then applied for the renewal of the permit. The LTA have not responded to the claim by the Appellant that he had surrendered the permit to LTA. In the absence of any response by LTA the Tribunal accepts Appellants submission that he had surrendered the permit to LTA.

The rationale behind the Board allowing renewals of permits that have expired over 3 years and accepting as genuine reasons being probate issues, base issues and pending legal

processes is understood. Some matters sometimes are beyond ones control. Nobody likes to be caught up in financial difficulties. Each constraint an applicant has must be considered. The LTA however must not forget that in matters that come before it for renewal they must have regard to factors in Regulation 5 (1) (a) to (h) of the Land Transport (Public Service Vehicles) Regulations 2000. Financial standing is one of the factors, but not the sole factor. The LTA must consider the application for renewal and consider all factors. One factor does not take precedent over the other. A holistic view must be taken before a decision is made.

Each application or request that comes to the LTA must be looked at by the LTA and decided on its merits. The merits of the matter can only be evaluated or assessed if all material is before the LTA. It is vital that a hearing takes place. So representations can be made and clarifications sought. Issues like the 7 year delay would have been picked out if a hearing took place. The Appellant or his counsel would have informed the Board or the Management that it was 3 years delay on his part and 4 years delay by the LTA in dealing with the application. Doors should not be shut on applicants the moment any issue outside the reasons identified by LTA to be genuine are seen. The LTA must give an applicant an opportunity to appear before them and make representations on it. The Appellant in this matter was not afforded this opportunity.

#### **Ground Four**

**The Authority erred in law and in fact in its reasoning for the Appellant to reapply when the freeze is over when the MB200 had not been reallocated to anyone by the Respondent through its process.**

The LTA has not stated what has happened to the permit after it was surrendered or it had expired. Whether another was granted in its place. It is a common practice for LTA to tell applicants to reapply when the freeze is lifted. It will be prudent if the LTA makes a decision and gives reasons for its decision. LTA should leave it to the Applicant to decide whether he/she wants to apply in future. All the LTA should do is to inform the applicant whether there is a freeze in place for the permit. Informing an applicant to reapply when the freeze is over is 'rubbing salt into the wounds' after refusing an application.

#### **Ground Five**

**The Appellant further says that the Respondent has until to date, failed to provide the Appellant due process and natural justice and such failure led to a decision that was perverse and unfair in all the circumstances of the case.**

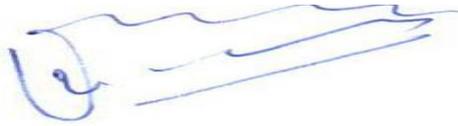
On this ground the Tribunal has in other grounds discussed issues relating to due process and natural justice.

#### **Orders**

- a. The decision of the LTA, dated 15<sup>th</sup> November 2016 (contained in letter dated 1<sup>st</sup> December 2016) to summarily dismisses the request for renewal of the minibus permit-MB200 by the Appellant, Waisake Eroni Delai Waqaituinaya is set aside.
  
- b. The LTA is directed to deal with the application for renewal of the permit- MB 200 by Waisake Eroni Delai Waqaituinaya taking into consideration the issues and

factors highlighted by the Tribunal. The LTA must do so within the next 60 days.

c. The Respondent (LTA) is to pay the Appellant \$500.00 cost within 21 days. The costs have been summarily assessed.



Chaitanya Lakshman  
**Land Transport Appeals Tribunal**  
15<sup>th</sup> June 2018

