

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

Civil Appeal No. HBA 09 OF 2017

[On an Appeal from the Land Transport Appeals Tribunal sitting at Lautoka on Appeal Action No. 36 of 2015]

BETWEEN : ASHWANI VIJAY KUMARI LAL

APPELLANT/RESPONDENT

AND : LAND TRANSPORT AUTHORITY

1ST RESPONDENT

AND : 1. NORTHWEST TRANSPORT COMPANY LIMITED
2. KAMINI KUMAR
3. KINISIMERE LOMANI NUKUNAWA

2ND RESPONDENTS/APPLICANT

AND : FLYING PRINCE TRANSPORT LIMITED
AKBAR BUSES LIMITED

INTERESTED PARTIES

Appearances : Mr V. Kapadia for the applicant
Mrs J. Naidu for the respondent
Date of Hearing : 2 November 2017
Date of Ruling : 2 November 2017

R U L I N G

[01] This ruling concerns with a notice of motion and grounds of appeal filed by the first named- second respondent, Northwest Transport Company Limited ('NTCL') ('the applicant' in these proceedings) in conjunction with an affidavit sworn by Shailesh Kumar ('the application'). The application seeks an order striking out the notice and grounds of appeal filed on 4 August 2017 on the grounds that:

a) That the Notice and Grounds of Appeal are [sic] not been served on Kamini Kumar and Kinisimere Lomani Nukunawa and the Chairman of the Land Transport Appeals Tribunal as required by Order 55, Rule (4) of the High Court Rules.

b) That the Appeal otherwise is filed in breach of Order 55, Rule (4) of the High Court Rules.

[02] This application is made pursuant to Order 55 Rules 3 and 4 of the High Court Rules ("the HCR") and the Inherent Jurisdiction of this Court.

[03] The appellant Ashwani Vijay Kumari Lal ('the respondent' in these proceedings) on 4 August 2017 filed a notice and grounds of appeal without referring to any rule or provision of the law challenging the decision of the Land Transport Appeals Tribunal ('the tribunal') dated 14 July 2017, where the tribunal set aside the decision of the Land Transport Authority's decision (conveyed to the respondent by its letter dated 8 December 2015) approving the respondent's application for re-issue and amendment of Minibus Permit No. LM 328.

[04] Section 48 of the Land Transport Act 1988 ('the Act') affords a right of appeal any decision of the tribunal only on points of law to the High Court. However, the Act does not provide the procedures, such as timeframe to be followed when appealing a decision of the tribunal. As such, recourse must be sought to Order 55, r.4 (2) of the High Court Rules 1988 ('the HCR'), which provides that the notice

must be served, and appeal entered within 28 days after the date of the decision the tribunal.

- [05] I have read the voluminous materials and legislation and considered the notice and grounds of appeal, Skeleton Argument of the applicant (the respondent did not file their skeleton argument). I have also had the benefit of hearing oral argument from Counsel on both sides on striking-out.
- [06] The question before the court turns on a relatively short point of whether the notice and grounds of appeal should be struck out for non-compliance of Order 55 of the HCR.
- [07] Firstly, I must say the appeal has been brought to this court wrongly in the first place. The appellant has failed to comply with O.55, r. 3 & 4 of the HCR. Rule 3 prescribes how an appeal is to be brought to the High Court from the tribunal. An appeal, according to rule 3, must be brought by way of originating summons. The respondent has brought this appeal by filing notice and grounds of appeal and not by way of originating summons. The appeal has been brought against rule 3. The timeframe within which such an appeal needs to be brought is prescribed in r. 4 (2) which provides that the notice must be served, and the appeal entered within 28 days after date of the decision of the tribunal.
- [08] Secondly, the respondent has failed to serve the notice of appeal and entry of appeal to each interested parties to the proceeding to which the appeal relates. The respondent, according to r. 4 (1), must have served and entered the appeal within 28 days of the date of the decision of the tribunal. The respondent had failed to comply with the requirement in r. 4 (1) by not serving the notice of appeal on Kamini Kumar and Kinisimere Lomani Nukunawa and the Chairman of the

tribunal. Kamini Kumar who was one of the parties to the proceedings to which this appeal relates. The respondent submits that it was served on Kamini Kumar's husband as she refuse to accept the service. I cannot accept this as a proper service.

[09] Thirdly, the respondent failed to furnish a signed copy of the proceedings. It was the duty of the respondent under O.55, r.7 (4) to furnish a signed copy of the note made by the tribunal at the proceedings in which the decision appealed against was given. This is another non-compliance with the rule of O.55.

[10] Turning to the affidavit in response. I find the appellant has failed to comply with the two peremptory orders the court made on previous occasions. The respondent has filed an affidavit in response out of time without leave of the court and without notice to the applicant. There was no application seeking extension of time to file the affidavit in response. Since the affidavit in response has been filed without leave of the court to file it out of time or with the consent of the other party, I disregard the affidavit in response filed by the respondent.

[11] The other point raised by the applicant is that there was no explanation for non-compliance with the rules of the HCR. There is no affidavit in response now in view of my disregard of their affidavit in response explaining the non-compliance.

Conclusion

[12] For these reasons, the appeal against the tribunal's decision has been brought against Order 55 of the HCR, and must be struck out with costs of \$1,000.00, which is summarily assessed.

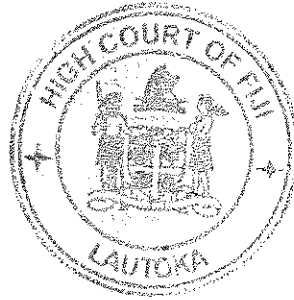
Final Outcome

1. Appeal struck out.
2. The respondent will pay summarily assessed costs of \$1,000.00 to the applicant.

M.H. Mohamed Ajmeer
2/11/17

M.H. Mohamed Ajmeer

JUDGE



At Lautoka

2 November 2017

Solicitors:

For the applicant: Messrs Sherani & Company, Solicitors

For the respondent: Messrs Jyoti legal, Barristers & Solicitors