

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

CIVIL APPEAL NO. HBA 01 OF 2016

[On an Appeal from the Land
Transport Appeals Tribunal sitting at
Lautoka in Appeal No. 61 and 68 of
2014 and 9 of 2015]

BETWEEN : **LAND TRANSPORT AUTHORITY**

APPELLANT/ORIGINAL RESPONDENT

AND : **SUNBEAM TRANSPORT LIMITED**

FIRST RESPONDENT

AND : **PACIFIC TRANSPORT LIMITED**

SECOND RESPONDENT

AND : **PARADISE TRANSPORT LIMITED**

THIRD RESPONDENT

Appearances : Mr P. Chauhan for the appellant/original respondent
Mr V. Kapadia for the first respondent
Mr R. Charan for the second respondent

Date of Hearing : 06 July 2018

Date of Ruling : 03 August 2018

R U L I N G

[on leave to appeal]

Introduction

[01] This ruling concerns an application for leave to appeal.

[02] By its summons dated and filed 30 April 2018, (*the application*), Sunbeam Transport Limited, (*the first respondent*) applies for leave to appeal the interlocutory decision made by this Court on 29 March 2018, refusing to strike out the appeal by the Land Transport Authority (*Authority*), the appellant (*my decision*). My decision is as follows:

1. *Leave is granted to the appellant to amend its name to Land Transport Authority.*
2. *The striking-out applications filed by the first and second respondents be dismissed and struck out.*
3. *The appellant will file a motion setting out directions for the appeal within 28 days of the date of this ruling.*
4. *The first and second respondents will pay summarily assessed costs of \$600.00 each, totalling \$1,200.00 to the appellant.*

[03] Sunbeam has filed an affidavit of Zahid Ali Wahab sworn on 30 April 2018.

[04] On 30 April 2018, Pacific Transport Limited (*Pacific Transport*), the second respondent has also filed a summons for leave to appeal, together with an affidavit of Nitesh Chand in support.

[05] The applications are made under Sections 12(1) (c) and 12 (2) (f) and 20(1) (a) of the Court of Appeal Act (*CAA*) and Rule 26 of the Court of Appeal Rules (*CAR*) and the inherent jurisdiction of the court.

[06] The Authority has filed an affidavit of Mereseini Siliva, in response to the application.

Grounds of Appeal

[07] The proposed grounds of appeal are as follows:

1. *That the Learned Judge erred in law in holding in paragraph 28 of his Ruling that*

“Not all parties involved in the consolidated proceedings will be directly affected by this Appeal and that the parties will be affected by this Appeal had been made Respondents”

when there was no evidence before the Judge that the interested parties will not be affected and that only relevant parties who are affected by this decision are the appellant and the second and third respondents in the High Court.

2. *That the Learned Judge erred in law in not holding that since the first respondent had not served the appeal on all interested parties who participated in Tribunal Appeal Nos. 61 and 68 of 2014 and 9 of 2015 namely, Kadar Buksh Limited, Khan Buses Limited, Valley Comfort Transport Limited, Shankar Singh Transport Limited, Taunovo Bus Company Limited, Maharaj Buses Limited and Sunset Express Limited, and the Tribunal as well as required by the High Court Rules the Tribunal that the Appeal filed by the first respondent was filed in breach of the mandatory requirement for service of the Appeal set out in Order 55 Rule 4(a) & (b) of the High Court Rules and therefore the appeal should have been dismissed and struck out.*
3. *That the Learned Judge erred in law in referring to Order 2 of the High Court Rules in paragraph 25 of his Ruling but did not make any findings or make orders on whether Order 2 of the High Court Rules would cure the defect in not serving all of the parties with the Notice of Appeal as required by Order 55 Rule 4 nor did he apply Order 2(2) of the High Court Rules when the High Court of Fiji has ruled in the cases of Satish Chand v Land Transport Authority & Anr in Civil Appeal No. HBA 01 of 2016, Ashwani Vijay Kumari Lal vs Land Transport Authority, Northwest Transport Company Limited in Civil Appeal No. HBA 09 of 2017 and Rajendra Prasad vs Land Transport Limited in High Court of Labasa Civil Appeal No. 50 of 2004 that the appeals from the Tribunal be dismissed for noncompliance with Order 55 Rule 4 of the High Court Rules.*

Grounds of Objection

[08] The respondent opposes the grant of leave to appeal on the grounds that:

- i. *No injustice will be done if leave to appeal is refused;*
- ii. *None of the Appellants' proposed grounds have any realistic prospect of succeeding; and*

- iii. *The Application for Leave to Appeal is out of time*
- iv. *There is no exceptional circumstances*
- v. *This application is delaying the substantial matter*
- vi. *The Applicant can still appeal when substantive matter is concluded and they will suffer no prejudice.*

The Law

- [09] The relevant law that applied to this application are: ss.12 (1), 12 (2) c, 12 (2) (f) & 20 (1) (a) of the CAA & Rules 26 of the CAR.
- [10] The CAA, s. 12(2) c read with s.12 (1), states that ... an appeal shall lie under this Part in any cause or matter, not being a criminal proceeding, to the Court of Appeal... (c) on any ground of appeal which involves a question of law only, from any decision of the High Court in the exercise of its appellate jurisdiction under any enactment which does not prohibit a further appeal to the Court of Appeal, while s. 12 (2) (f) states that no appeal shall lie... (f) without the leave of the Judge or of the Court of Appeal from any interlocutory order or interlocutory judgment made or given by a judge of the High Court... and s. 20 (a) provides: a single judge of appeal (Court of Appeal) may give leave to appeal.
- [11] The CAR, R 26, R 2 and 3 states:
- (2) *Any application to the Court of Appeal for leave to appeal (whether made before or after the expiration of the time for appealing) shall be made on notice to the party or parties affected.*
 - (3) *Wherever under these Rules an application may be made either to the court below or to the Court of Appeal it shall be made in the first instance to the court below.*

The Submission

Applicant

- [12] Mr Kapadia of counsel for the applicant, submits that leave should be granted in this case as there are prima facie and clear grounds disclosed to warrant leave to appeal because the court: (a) the court failed to take into account mandatory provisions of O.55, R 4 of the HCR in conjunction with S.45 (3) (b) of the Act, which mandates that the High Court and the Tribunal must give notice of the

Appeal to all objectors who had appeared before the Authority and the Tribunal, (b) the court erred in law in holding that the parties who have not been included in this appeal and (c) the issues raised in the proposed grounds of appeal are of exceptional importance to the practice and procedure of the Authority and the Tribunal on how appeals from the Tribunal to the High Court are to be dealt with and whether some objectors who had appeared and have been heard in the Authority and the Tribunal can be excluded in the Court by an appellant despite the provisions of O 55, R 4 of the HCR protecting their right to be heard on an appeal to the High Court on a question of law only. He refers to me for prior High Court decisions in similar transport matters where appeals have been struck out for non-compliance with O 55, R 4 of the HCR namely:

- a. *Satish Chand v Land Transport Authority & Anr* – Labasa High Court Civil Appeal No. HBA 01 of 2016.
- b. *Rajendra Deo Prasad v Land Transport Authority & Anr* – Labasa High Court Civil Appeal No. 50 of 2004.
- c. *Khan Buses Limited v Land Transport Authority & Ors* – Lautoka High Court Civil Appeal No. HBA 07 of 2017.
- d. *Ashwani Vijay Kumari Lal v Land Transport Authority, Northwest Transport Company Limited & Ors* – Lautoka High Court Civil Appeal No. HBA 09 of 2017.

[13] In essence, Mr Kapadia's submission is that the appeal raised a matter of public importance on representation before the courts mandated by O 55, R 4 and that the proposed grounds of appeal raise an arguable legal point which has a real prospect of success on appeal.

[14] Pacific Transport endorses the submission put forward by Sunbeam.

Respondent

[15] In contrast, the respondent submits that; the applicants' grounds of appeal disclose no reasonable prospect of success and leave should be refused for that reason. The applicants have not and cannot demonstrate to the standard required any reasonable prospect of success to appeal and has not established that 'substantial injustice' will result from denial of leave to appeal.

The background facts

- [16] The background facts as deposed in the affidavit in support are as follows:
- [17] On 30 January 2016, the Authority filed notice of appeal and grounds of appeal against the judgment of the Tribunal dated 16 December 2015, seeking orders that the whole judgment be set aside, wherein the Tribunal had ordered that decision of the Authority conveyed to Kadar Buksh Limited by letter dated 12 December 2014, approving a new Road Route Permit and granting trips departing Suva and Lautoka at 5.30am and 6.30pm be set aside and the Authority pay costs to all parties of \$1,000.00 summarily assessed.
- [18] The Authority has filed an appeal on 9 grounds. Pursuant to section 48 of the Land Transport Act (*the Act*) the decision of the Tribunal is subject to an appeal only on points of law to the High Court.
- [19] In the proceedings before the Tribunal, the following parties were served relevant documents: -
1. Sunbeam Transport Limited
 2. Pacific Transport Limited
 3. Paradise Transport Limited
 4. Khan Buses Limited
 5. Valley Comfort Transport Limited
 6. Shankar Singh Transport Limited
 7. Taunovo Bus Company Limited
 8. Maharaj Buses Limited
 9. Sunset Express Limited
- [20] All of these companies had filed written objection to the application of Kadar Buksh Limited as required by the Land Transport (Public Service Vehicle) Regulations. The Authority heard the objections from these objectors to KBL's application made in Lautoka on 10 September 2014, and decision letter was given to those objectors.
- [21] Pursuant to Section 45 (3) (b) of the Act, the Tribunal is mandated to issue a notice of the time and place of the hearing of the appeal to the Authority and to

any other persons involved as applicant or objectors to the original application the decision on which gave rise to the appeal in the Tribunal.

- [22] KBL, the party most affected by the decision of the Tribunal chose not to appeal the decision of the Tribunal.
- [23] This is the first time the Authority has filed an appeal against the decision of the Tribunal that set aside the approval of the Authority to a Bus Company.
- [24] The applicants made applications to strike out the Authority's appeal on the grounds that the appeal had been filed in breach of the HCR O. 55, R 4 (1) (b), in that it was mandatory to serve inter-alia on the Chairman of the Tribunal and every party to the proceedings in which the decision appealed against was made.
- [25] The Court (I), on 21 March 2018, after hearing the applications filed by the applicants to strike out the appeal, announced dismissing the striking out applications for the reasons to be issued shortly. Accordingly, the Court delivered its written ruling on 11 April 2018, wherein the Court held that not all parties involved in the consolidated proceedings will be directly affected by this appeal and that the parties that will be affected by the appeal have been made respondents.
- [26] The applicants now seek leave to appeal the order made striking out and dismissing their applications to strike out the Authority's appeal.

The Decision

- [27] The applicants apply for leave to appeal my interlocutory order delivered refusing the applicants' applications for striking out the appeal filed by the Authority. The striking out applications were made on the ground that the appeal was not served on interested parties that participated in the consolidated Tribunal Appeal and the Chairman of the Tribunal as required by O 55, R 4 (1), the HCR.
- [28] The Court held that not all parties involved in the consolidated proceedings will be directly affected by this appeal and that the parties that the will be affected have been made respondents.

- [29] Mr Kapadia on behalf of Sunbeam, contends that there is no evidence that all other objectors not served and named with not be affected by the decision made on this appeal (appeal brought by the Authority) particularly when the Authority has unilaterally amended the time table without the knowledge of the objectors. He further argues that the failure to include the six other objectors in the appeal cannot be cured by the HCR, O 2, R 2.
- [30] The applicants submit that the four prior cases they have refused (above) have struck out the appeal for non-compliance with O 55, R 4 of the HCR.
- [31] Pathik J in *Rajendra Deo Prasad v Land Transport Authority & Ors* (Labasa High Court Civil Appeal No. 50 of 2004, dismissed an appeal where there was no merit in the appeal and for the appellant had not complied with the requirements of O 55 and that no 'point of law' had been raised as required under Section 48 of the Land Transport Act 1988.
- [32] In *Chand v Land Transport Authority & Ors* (above) Seneviratne, J struck out an appeal for irregularities (for failure to comply with the requirements of O 55, R 4) stating that the irregularities cannot be rectified by filing a new set of papers.
- [33] I, in *Khan Busses Ltd v Land Transport Authority & Ors* (above), struck out an appeal for failing to comply with the requirements of O.55, R 4 and for failing to comply with the two peremptory orders given by the Courts.
- [34] Also, in *Ashwani Vijay Kumari Lal v Land Transport Authority & Ors* (above), I struck-out an appeal against the Tribunal's decision on the ground that it was brought against O 55 of the HCR.
- [35] In the present proceedings, I struck out the striking out applications filed by the applicants on the basis that not all parties involved in the consolidated proceedings will be directly affected by this appeal and that the parties that will be affected have been made respondents.
- [36] The proposed grounds of appeal number 2 & 3 raise important issue of the practice and procedure of the Authority and the Tribunal on how appeals from the Tribunal to the High Court are to be dealt with and whether some objections who had approved and have been leased in the Authority and the Tribunal can be excluded in the High Court by an appellant despite the provisions of O 55, R 4

of the High Court Rules protecting their rights to be heard on an appeal to the High Court on a question of law only about the one not directly affected by the appeal to the High Court.

- [37] The Tribunal's decision directly affected Kadar Buksh Limited because the Tribunal cancelled the Road Route Permit granted to it by the Authority. However, KBL did not appeal the Tribunal's decision. This is the first time an appeal against the decision of the Tribunal set aside the approval of the Authority to a bus company. The KBL was not named as an interested party in the appeal.
- [38] The Court considering a request for permission is not required to analyse whether the grounds of proposal appeal will succeed. Merely whether there is a real prospect of success (*Hunt v Peasegood* (2000) Times, 20 October 2000).
- [39] There are no Court of Appeal decisions on the issue the applicants had raised.

Conclusion

- [40] In my view, the grounds of appeal, especially grounds 2 & 3 raise arguable issues to be decided by the Court of Appeal. I would, therefore, grant leave to appeal my interlocutory order of 29 March 2018, made refusing to strike out the appeal for failing to serve the appeal on all interested parties as well as the Chairman of the Tribunal.
- [41] Since I have granted leave to appeal the interlocutory order, it would be prudent to stay the substantive appeal hearing until the determination of the proposed appeal on preliminary issues by the Court of Appeal.
- [42] An appeal against any interlocutory order lie within 21 days (calculated from the date on which the judgment or order of the Court below was signed, entered or otherwise perfected) (see CAR, O 16). The interlocutory order in respect of which leave to appeal is sought was signed on 11 April 2018. The applicants have filed their leave application on 30 April 2018. They have filed their application within 21 days from the date on which the ruling was signed. Therefore, it is not necessary to consider the Authority's submission on extension of time.

[43] I would make no order as to costs.

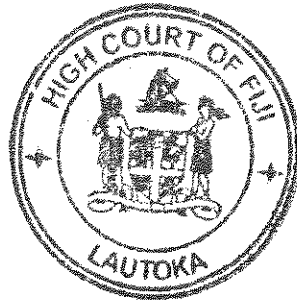
The result

1. Leave to appeal the interlocutory decision dated 29 March 2018 on the proposed grounds 2 & 3 is granted.
2. The applicants will file and serve the notice of appeal within 14 days.
3. The hearing of the appeal is stayed until the determination of the proposed appeal by the Court of Appeal.
4. No order as to costs.

M.H. Mohamed Ajmeer
.....
3/8/18

M.H. Mohamed Ajmeer

JUDGE



At Lautoka

03 August 2018

Solicitors:

For the appellant/respondent: M/s R Patel Lawyers, Solicitors

For the first respondent/applicant: M/s Sherani & Co, Solicitors

For the second respondent/applicant: M/s Mishra Prakash & Associates, Barristers & Solicitors