

In the High Court of Fiji at Labasa
Civil Jurisdiction
Civil Action No. 7 of 2016

Dalip Chand & Son Ltd
Plaintiff
And
Rajendra Deo Prasad & Northern Buses Ltd
Defendants

COUNSEL: Mr Kohli for the plaintiff
Mr A. Pal for the defendants
Dates of hearing : 6th, 7th and 8th March, 2017
Date of Judgment: 26th April, 2017

Judgment

1. The plaintiff and the first defendant, (trading in the name of Northern Buses) are licensed operators of buses in Labasa. The plaintiff alleges that the first defendant is illegally operating on one of its routes. The plaintiff claims damages and seeks an injunction to restrain the first defendant from operating his buses on its route. The first defendant denies the claim and states that his licence, as amended, permits him to operate on the challenged route.
2. The statement of claim states that:
 - a) The plaintiff operates its buses on Road Route Licence, (RRL)12/23/23 from 27th March, 2012. One of the trips covered by its RRL is from Labasa Bus Station to Boubale via Bulileka Road. Boubale Road was renamed Qawa Road on 16th September, 2012. RRL12/23/23 was operated by Bulileka Transport Limited, until 6th October, 2011.
 - b) The first defendant operates on RRL 12/23/34, which includes trips from Labasa Bus Stand to “Qawa Circular Road” via Vunivau/Basoga Road. “Qawa Circular Road” is 5 km away from the Qawa Road accessed via Bulileka Road.
 - c) In 2002, the first defendant illegally commenced operating its buses on Bulileka Transport Limited’s route to Qawa Road. Bulileka Transport Limited obtained an injunction in Civil Action no. 66 of 2002 restraining the first defendant from operating on its route. He ceased operations on 15th October, 2002, in compliance with the Order. The statement of claim finally states that on 7th July, 2006, the first defendant once again commenced operating its buses illegally on the plaintiff’s route and continues to do so.

3. The first defendant, in his statement of defence states that the amendment of 16 July, 2002, to his RRL 12/23/34 gives him the right to operate his bus services on the Labasa Bus Station/ Qawa Road/ Labasa Bus Station route. Qawa Road was in existence for a significant period earlier than 2002. The action filed by Bulileka Transport Limited was struck out in November, 2006. No final determination was made in that case. He recommenced operations on 7 July, 2006, for a brief period. He “*properly commenced operating*” that route in December, 2015. He has filed a claim against the LTA for damages, for interfering with his right to operate on the Labasa Town-Qawa Road- Labasa Town route.
4. The statement of defence of the second defendant states that the plaintiff does not have a cause of action against the second defendant, since it was not an operator of bus services.
5. The plaintiff, in its reply to defence states that the amendment of the first defendant’s licence allows him to operate on Qawa Road in Vunivau. The amendment was unopposed, as it related to amended routes on the first defendant’s existing route. Qawa Road has always been referred to and is commonly known as Boubale Road.

6. ***The hearing***

- a. PW1, (Semi Matalua, formerly a Divisional Transport Officer of the LTA) said that he had worked with the LTA in Labasa for two spells of 6 years each, in 1982 and in 1994. In evidence in chief, he said that the first defendant applied for an amendment of his RRL12/23/34, to cover “*LABASA TOWN/QAWA ROAD JUNCTION/LABASA TOWN VIA LABASA VULOVI ROAD*”.

An application for an amendment of a RRL is filed with a sketch plan. The LTA relies on a sketch plan, which sets out the proposed routes, not a Govt map. The witness agreed with the example given by Mr Kohli, counsel for the plaintiff that “*Emily point*” is a signage in a bus, but is not noted on a Govt map. An advertisement is placed in the Press inviting objections or supporters. A transport inspector inspects the proposed route and submits a report to the LTA. The first defendant was given approval to operate from Labasa to Vulovi Road in Vunivau. He was not given approval to operate to Bulileka Road from the Bulileka Road-Vaturekuka roundabout, for which he would have had to make a fresh application.

The sketch plan depicted the amended route, viz, Labasa, Bulileka Road, Vulovi Road, Qawa Road and Qawa settlement. After his amendment was allowed, the LTA received a complaint from Ravindra Deo Prasad of Bulileka Transport Limited that the first defendant was operating illegally from the roundabout of Vaturekuka-Bulileka Road. On 26th September, 2002, the LTA warned him to cease operations on Bulileka Road. Since he did not, PW1 said that he issued another warning on 28th October, 2002.

In cross-examination, he said that the LTA by its letter of 25th July, 2002, approved the first defendant's application for amendment.

It was put to PW1 that the contents of LTA's letter of 28th October, 2002, is different from the letter of 26th September, 2002, as regards the route violated. He said the letter of 28th October, 2002, refers to "*Malau Road*", to clarify that the LTA meant Qawa Road in Vunivau and not Qawa Road in Bulileka.

The first defendant had operated on Vulovi Road leading to Malau Road, before he applied for the amendment. Vulovi Road is sometimes called Malau Road or Wainikoro Dama Road. Most roads have more than one name.

A letter dated 4th October, 2002, from the PWD, Ministry of Works & Energy was shown to this witness. The letter stated that Qawa Road was recorded in PWD's inventory from 1970. The witness said that the letter was not addressed to the LTA. He was also shown a topographic detailed map of the Lands and Survey Dept of 1986, which signifies a Qawa Road in Bulileka.

It was put to the witness that in the light of those documents, the LTA's letter of 28th October, 2002, was incorrect in stating that the change of name from Boubale to Qawa took place in November, 2002. The witness replied in the affirmative. He said that the main issue was the first defendant's application for amendment.

He accepted that clause 3(7) of the LTA Regulations provides that an amendment is treated as a new application.

The LTA issued warnings to the first defendant. The last option was to suspend or cancel the licence.

PW1 said that no objections were made to the first defendant's application for amendment.

In re-examination, he said that in Labasa, multiple names for roads are common. If two roads are called Qawa Road, the sketch plan will indicate which road is meant.

- b. PW2, (Raijeli Nai, Authorised Officer, LTA, Vunivau) said that she had joined the LTA in 2000. She was in Vunivau for 13 years. She said that an amendment to a RRL is sought by an operator to an existing route. The first defendant was operating on Vunivau Road and Valebasoiga Road. He applied for an amendment of his road permit to Qawa Road junction, where Vulovi Road met Vunivau Road. His application sets out the route he sought, viz, "LABASA TOWN/ QAWA ROAD JUNCTION/LABASA TOWN VIA LABASA VULOVI ROAD". A schedule of his "Proposed timetable-Additional Trip: Daily" was attached. No objections were made to the first defendant's application for amendment. She identified the sketch plan attached to his application as prepared by Samisoni Ravudi, a Senior Road Safety Officer of the LTA. Qawa Road was marked in Vunivau. A sketch plan is usually attached to an application for an amendment, not a Govt map. PW2 said that in 2002, she was unaware of a Qawa Road in Bulileka. When the first defendant started to operate from Bulileka Road, the LTA rechecked and came to know of a Qawa Road in Bulileka. Now a sign is put up of Qawa Road in Bulileka. If someone had an accident or died in Qawa Road, she said that she would go to Vunivau. Qawa Road in Vunivau leads to Qawa Primary School Road. Bulileka Transport Ltd operated on Bulileka Road. If the first defendant wanted to operate on Qawa Road in Bulileka Road, he would have had to apply for a new RRL. To her knowledge, the public had made no demand for additional trips to Boubale Road. LTA issued two letters to the first defendant to cease operations on Bulileka Road. Bulileka Transport Limited obtained an injunction restraining the first defendant from operating on Bulileka Road. He stopped operating. In 2010, he started operating again for 2-3 days and was issued with a warning and a Traffic Infringement Notice, (TIN). He started operating again from Bulileka Road in 2015. It transpired that the LTA office in Labasa got burnt in 2014. All records were destroyed. In cross-examination, she said that the LTA does not issue new permits now. Only amendments are allowed. The first defendant did not apply for additional trips. He clearly applied for amendment of his route. The public are aware that Qawa Road is in Vunivau. In answer to Mr Pal, counsel for the defendants, PW2 said from that from Labasa bus station, it would take 5 to 10 mts to go to Qawa Road. To go to Boubale Road, now Qawa Road, it would take 30 mts.

The witness was then shown the proposed time table submitted by the first defendant stating that it would take 30 mts to arrive at Qawa Rd junction from Labasa town and vice versa. Despite the time being consistent with the time-table, PW2 reiterated that the application for amendment was for Qawa Road in Vunivau.

She said that a sketch plan as against a Govt map is required to be attached to an application, as it clearly specifies the routes. A Govt map depicts areas very broadly. The witness said that she did not know of the existence of a Qawa Road in Bulileka.

A TIN was issued to the first defendant in 2010. She was not aware if the first defendant was found guilty.

In re-examination, PW2 said that the detailed sketch plan with routes was submitted to the Board for approval. She reiterated that the first defendant's application for amendment was from Labasa town to the "inside" of Qawa Road and Vunivau. If an operator travels from Labasa town to Vunivau and picks passengers, it would take half an hour.

- c. PW3, (Ravindra Deo Lakshman- formerly Prasad) said that he was in the business from 1972 to 2011. His late father gave his business to his sons. The licences were divided between the witness and the first defendant, (who bought his brother Kamal's business). PW3 said that his licence was in the name of Bulileka Transport Limited. He sold his licence to the plaintiff. He operated from town to Bulileka Road. A right turn from the roundabout leads to Bulileka Road. The first defendant did not operate on that road. He operated to Vunivau and Valebasoga from town. Valebasoga Road is opposite Bulileka Road. The straight road from the roundabout leads to Vaturekuka.

In 2001, the LTA asked the first defendant to make amendments to his licence, to legalise the routes he was illegally operating on Vulovi Road, Qawa Road, Qawa Primary school and Vunivau Road. The witness said that he did not object to the first defendant's application for amendment, as it had nothing to do with his route on Bulileka Road. The amendment did not cover Boubale Road. He lived all his life in Bulileka Road. He came to know of a Qawa Road in Bulileka on 16th September, 2002, when the first defendant started operating on that road and a signage was put up. He lodged a complaint with the LTA.

The LTA said that the first defendant was illegally operating on Boubale Road. The amendment allowed him to operate from Qawa Road in Vunivau. PW3 said that he would have objected to the amendment, if it had referred to Qawa Road in Boubale.

Prior to 2015, he did not see the first defendant or any operator travelling on Bulileka Road with the sign Qawa. If they did, passengers to Vunivau would get into that bus. Everyone in Labasa knew that Qawa Road is in Vunivau. Newspapers would report an incident as having occurred in Qawa in Vunivau. The road leading to Qawa Primary school was known as Qawa Road. Before the Qawa Road signage came up in Bulileka Road, it was called Boubale Road, as it is still known and called.

From 1999, the first defendant's bus had the sign Qawa to Vunivau. He operated from Bulileka from 17th September, 2002,. The LTA warned him not to operate. He was issued with TINs. The witness said that he obtained an interim injunction restraining the first defendant from operating from Boubale Road.

An applicant is required to submit a plan with the proposed routes and amendment desired.

The LTA does not request Govt maps, as bus stops such as Emily Point and Line point are not signified in Govt maps.

The public had not made a demand for additional buses to operate from Boubale Road. Sufficient services were available. The witness was directed to the handwritten note on the second page of the first defendant's application.

Vulovi Road is opposite All Saints Secondary School and leads to Qawa Road Primary School Junction, where Qawa Road begins. Vulovi Road falls on to Malau Road and Wainikoro Road. In cross-examination, it was put to PW3 that the Divisional Engineer Northern, PWD of the Ministry of Works & Energy in his reply of 4th October, 2002, to his letter stated that Boubale Road has been recorded in their inventory as Qawa Road from 1970. The witness said that the LTA was unaware that it was Qawa Road, as otherwise it would have come back to him.

The case he filed against the first defendant did not proceed to trial. He did not disclose PWD's letter in that case, as he had other evidence.

An application for a RRL on his route should have come by way of a new application. The amendment did not affect him, as the first defendant did not operate in Boubale until 17th September, 2002, when the signage was changed overnight.

It was pointed out to the witness that his Route 507: Labasa to Bulileka took 30 mts, as stated in his permit. The advertisement of the first defendant's proposed timetable provides that his trip to Qawa Road junction from Labasa(bus stand) and return also takes 30 mts.

It was put to him that the time tables indicate that the first defendant applied for Qawa Road in Boubale Road. The witness said that the advertisement gives more time than the actual time taken. Qawa Road in Bulileka did not exist until 16th September, 2002. He did not object, as the first defendant sought an amendment to his existing route.

In re-examination, he said that the first defendant had applied for 17 trips from Labasa town to Qawa Road junction, as contained in his letter of 20th September, 2001, to the LTA. PW3 said that he had 48 trips. He would have objected if 17 trips were added to his route. It was of no concern to him, since the first defendant sought an amendment to operate in the Vunivau area. The time schedules of the witness and first defendant provides that the first trip on each schedule would leave at 6.15 am and return at 6.45am. The LTA would not have approved two buses of two different operators leaving at the same time. PW3 said that the plaintiff's licence refers to Boubale Terminus, not Qawa terminus, as the LTA was unaware of a Qawa Road in Boubale.

- d. PW4, (*Sarafina Selai Toga, Journalist*) said that she has travelled to Vunivau, Bulileka and all over Labasa. Qawa Road was in Vunivau. She had not heard of Qawa Road in Bulileka. In her ten years in Labasa, she has not covered a story that occurred in Qawa Road in Boubale nor Qawa Road in Bulileka. She produced a copy of the Fiji Times of 26th August, 2016, which reported a police investigation in Qawa Road in Vunivau.

In cross-examination, it transpired that she was not the author of the article reported in the Fiji Times. There was no signage of Qawa Road in Bulileka. Qawa Road was known to be in Vunivau. The Fiji Roads Authority and Water Authority identify Qawa Road in Vunivau. She did not look at maps. Her press releases have never been corrected.

In re-examination, she said that she would have investigated, if she was told Qawa Road was in Bulileka.

- e. PW5, (*Ashnika Chand, Co-Director of the plaintiff company*) in evidence in chief said that the plaintiff had suffered damages, as a result of the defendant operating illegally on its route. The plaintiff is claiming general damages, as its income was dropping daily; exemplary damages, as the first defendant has been operating forcibly; punitive damages, to punish him; an injunction and costs on an indemnity basis. The claim for special damages is not pursued.
- f. PW6, (*Elia Niubalavu, Court Officer*) produced the court record in Action no 66 of 2002, the action filed by Bulileka Transport Ltd against the first defendant.

g. DW1, (*the first defendant*) said that his application for amendment of his RRL12/23/34 to Qawa Road was unopposed. The LTA prepared the advertisement, in terms of his application. He applied to operate on Qawa Road in Bulileka, not Qawa settlement. He attached a map he obtained from the PWD and his proposed timetable. He produced his advertisement, proposed time table for Qawa route and map as “D1”, “D2” and “D3” respectively.

The map identifies Qawa Road after Bulileka village. There is no Qawa Road in Vunivau or Malau Road, only a settlement. Qawa Road is depicted in the Govt map he produced. The Govt map corresponds with his application. His application was approved. PW3 would not have seen the advertisement.

His proposed time table provides that it takes 30 mts to reach Qawa junction from Labasa town and 30 mts to return. It was only the first trip of the parties that would leave and return at the same time.

He produced the letter of 4th October, 2002, from the PWD, Ministry of Works & Energy in reply to PW3. The letter was not disclosed in the action filed by Bulileka Transport Limited.

He started operating on Qawa Road, after his application was approved in July, 2002. On 26th September, 2002, the LTA asked him to cease “*operation on Bulileka Road immediately until further clarification*”. LTA wrote to him again on 28th October, 2002. He did not agree with the contents of that letter, as his application was to Qawa Road.

On 27th September, 2002, Bulileka Transport Limited obtained an injunction restraining him from operating on its route

He did not pay any fines. The TINs issued were withdrawn or dismissed. From 2002, he has not been found guilty of operating on Bulileka Road. LTA has not initiated disciplinary proceedings against him. His permit was renewed in 2006.

In 2014, he made inquiries and found out that the action filed by Bulileka Transport Ltd against him was no longer active and was dismissed. On 23rd January, 2015, his solicitor wrote to LTA and Messrs Kohli and Singh, Barristers and Solicitors stating that the first defendant was entitled to commence operating services, as that action was struck out. At that stage, Mr Kohli stated that he had not received the letter. LTA replied that they would clarify issues, but did not. He started legal proceedings against the LTA in HBC 102 of 2015. LTA did not file action against him.

He resumed operations in January, 2016, and received a notice from LTA to cease operations. He concluded his evidence in chief stating that the amendment of his route was not to Vunivau settlement, his operations on Qawa Road are not illegal nor causing losses to the plaintiff.

In cross-examination, DW1 agreed that in 2001, he was illegally operating on Wainikoro Road and Malau Road. His route terminated at Vunivau Terminus and he came to town on Wainikoro Road and Malau Road, as it was a shorter run. He denied the LTA asked him to regularize his route and that his illegal trips were taken care of by the amendment, as stated in LTA's letter of 26th September, 2002. He replied stating that he was not operating illegally. DW1 gave no answer to the question why he had not produced his reply in the action Bulileka Transport Ltd instituted against him or in these proceedings.

The road between Vunivau Road and Wainikoro Road leading to Qawa Primary school has no signage. DW1 said that he did not know that it was called Qawa Road. Later he said it is called Qawa School Road and finally, that it is commonly referred to as Qawa Road.

He said that he was not advised by his solicitor to dissolve the injunction. After the Court order, he did not operate till 2006. He operated for only 2 days, as he was reissued with TINs. His solicitor advised him in 2002 to wait till 2006. Twelve TINs were issued to him and his drivers on 10th July, 2006. He received a letter from the LTA on 14 July, 2006, stating that he had agreed to suspend operations from 12 July, 2006. He stopped operating. Now his solicitor advised him to operate.

It was pointed out to DW1 that in his affidavit in opposition of 10th October, 2002, filed in the action instituted by Bulileka Transport Ltd, he stated that his application did not contain any route plan as annexed to the affidavit of PW3. Mr Kohli asked him why he had not attached his map, marked "D3" to that affidavit. After a pause, he said that he acted on the advice of his solicitor.

It was put to DW1 that the map came in his affidavit in opposition of 10th May, 2015, filed in this case, as an "afterthought", after the PWD had updated Boubale Road with the signage Qawa Road. DW1 said that he cannot answer that question.

Mr Kohli suggested to the witness that in his affidavit of 10th May, 2015, he stated that he never "used" the map produced by PW2, as the records cannot be verified since the LTA office in Labasa was burnt. His response was that his application is in the LTA office in Suva, not

Labasa. He was then asked why he had not subpoenaed the Board Secretary in Suva to produce the plan.

It was put to him finally that :Bulileka Transport Ltd did not oppose his application, as it did not impinge on its route; a renewal was granted to him, as he had ceased operating from 2002 to 2006; in 2006, the LTA had issued 10 TINs to him on one day, and he ceased operating till December, 2015; he submits a Govt map now, after he found out that the LTA office records in Labasa were burnt in 2014. DW1 denied these allegation and stated that he started operating, when the TINs were dismissed. He operated in 2010 for two to three days.

In re-examination, DW1 said that his application would not have not been accepted without a map. All the TINs issued were dismissed or withdrawn by the LTA. People can call a road anything, but the LTA must be specific. Mr Pal pointed out that the affidavit of PW3 filed in the action instituted by Bulileka Transport Ltd attached the map relied on by the first defendant.

The determination

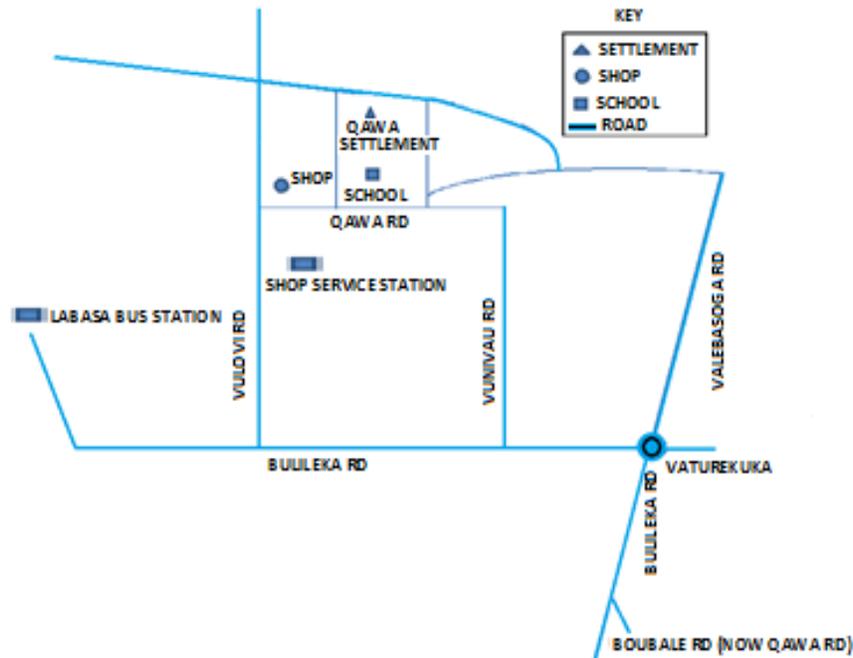
7. The case for the plaintiff is that DW1, the first defendant is illegally operating his buses on its licenced route to Qawa Road off Bulileka Road. DW1's licence as amended, permits him to operate on Qawa Road in Vunivau.
8. DW1 contends that his RRL, as amended, permits him to operate on Qawa Road in Bulileka.
9. Mr Pal submitted that the plaintiff should have sought its remedy under the Land Transport (Public Service Vehicles) Regulations, 2000. It was also argued that the LTA has not been made a party in this case.
10. Mr Kohli pointed out quite correctly that the Regulations do not enable an aggrieved party to claim damages and obtain a restraining order. Regulation 12 provides that the LTA may "*cancel, vary or suspend a permit*".
11. In my view, the jurisdiction of the High Court to grant redress is unfettered .

12. On the second contention, clearly the LTA is not required to be made a party in these proceedings, as the plaintiff is not challenging a decision of the LTA.
13. This dispute arises from the fact that Labasa has two roads called Qawa Road. One off Bulileka Road, which at the material time was called Boubale Road, as I find later in my judgment. The other in Vunivau is commonly referred to as Qawa Road, as it leads to Qawa Primary School, as accepted by the first defendant in cross-examination.
14. The relevant bus route of the plaintiff commences from the Labasa bus station, proceeds past the Sugar Mill and All Saints Secondary School up to the roundabout, when it turns right to Bulileka Road and then branches to Boubale Road, renamed Qawa Road.
15. DW1's bus route runs from Labasa bus station and turns left to Vunivau Road after passing All Saints Secondary School. One of his routes is to Valebasoiga.
16. DW1 produced in evidence an official map, which he said he submitted with his application for amendment of his RRL. The map depicts Qawa Road in Bulileka Road.
17. Mr Kohli disputed he submitted that map with his application for the following reasons.
18. Firstly, DW1 had not attached that map to the affidavit he filed in the action Bulileka Transport Limited instituted against him. In that affidavit, he stated his application did not contain this route plan. In his affidavit filed in this case, he stated that copies of the map he used would only be available with him and the LTA. Mr Kohli submitted that the records cannot be verified, as the LTA office in Labasa was burnt.
19. Secondly, there is no indication on the map that it was submitted by DW1. In contrast, the sketch plan produced on behalf of the plaintiff gives DW1's name and RRL no on the top of the page.
20. No cogent evidence has been produced by DW1, in support of his contention that he submitted the disputed map. I find that the map relied on by him does not indicate the bus routes, as accepted by Mr Pal, when he addressed Court.

21. PW1, PW2 and PW3 testified that the LTA requires a sketch plan setting out the proposed bus routes with markings of where the journey commences and terminates, not a Govt map. PW1 and PW3 pointed out that many buses depict a signage not found in Govt maps.
22. PW2 said that a sketch plan depicting the amended route, viz, Labasa, Bulileka Road, Vulovi Road Qawa Road and Qawa settlement was prepared by Samisoni Ravudi, a Senior Road Safety Officer of the LTA.
23. I do not accept the evidence of DW1 that he submitted the official map. I did not find DW1 to be an honest witness. His answers in cross-examination were often evasive and not truthful.
24. I prefer and accept the independent evidence of PW1 and PW2 that the LTA approved the DW1's amendment of his RRL, on the basis of the sketch plan prepared by the officer of the LTA.
25. The sketch plan relied on by the LTA indicates Qawa Road in Vunivau. It does not refer to Qawa Road in Bulileka.
26. Mr Pal put it to PW2 and PW3 in cross-examination that DW1's time table demonstrated that he had applied for Qawa Road in Buileka Road, since the time taken to reach as well as return from that destination was 30 mts, while Qawa Road in Vunivau would be reached in 10 mts.
27. PW2 and PW3 in re-examination said that if an operator travels from Labasa town to the interior of Vunivau and picks passengers, it would take half an hour. Mr Kholi, in the re-examination of PW3 pointed out that the LTA would not have approved two buses leaving at the same time to the same destination.
28. I accept the evidence of PW2 and PW3 on that point.

29. The decisive issue in my view, is not the time taken for the journeys, but the route that was allowed by the LTA. It is pertinent to note that DW1 in evidence in chief said that he prepared the time table.
30. That takes me to what precipitated DW1 to seek an amendment to his RRL.
31. PW2 said that in 2001, the LTA asked the first defendant to make amendments to his licence to legalise the routes he was illegally operating on Vulovi Road, Qawa Road, Qawa Primary school and Vunivau Road.
32. DW1 in cross-examination admitted that in 2001, prior to the amendment, he was illegally operating on Malau Road and Wainikoro Road. These roads were not covered in his route. His trip terminated at Vunivau terminus. He returned to town via Malau Road rather than on Vunivau Road, in order to come back to Labasa town in a shorter time. DW1 said that his understanding of Malau Road was the road leading to Wainikoroa Dama Road. He denied that the LTA asked him to legalize his route and file an amended application.
33. His denial is refuted by the note in his application for amendment, which states that “*Due to Public demand and. some Trip are operated illegal by*” and LTA’s letters to him of 26th September,2002, and 28th October,2002.
34. The letter of 26th September,2002, provides that the amendment has “***taken care of the illegal trips(he) had been operating through Qawa area for the past years under the RRL 12/23/34. Operating on a new area needs a fresh application and not amendment***”.(emphasis added) DW1 in cross-examination said that he replied this letter. His reply was not produced. The inference to be drawn is that he accepted the contents of that letter.
35. The letter of 28th October,2002, clarifies that the amendment allowed him to operate on “***Labasa/Malau Road/Qawa Road via Vulovi Road/Labasa***”.(emphasis added)
36. In my view, the evidence establishes conclusively that DW1 sought an amendment to legalise his journeys on Malau Road and Qawa Road via Vulovi Road.

37. Qawa Road in Vunivau runs across Vunivau Road and Vulovi Road. PW1 and DW1 testified that Vulovi Road is sometimes called Malau Road or Wainikoro Dama Road, as it continues on to those roads. Qawa Road in Vunivau is in closer proximity to the Labasa bus station than Qawa Road in Bulileka Road, as depicted in the following sketch:



38. PW2 said that in 2002, she was unaware of a Qawa Road in Bulileka. When the first defendant started to operate from Bulileka Road, the LTA rechecked and came to know of a Qawa Road in Bulileka. Now a sign is put up of Qawa Road in Bulileka.

39. PW3 said that he lived all his life in Bulileka Road. He came to know of a Qawa Road in Bulileka on 16th September, 2002, when DW1 started operating on that road and a signage of Qawa Road was installed. Everyone in Labasa knew that Qawa Road is in Vunivau. He also pointed out that his licence refers to Bulileka and Boubale Terminus, not Qawa terminus, while DW1's licence makes no reference to Bulileka, nor Boubale Terminus.

40. PW4 said that she had not heard of a Qawa Road in Bulileka. The copy of the Fiji Times of 26th August, 2016, she produced reported a police investigation in Qawa Road in Vunivau.

41. DW1 accepted that Qawa Road was in Vunivau. I reproduce an excerpt of his cross-examination on that point:

Q: *When operating in Vunivau Area, you have to go through Vunivau Road. To come to town you have to come to Wainikoro Dama Road, Bulileka Road and then to town ?*

A *Yes.*

Q *What is the road between Vunivau Road and that which terminates on Wainikoro Dama Road ?*

A *That road is not written but leads to Qawa Primary School...*

Q *What is that road commonly known as ?*

A *I do not know.*

Q *It is commonly known as Qawa Road everybody knows, every taxi driver*

A *I do not know that it is Qawa Road...not defined as Qawa Road. It is the access road to the school.*

Q *What do people refer to that road as ?*

A *School Road, Qawa School Road*

Q *If an accident happens there, what would you report to Police?*

A *Qawa School Road.*

Q *Everybody in Vunivau refers to it as Qawa Road?*

A *It depends*

Q *It is commonly referred to as Qawa Road.*

A *Yes..(emphasis added)*

42. I note that DW1, in his affidavit filed in the action instituted by Bulileka Transport Ltd against him stated that “*there is only one Qawa Road via Vulovi*”.

43. The defence relies on a letter of 4th October, 2002, from the PWD, Ministry of Works & Energy, in support of the contention that the amendment to DW1’s licence covers Qawa Road in Bulileka.

44. The letter states that “*from 1970(Boubale Road) has been recorded in their inventory as Qawa Road*”. The letter goes on to state that:

It seems that Boubale Road has been used to facilitate the community it serves. The Department has embarked on a process to update the inventory and hence the installation of sign as Qawa Road.(emphasis added)

45. In my view, the paragraph that I have read endorses LTA’s letter of 28th October, 2002, that Qawa Road was known as Boubale Road until 16th September, 2002.

46. The letter of 28th October, 2002, reads:

..The Authority notes that you started serving Qawa Road via Bulileka

*Please note that this was not the amendment granted by the Authority. **Qawa Road via Bulileka was not in existence at the time of your application for amendment, the road was known as Boubale Road.***

The change of name from Boubale to Qawa happened on 16 September, 2002.

You are therefore warned to cease operation to Qawa Road via Bulileka immediately..

The Authority notes that you were issued with Traffic Infringement Notices as a result of the above illegal operations.(emphasis added)

47. I find and hold that Qawa Road in Bulileka was not given official recognition at the time DW1 made his application for an amendment of his licence on 26th September, 2001.

48. The LTA, by its letter of 25th July, 2002, to DW1, “*approved (his) application*”.

49. His application expressly provides that it was made for the “*Amendment of Route: LABASA TOWN/QAWA Rd Junction/LABASA TOWN VIA LABASA VULLOVI ROAD*”.(emphasis added).

50. In my judgment, the reference to “*VULLOVI ROAD*” fortifies the plaintiff’s case that LTA granted approval to DW1 to operate in Qawa Road in Vunivau.

51. I conclude that the first defendant had no license to operate to Qawa Road in Bulileka and grant the plaintiff the restraining order claimed in respect of that route.

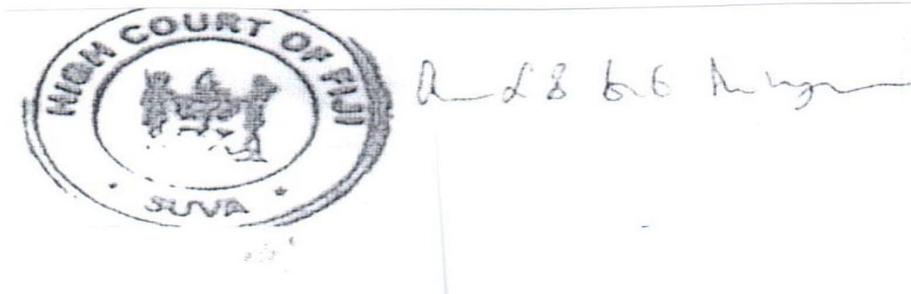
52. The plaintiff in his statement of claim claims general, special, exemplary and punitive damages. At the trial, the claim for special damages was dropped. The closing submissions of the plaintiff quite correctly submits that the claim for exemplary and punitive damages are difficult to maintain, as these have not been pleaded.

53. The closing submissions claim general damages for pain and suffering. The claim is untenable and is declined. A corporate entity cannot suffer pain and suffering.

54. The plaintiff has no cause of action against the second defendant. The second defendant is not an operator of bus services. The claim is declined.

55. Orders

- (a) The first defendant is restrained from operating its buses on the plaintiff's route to Qawa Road, (formerly Boubale Road) via Bulileka Road.
- (b) The first defendant shall pay the plaintiff costs summarily assessed in a sum of \$ 5000.
- (c) The plaintiff's claim for damages against the first defendant fails.
- (d) The plaintiff's claim against the second defendant is declined with costs summarily assessed in a sum of \$ 500.



A.L.B. Brito-Mutunayagam
Judge
26th April, 2017