

**Land Transport Appeals Tribunal  
Sitting At Lautoka**

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Appeal # 72 of 2014

Between: **Westbus (Fiji) Limited**  
[Applicant/Appellant]

And: **Land Transport Authority**  
[Respondent]

**MR Khan Brothers Transport Company Limited  
Shahbud Dean Transport Limited  
Nadi Town Council**  
[Interested Party]

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Appeal # 73 of 2014

Between: **Westbus (Fiji) Limited**  
[Applicant/Appellant]

And: **Land Transport Authority**  
[Respondent]

**Shahbud Dean Transport Limited  
MR Khan Brothers Transport Company Limited  
Pacific Transport Limited  
Nadi Town Council**  
[Interested Party]

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Appeal # 11 of 2015

Between: **Westbus (Fiji) Limited**  
[Applicant/Appellant]

And: **Land Transport Authority**  
[Respondent]

**Shahbud Dean Transport Limited  
MR Khan Brothers Transport Company Limited  
Lautoka General Transport Limited  
Nadi Town Council**  
[Interested Party]

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**Appearances:**

**For the Applicant/Appellant:** Mr Ramesh Prakash and Ms Maharaj.

**For LTA:** Ms Emele Dauwere.

**For Shahbud Dean Transport Limited:** Mr Vasu Pillay.

**For Nadi Town Council:** No Appearance.

**For Pacific Transport:** No Appearance.

**For MR Khan Transport:** No Appearance.

**For Lautoka General:** No Appearance.

Date of Hearing: 12<sup>th</sup> October 2018 (Suva)

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**Ruling**

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## Introduction

The Applicant/Appellant, Westbus (Fiji) Limited had filed a similar motion in each of the 3 matters seeking the following orders:"

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1. That Westbus (Nadi) Limited, a limited liability company having its registered office at Nadi Back Road, Nadi, Fiji be substituted as the Appellant in these proceedings in place of Westbus (Fiji) Limited;
  2. That the name of the Appellant in these proceedings be amended to be read as Westbus (Nadi) Limited and the proceedings do continue in the name of the said substituted Appellant;
  3. Such other directions as the Tribunal deems fit;
  4. And the costs of this application be costs in the cause."

The motion was filed with an affidavit in support of Mr. Ajay Kumar Sharma. An affidavit in response was filed by Mr. Mohammed Zain Razafud Dean of Shahbud Dean Transport Limited. The matter was also heard in Nausori on 8<sup>th</sup> September 2017.

This is the Ruling on the motion.

## Analysis

The Tribunal has noted all the submissions made at the hearing and all the documents that had been filed. In these 3 matters the Applicant is seeking an order from the Tribunal to substitute Westbus (Fiji) Limited with Westbus (Nadi) Limited.

The matters before the Tribunal are appeals filed by Westbus (Fiji) Limited. The submission by the Applicant is that subsequent to the filing of the appeal the road route licence has been transferred to Westbus (Nadi) and the rights and interest are now with Westbus (Nadi).

There are no provisions in place on the issue of alteration/substitution of a Party in the Land Transport Act 1998 or the Regulations. In the absence of any provisions within the Land Transport Act 1998 or the Regulations the LTA Tribunal takes its guidance on matters of practice and procedure from the Magistrates' Court Act and the Magistrate Court Rules. Recently in **Land Transport Authority v Prasad [2018] FJHC 960; HBA09.2018 (8 October 2018)**, Justice Amaratunga looked at the Magistrates' Court Rules when there was no time period or procedure of the appeal process in the Land Transport Act, 1998.

In addition to the case laws the Tribunal notes that **Section 61G (6) of the Magistrates Court Act 1944** provides that *"any existing rules of procedure or practice prescribed for any statutory tribunal subject to this Part in any written law shall continue to be applicable by any magistrate exercising the jurisdiction of any statutory tribunal under this Part, until such time as they are revised or amended by the Chief Justice pursuant to section 61F; provided however, that where a written law which established a statutory tribunal does not provide any rules of procedure or practice, then the rules applicable in the Magistrates' Court shall apply mutatis mutandis."* In simple terms the Land Transport Appeals Tribunal can rely on the Magistrates' Court Rules where the Land Transport Act does not have provisions on any rules of procedure or practice.

The next step for the Tribunal is to look at the Magistrates' Court Act and the Rules. Having perused the Rules the Tribunal finds that **Order 11 of the Magistrates Court Rules 1945** provides for alteration of parties. The relevant provision is **Rule 1**. It provides that *"where, after the institution of a suit, any change or transmission of interest or liability occurs in relation to any party to the suit, or any party to the suit dies or becomes incapable of carrying on the suit, or the suit in any other way becomes defective or incapable of being carried on, any person interested may obtain from the court any order requisite for curing the defect, or enabling or compelling proper parties to carry on the proceedings: Provided that any person served with such an order may, within such time as the court in the order directs, apply to the court to discharge or vary the order."*

Order 11 Rule 1 Magistrates Court Rules 1945 permits substitution or alteration of parties and the factors that need to be looked at is whether there has been after the institution of a suit, any change or transmission of interest or liability occurs in relation to any party to the suit, or any party to the suit dies or becomes incapable of carrying on the suit, or the suit in any other way becomes defective or incapable of being carried on. In this matter the Applicant has shown that Westbus (Nadi) has interest in the proceedings now as Westbus (Fiji) has transferred the licence it held in the respective matters to Westbus (Nadi). A copy of provisional approval by LTA of the transfer of RRL from Westbus (Fiji) to Westbus (Nadi) and a copy of the RRL were filed with a sworn affidavit. The Applicant in this matter has shown to the Tribunal that there has been a transmission of interest of one party and that a new party has taken over the role of that other party.

The Tribunal is of the view that the bus industry is not a static industry. It's evolving with time. With the evolution

the bus operators need to regularly make strategic and prudent decisions in relation to the operation of their business. Restructuring and reorganisation takes place. The Regulator, LTA permits the transfer of a RRL. Once the RRL is transferred a new permit holder comes into operation. The status of legal proceedings of the previous owner is in issue. The transfer of RRL or taking over of the RRL by another Company is clearly a change or transmission of interest of a Party. The new Party clearly has an interest in the proceedings that are pending.

One other issue this Tribunal would like to consider when dealing with the issue of the alteration of a Party is the issue of fairness. Is alteration of a Party fair to other Parties? As is in this case is it just and reasonable that a new permit holder takes place of the previous permit holder in the legal proceedings. Where matters are pending is it just and reasonable that alteration/substitution of parties be allowed where transfer of permit has already taken place.

The Tribunal is of the view that when an alteration/substitution takes place it is only a Party that is being altered/substituted. The contents of the proceedings or subject matters are not altered/substituted. In other words if one party replaces another party that new party cannot in the proceedings rely on new matters which relate to that Party, the new party. The records before the Tribunal do not change meaning that the Tribunal will not consider the new permit holders standing but the record that is before the Tribunal of the issues that have been considered by the LTA Board. It is not unfair to any party if under these circumstances alteration of a Party is made.

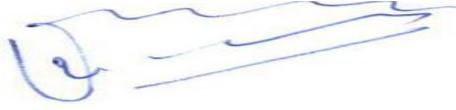
For the foregoing reasons the motion is granted.

### **Orders**

#### **The Tribunal hereby orders as follows:**

1. That Westbus (Nadi) Limited, a limited liability company having its registered office at Nadi Back Road, Nadi, Fiji be substituted as the Appellant in these proceedings in place of Westbus (Fiji) Limited;
2. That the name of the Appellant in these proceedings be amended to be read as Westbus (Nadi) Limited and the proceedings do continue in the name of the said substituted Appellant;

3. No orders as to costs.



Chaitanya Lakshman  
**Land Transport Appeals Tribunal**  
23<sup>rd</sup> November 2018

