

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court of Fiji]

CRIMINAL APPEAL NO: AAU002 of 2015
[High Court Case No: HAA007 of 2014]

BETWEEN : LAMI TOWN COUNCIL *Appellant*

AND : FOODS (PACIFIC) LIMITED *Respondent*

Coram : Hon. Mr. Justice Daniel Goundar

Counsel : Ms. S. Nayacalevu for the Appellant
Mr. V. Maharaj for the Respondent

Date of Hearing : 15 March 2017

Date of Ruling : 22 March 2017

RULING

[1] Lami Town Council (the appellant) is a statutory local government body. Foods (Pacific) Limited is a limited liability private company. The appellant brought criminal prosecution against the respondent in the Magistrates' Court. Following a trial, the respondent was convicted and fined. The respondent appealed against conviction in the High Court. On 8 December 2014, the High Court allowed the appeal and quashed the respondent's conviction. The appellant filed this timely appeal against the High Court's judgment pursuant to section 22(1) of the Court of Appeal Act, Cap. 12. Section 22(1) limits the right of appeal to a question of law alone. The question is whether the appellant has a right of appeal.

[2] The appellant advances the following grounds of appeal:

- (1) THAT the Learned Judge erred in law in failing to properly apply the law under section 7 (7) (b) of the Town Planning Act, when dealing with the appeal for Count 1 of the charge –
 - i. In holding that the permission of the local authority is not required in respect of the „development“ carried out by the Respondent in Nakarawa Park (also known as Toti Park) as it sits on native land.
 - ii. In failing to consider that the actions of the Respondent at Nakarawa Park (also known as Toti Park) is a „development“ under section 2 of the Town Planning Act.
 - iii. In holding that the Native Land Trust Board (now known as i“Taukei Land Trust Board) is the proper authority to commence any legal action against the Respondent, contrary to the provisions of the Town Planning Act and the Local Government Act.
 - iv. In holding that the initial approval given by Lami Town Council becomes illegal as no consent was given by the Native Land Trust Board (now known as the i“Taukei Land Trust Board) contrary to the provisions of the Town Planning Act.

- (2) THAT the Learned Judge erred in law in failing to properly apply the law under section 115 (1) of the Local Government Act, when dealing with the appeal for Count 2 of the charge –
 - i. In holding “that the obstruction is only a temporary obstruction and is done out of necessity” when no authority was given by the Appellant, in breach of section 115 of the Local Government Act.
 - ii. In holding “that the Appellate failed to prove that the Respondent caused Obstruction of Street” in breach of section 115 of the Local Government Act.

- (3) THAT the Learned Judge erred in law by –
 - i. Misinterpreting the application of section 12 of the Native Lands Trust Act, Cap 134 in the determination of the appeal for Counts 1 and 2 of the charge.
 - ii. Failing to properly consider and apply the provisions of the Local Government Act and the Town Planning Act.

- (4) THAT the Learned Judge erred in law in holding that Lami Town Council was not the proper authority to institute Criminal Action Number 356 of 2009 against the Appellant, contrary to the provisions of the Local Government Act and the Town Planning Act.

- (5) THAT the Learned Judge erred in law in failing to properly apply the case of Nadi Township Board v Sukhraj and Native Land Trust Board [1971] Supreme Court, 30th March and 13th April 1971; by –
 - i. “holding that a local government authority may not institute action to **acquire** lands for town planning scheme without prior consent from the Minister to commence proceedings”, contrary to criminal prosecution for breaches of the Local Government Act and the Town Planning Act.

- (6) THAT the Learned Judge erred in law in setting aside Count 3 –

- i. Without properly considering and applying regulation 19 (1) (f) of the Lami Town By laws, Local Government Act; Cap. 125 and regulation 54 of the Lami Town By Laws, Local Government Act, Cap. 125.

- [3] On count one, the respondent was charged with failure to cease operating storage containers from Toti Park contrary to section 7(7) (b) of the Town Planning Act, Cap. 139. The charge alleged that the appellant granted the respondent temporary approval to use Toti Park for 10 days from 17-26 July 2008, and the respondent contravened that condition by not ceasing their operations from the Park after the temporary approval had lapsed.
- [4] On count two, the respondent was charged with obstruction of a street contrary to section 115(1) (f) of the Local Government Act, Cap. 125. The charge alleged that the respondent without proper authority placed their containers on Toti Street thereby causing obstruction on Toti Park.
- [5] On count three, the respondent was charged with interfering with authorized use of a Public Park contrary to Regulation 19(1) (f) of the Lami Town Bylaws, Local Government Act, Cap. 125 and Regulation 54 of the Lami Town Bylaws, Local Government Act, Cap. 125. The charge alleged that the respondent wilfully interfered with the authorized use of Toti Park by using it as a storage space for its containers and depriving the people of Lami Town from its use as a park thereby causing prejudice to the people of Lami Town.
- [6] The High Court quashed the conviction of counts one and two on the ground that the initial approval given by the appellant to the respondent to use Toti Park was unlawful because they had not obtained the consent of the Native Land Trust Board (now TLTB) before dealing with Toti Park, which was a native land. I am of the opinion that whether the appellant was required to obtain the consent of TLTB to deal with a designed park under the Town Planning Act before a prosecution can be brought is a question of law alone.
- [7] The High Court quashed the conviction of count three on the ground that there was no evidence that the respondent had caused an obstruction as alleged on that count.

Whether there is no evidence on an essential element of the charged offence in my opinion is a question of law alone.

Result

[8] I am satisfied that the appellant has a right of appeal under section 22(1) of the Court of Appeal Act, Cap. 12. The appellant may proceed with this appeal.



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Hon. Mr. Justice Daniel Goundar
JUSTICE OF APPEAL

Solicitors:

Shekinah Law for the Appellant
MC Lawyers for the Respondent