

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**APELLATE JURISDICTION**

**Traffic Appeal No. 14 of 2016**

**ABDUL KAMAL**

**v**

**LAND TRANSPORT AUTHORITY**

**Counsel** : Ms. S. Devi (L.A.C.) for the Appellant  
Mr. R. Ratule for the LTA.

**Date of Hearing** : 20 April 2017

**Date of Judgment** : 02 May 2017

**JUDGMENT**

1. On the 14<sup>th</sup> November 2016, in the Labasa Magistrates Court the Appellant was convicted of the traffic offence of carrying excess passengers, contrary to Regulations 39(1) and 87 of the Land Transport (Traffic) Regulations 2000. He was fined \$170.

2. He now appeals that conviction on the following grounds:
  - (i) There was no evidence as to the number of excess passengers being carried.
  - (ii) The learned Magistrate erred in law in convicting him when there was no offence disclosed.
3. The matter was dealt with by the Magistrate by way of formal proof.
4. The Appellant had been issued with a traffic infringement notice ("TIN") on the 7<sup>th</sup> February 2014 and on first appearance he entered a plea of not guilty.
5. On the date set for hearing of the matter the accused was not present and as a consequence the prosecution's application to prove the matter by Formal Proof was allowed. One LTA officer gave sworn evidence that the appellant was stopped on 7<sup>th</sup> February 2014 because his single cab commercial vehicle was carrying 6 passengers, a number in excess to those he was permitted to carry.
6. Counsel for the Appellant submits that the case was not proved to the requisite standard in that a certificate as to the number of passengers allowed to be carried was never produced in Court.
7. The regulation purportedly offended reads:

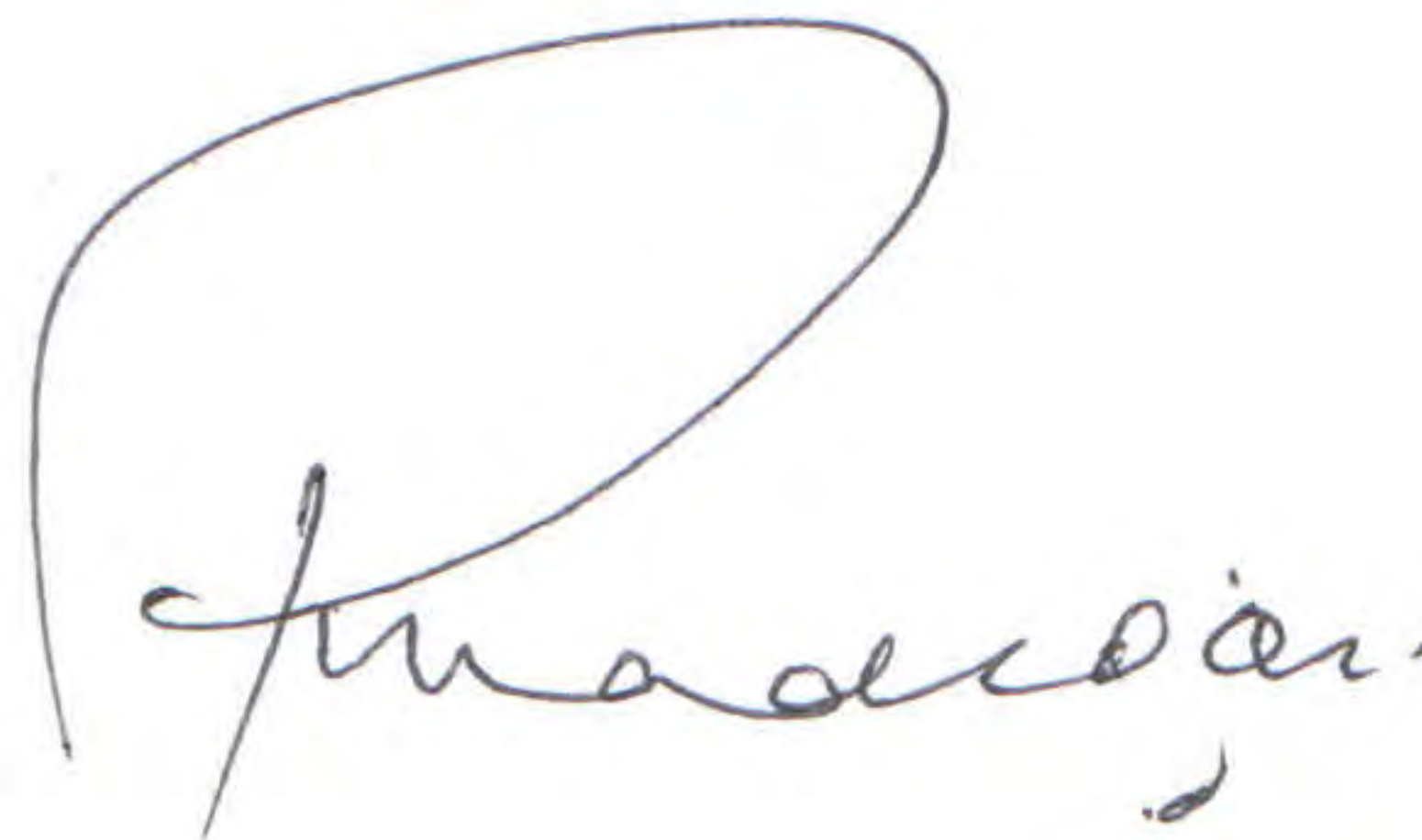
*"39. No person may drive or cause or permit to be driven a motor vehicle with passengers located in positions other than positions approved by the authority, the number of which must be indicated on the certificate of registration, except as may be indicated on a current permit issued pursuant to this regulation by the authority and subject to the condition of the permit."*

8. The appellant's first ground of appeal is that the formal proof hearing must result in an acquittal because there is nothing in the record to show that the certificate of registration was produced in evidence. He submits that that is the only evidence that the Court could receive as to the allowed number of passengers against the actual number of passengers being carried.
9. This ground of appeal however is misconceived. There must surely be evidence before the Court of the number of excess passengers on board, in excess of the authorized number, however there is nothing in the legislation that dictates that this evidence can only come before the Court by way of the Certificate of registration. On the contrary this evidence was before the Court and it was evidence given by the one prosecution witness, the LTA officer, Mr Kumar. As the officer who detected the offence on the 7<sup>th</sup> February 2014, in addition to being an authorized officer of the LTA, he was perfectly competent to give this evidence.
10. The first ground of appeal is not made out.
11. The second ground of appeal raises the issue that the particulars of the offence as charged do not state the number of excess passengers being carried at the time. And as a result the charge is defective in that they do not disclose any offence thereby offending against the provisions of section 58 (b) of the Criminal Procedure Decree 2009.
12. The difficulties contained in this case have been caused by the lack of reference in the evidence in Court and in the judgment of the learned Magistrate to the true nature of the offending by the

driver. A perusal of the disclosures reveal that the accused driver was stopped because he was carrying passengers in the tray of his vehicle.

13. Transporting passengers in the open tray of a vehicle without authority is illegal in Fiji and such offenders are charged with an offence contrary to section 39 (*supra*).
14. That is the offence that charges carrying passengers in “positions other than in positions authorized by the LTA” (i.e. on the back tray) and most unfortunately that particular offence is headed “Carrying of Excess Passengers”.
15. Carrying excess passengers and carrying passengers on the back tray are not necessarily the same thing. A driver may carry excess passengers in the cab and he may have one passenger on the tray (and none inside) and he certainly wouldn't be carrying excess passengers.
16. Despite the ambiguous title to section 39 the wording of the section is adequately reflected in the charge laid. The charge charges him with carrying passengers in a position (ie on the tray) that is not authorised by the LTA. The offence is clearly stated in satisfaction of s.58 (b) of the Criminal Procedure Code 2009.
17. The appellant had been attending mentions of his matter on numerous occasions since February 2014 and not once is he recorded to have been confused by the charge nor has he ever asked for further and better particulars.
18. The second ground of appeal has no merit.

19. It is a written concern of the appellant that he was misled as to the venue of the hearing which explains his absence. He says that he was waiting in Magistrates Court No.3 when his case was called in Court No.1.
20. Court no. 3 has never been used for regular hearings since January 2015 and there is a notice there directing litigants and accused persons to Court No.1. He was present on the 1<sup>st</sup> March 2016 when the hearing was set down for hearing in Court No.1 on the 14<sup>th</sup> November 2016.
21. I do not believe his reasons for absence. He was present at every other hearing of his case, electing to act for himself, and it just so happens that he has an excuse for not appearing on the day of hearing.
22. This Court is satisfied that the conviction is founded on due process; the charge being apposite and the formal proof hearing satisfying all the elements of the offence.
23. The appeal against conviction is dismissed and the appellant now has 14 days to pay the fine and if not to be imprisoned for 14 days.



**P. K. Madigan**  
**Judge**



At Labasa  
02 May 2017