

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**APPELLATE JURISDICTION**

**Criminal Appeal No. HAA 51 of 2017**  
**(from Ltk Traffic 1553/16 (B))**

**BETWEEN:**

**CONSTRUCTION EQUIPMENT HIRE (LAUTOKA) LIMITED**

**Appellant**

**AND:**

**LAND TRANSPORT AUTHORITY ("LTA")**

**Respondent**

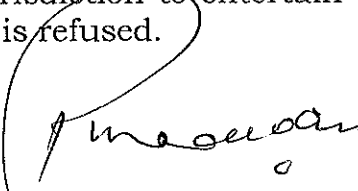
Mr. W. Pillay for the Appellant  
Ms. T. Colati for the Respondent

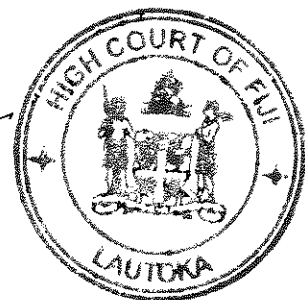
Date of Hearing: 20 June 2017  
Date of Judgment: 27 June 2017

**JUDGMENT**

- [1] On the 14<sup>th</sup> February 2017 in the Magistrates Court at Lautoka a company by the name of Construction Equipment Hire Limited was convicted of permitting a person to drive a motor vehicle with a non conforming mass plus load. The particulars were that on the 5<sup>th</sup> September 2016 at Saweni, vehicle IP483 was carrying a load of soil weighing 35.52 tonnes, 8.72 tonnes in excess of the maximum allowable of 26.8 tonnes.
- [2] When the matter was heard in the Magistrates Court at Lautoka the offence was purportedly proved by way of formal proof. In that process, officers of the LTA erroneously informed the Court that the vehicle belonged to a company called Construction Equipment Hire Limited.
- [3] As a consequence the Magistrate quite understandably convicted the company Construction Equipment Hire Limited of the offence and fined it \$8,000.

- [4] Construction Equipment Hire Limited and Construction Equipment Hire (Lautoka) Limited are two quite distinct and separate legal entities with no directors or shareholders in common. The Court has been provided with evidence to show that they are not in any way related and to show that they are both still trading.
- [5] If the matter stopped there, then the controlling minds of Construction Equipment Hire (Lautoka) Limited could have no grievance because their company was not convicted nor was it fined.
- [6] **However**, despite the lower Court's judgment and sentence, the records of the LTA have been falsely endorsed to accord the fine and conviction to Construction Equipment Hire (Lautoka ) Limited with the result that this (Lautoka) company is unable to attend to routine LTA transactions because the fine has not been paid.
- [7] The (Lautoka) company therefore makes application to appeal out of time; to appeal the lower Court's decision because it had not been served with a notice of proceedings and was consequently unable to appear at a hearing to defend itself which of course is its constitutional right.
- [8] Unfortunately the problems do not stop there. The Criminal Procedure Act Part XV does not give the (Lautoka) company a right of appeal. Section 246 (1) of the Criminal Procedure Act 2009 reads:
- "246.-(1) Subject to any provision of this part to the contrary, any person who is dissatisfied with any judgment, sentence or order of a Magistrates Court in any criminal cause or trial **to which he or she is a party** may appeal to the High Court against the judgment, sentence or order of the Magistrates Court, or both a judgment and sentence."* (emphasis added).
- [9] The (Lautoka) company not being a party to the proceedings, this Court has no jurisdiction to entertain the appeal. So leave to appeal out of time is refused.

  
**Paul K. Madigan**  
**Judge**



**At Lautoka**  
**27 June 2017**