

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 245 of 2016

BETWEEN : **WESTBUS (FIJI) LIMITED** a duly incorporated company
having its registered office in Lautoka.
PLAINTIFF

AND : **FIJI ISLAND REVENUE & CUSTOMS AUTHORITY** a
body corporate duly constituted under the Fiji Revenue &
Customs Authority Act 1998 and having its registered office at
Revenue House, 1 Ratu Sukuna Road, Suva, Fiji.

DEFENDANT

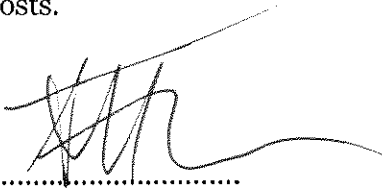
Counsel : Ms. Dotton for the Plaintiff
Mr. Verebalavu for the Defendant

R U L I N G

1. The background to this case is set out in an interlocutory Ruling which is reported in *paclii* in **Westbus (Fiji) Ltd v Fiji Island Revenue & Customs Authority** [2017] FJHC 40; HBC245.2016 (30 January 2017) which I reproduce in full below:
2. The matter is marked for hearing before me this morning for hearing on the substantive matter.
3. Mr. Verebalavu has raised a preliminary objection. He argues that the matter should have been placed before the Tax tribunal for determination and that it is an abuse of process for the Plaintiff to have filed these proceedings in the High Court civil division when there are specialist courts with particular jurisdiction which are creatures of statute set up to deal with particular matters.
4. Ms Dotton argues that the main reason why the plaintiff has brought the action before the High Court was because there was an interpretation issue as to whether or not a Deed of Agreement between the Fiji Government & The Fiji Bus Operators Association which effectively zero rates VAT on all bus fares collected by and paid by bus operators, should apply to a particular bus

service provided by the Plaintiff through contract. The issue was that, if that particular service was a charter service, then the plaintiff would not be entitled to the benefit of the zero-rating under the said Deed.

5. Mr. Verebalavu argues that the plaintiff is essentially contesting a “tax decision” which FIRCA had arrived at after reviewing the Plaintiff’s VAT returns and following a desk audit in 2016, had found some discrepancies in the WFL’s VAT accounting. He argues that the main thrust of the plaintiff’s grievance is the VAT assessment by FIRCA.
6. I agree with Mr. Verebalavu’s argument.
7. This matter should have been placed before the Tax Tribunal. It is an abuse of process to file the action in the civil division of the High Court when a specialist tribunal which is a creature of statute is in place to deal with such matters.
8. The Deed in question is merely evidence that should be placed before the Tax Tribunal to consider.
9. I dismiss the application.
10. The preliminary objection by FIRCA could have been formally made by Summons or Motion to strike out as an abuse of process. Since it was not done so, I will make no order as to costs.



Anare Tuilevuka

JUDGE

28 July 2017.

