

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Judicial Review No.: HBJ 03 of 2017

BETWEEN : **ALL EARTHWORKS LIMITED** **APPLICANT**

AND : **LAND TRANSPORT AUTHORITY** **RESPONDENT**

Counsel : **Mr. Haniff F. for Applicant**
Mr. Stephens G. for Respondent

Dates of Hearing : **1st December, 2017**

Date of Judgment : **23rd January, 2018**

JUDGMENT

INTRODUCTION

1. The Applicant seeks certiorari to quash decision of the Respondent made on 12.09.2017 whereby it had refused to renew the registration for Applicant's vehicles, and an order of Mandamus to compel the Applicant to renew registration of all Applicant's vehicles. The Applicant also sought two declarations, that refusal to renew registration of all Applicant's vehicles is unlawful and unreasonable and lacks jurisdiction. It should be noted at the outset there were further Amendment to the Land Transport Act (LTA) and also to the Regulation that came in to operation on 26th September, 2017 which specifically dealt with disputed Traffic Infringement Notices (TINs) for excess carriage of loads. If those amendments that came into force on 26th September, 2017 is applicable to the Applicant's TINs no certiorari or mandamus can be issued. Both Amendments to the LTA that were introduced in 2017 were retrospective and there were two Regulations that came in to operation simultaneously with the two Amendments. The said Regulations that were introduced in 2017 facilitated the retrospective amendments to LTA and Regulations and Amendments in 2017 came in to force simultaneously.

FACTS AND LAW

2. The Plaintiff filed this action seeking following reliefs
 1. An order of certiorari to quash the decision of the Land Transport Authority of 12 September 2017 whereby the Land Transport Authority refused to renew the registration for All Earthworks Limited vehicles.
 2. An order of mandamus to compel Land Transport Authority to renew registration for All Earthworks Limited vehicles.
 3. An interim order directing Land Transport Authority to renew registration for all Earthworks Limited vehicles pending the hearing and determination of this application by this court.
 4. A declaration that the Land Transport Authority exceeded and or did not properly exercise its jurisdiction and or acted ultra vires and or made errors of law and or acted unreasonably and or irrationally in refusing to renew registrations for all Earthworks Limited vehicles.
 5. A declaration that the Land Transport Authority should have applied the provisions of the Land Transport (Amendment) Act 2017 that came into force on 7th April, 2017.
 6. Further Declarations or other relief as this.....'
3. The grounds on which Judicial Review sought are stated as follows
 - a. The Land Transport Authority is refusing to renew registrations of All Earthworks Limited vehicles made an error in law in not properly construing and applying the provisions of the Land Transport (Amendment) Act 2017 which came into force on 7th April, 2017 and its respective Regulations.
 - b. The Land Transport Authority exceeded or did not properly exercise its jurisdiction under the Land Transport (Amendment) Act which came into force on 7th April, 2017 in refusing to renew All earthworks Limited's vehicle registration.
 - c. The Land Transport Authority acted unreasonably and /or irrationally and /or arbitrarily and or unlawfully in refusing to renew registration of All Earthworks Limited's vehicles.'
4. The Applicant had relied on the affidavit filed on 27th October, 2017 for seeking leave, for the substantive relief.

5. After the service of the application for seeking leave for judicial review upon the appearance of the counsel for the Respondent on 3.11.2017 leave to apply for Judicial Review was granted in terms of Order 53 rule 3(3)(b). The urgency of the application and the materials submitted to court at that time was considered in granting the leave. But it was revealed at the time of the hearing that there were subsequent amendments to both LTA and Regulations made under LTA that came in to operation on 26th September, 2017 which specifically dealt with TINs relating to excess loads.
6. The Applicant is an entity that engage in a business of transportation of heavy loads, namely road haulage. It was the accused in number of TINs and they were contested by the Applicants before the Magistrate's Court. The actions relating to alleged carrying of excess loads were pending in Magistrate's Courts when Land Transport (Amendment) Act 2017(hereinafter referred to as LTA Amendment 2017 (1)) (Act No 11 of 2017) was enacted.
7. This LTA Amendment 2017 (1), came in to force through a Government of Fiji Gazette on 7th April, 2017, with retrospective effect as all the pending litigations regarding TINs deemed withdrawn and deemed issued TINs on 7th April, 2017 under amended law. So, irrespective of TINs were involving excess loads or not they were all deemed withdrawn and deemed issued with TINs, under the said amendment.
8. Section 93 of Land Transport Act (LTA) was deleted and it was substituted by a new provision introduced by LTA Amendment 2017(1). It dealt with transitional provisions after implementation of LTA Amendment 2017(1) to the Principal Act.
9. It reads as follows

93.—(1) All Traffic Infringement Notices issued prior to the commencement of the Land Transport (Amendment) Act 2017 are deemed to have been issued at the date of the commencement of the Land Transport (Amendment) Act 2017 in accordance with section 92.

(2) All proceedings instituted in relation to Traffic Infringement Notices in

any court prior to the commencement of the Land Transport (Amendment) Act 2017 are deemed to be withdrawn.

(3) Any person to whom a Traffic Infringement Notice is deemed to have been issued under this section shall be subject to the process set out in ~~section 92~~¹ (with my additional illustration of on subsequent amendment introduced by Act No 46 of 2017, where a substitution was made)

10. Accordingly, all the actions instituted against the Applicant, for TINs issued for violation of carriage of excess goods, prior to the date of LTA Amendment 2017(1) came in to force, (i.e 7th April,2017) were deemed withdrawn. The Section 93 (1) of LTA applied retrospectively and all TINs issued to the Applicant **deemed to have been issued under the amended provision** (i.e Section 92).
11. Section 92 introduced by LTA Amendment 2017 was further amended by Act No 46 of 2017 cited as Land Transport(Amendment)(No3) Act 2017 and it had come in to operation by the Government Gazette on 26th September,2017 from the same date.
12. Section 92 of LTA that came in to operation on 26th September, 2017 reads as follows
Proceedings for Traffic Infringement Notices
92. The Minister may make regulations setting out all proceedings for Traffic Infringement Notices, including—
(a) the manner, form and time frames for which Traffic Infringement Notices must be issued;
(b) the actions a person may undertake upon receipt of a Traffic Infringement Notice; and
(c) the penalties that a person to whom a Traffic Infringement Notice has been issued may be liable to.’ (emphasis added)
13. Land Transport (Amendment)(No3) Act 2017, amended Section 93(3) of LTA, by deleting words ‘in section 92’ by substitution **“by regulations as provided for under section 92”**.

¹ Further amended by substitution of **‘by regulations as provided for under section 92’** by deleting words ‘in Section 92’ by further Amendment through Act No 46 of 2017 that came in to force on 26th September,2017.

14. In accordance with LTA the Minister had made Land Transport (Traffic Infringement Notice) (Amendment) Regulations 2017 on 26th September, 2017 which came into operation on the same day.
15. In terms of the said Regulations, that came in to operation on 26th September, 2017, a TIN issued for excess carriage of loads needs to be paid within 90 days and if not the registration of the vehicle must be suspended and there is provision even to suspend other vehicles that are being used for carrying loads by that person or the principal of the said person.
16. The Applicant had indicated their desire to dispute the TINs in Courts, shortly after new amendment came in to force on 7th April, 2017, but without a success. This was due to lack of procedure for the accused to initiate proceeding in Magistrate's Court. Finally, the Applicant was able to initiate proceeding to dispute the TINs. This was after several attempts and communications with the court administration personnel.
17. When the Applicant made a request for renewal of registration for its vehicles for following year (2018) they were refused and the basis of the refusal is the non-payment of fixed fines in TINs, despite the fact that they are being disputed in courts in terms of the law.
18. The Applicant's arguments as stated in the paragraphs 2, and 3 respectively in written submissions are
 - a. Whether Applicant had elected to dispute TINs within 90 days pursuant to Section 92(3) (c) of LTA and Regulation 6(c) of the Land Transport (Traffic Infringement Notice) Regulations 2017.
 - b. Whether Land Transport (Traffic Infringement Notice) (Amendment) Regulation 2017 wholly replaced Land Transport (Traffic Infringement Notice) Regulation 2017 and had retrospective application.
19. Respondent objects to this Judicial Review and state that the Applicant had not exhausted all the remedies available under LTA. They also rely on the Regulations that came into operation on 26th September, 2017.

ANALYSIS

20. The Respondent stated that the Applicant had not exhausted all its remedies before application for the Judicial Review, hence this Judicial Review should be struck off without considering any merits.
21. In *R (on the application of Walapu) v Revenue and Customs Commissioners* [2016] 4 All ER 955 at 988 (QUEEN'S BENCH DIVISION (ADMINISTRATIVE COURT, Per Green J) it was held,
- 'There is therefore undoubtedly a 'decision' in the administrative law sense which in principle is capable of being subjected to judicial review, just as it has been in the present case. Judicial review is, it is now trite to observe, context specific and it will also take account of the existence of other remedies. This might mean that judicial review will be refused until a person has exhausted other remedies, such as an appeal procedure; or it might limit the scope and intensity of review taking into account the existence of other remedies'*
22. The Respondent relied on Section 12(8) of LTA where it states:
- '(8) If a person is aggrieved by a decision made by a person to whom a power has been delegated under subsection(1), the aggrieved person may, by notice in writing addressed to the Authority, require the Authority to reconsider the decision of its delegate and the Authority may either confirm or reverse the decision of its delegate'*
23. Though a decision was taken on 12.9.2017 by a person acting for CEO of Respondent refusing to register the vehicles of the Applicant there was no request to reconsider (an Appeal) in terms of Section 12(8) of LTA.
24. The said decision of 12.9.2017 not to register Applicant's vehicles, was taken in pursuant to Section 9(1)(b), and or (d) of LTA and such authority is a delegated authority of the Respondent. So a person aggrieved by such a decision must, first resort to the internal mechanisms before seeking redress from court. The Applicant had not done so and this application needs to be struck off for failure to explore available remedies before seeking Judicial Review.

25. Though the Judicial Review can be refused on the above basis, I venture to consider merits of the application.
26. The Respondent also argues that Applicant could seek relief from the Land Transport Tribunal in terms of Section 40 of LTA. I do not agree with that. Land Transport Tribunal is entrusted with determinations relating to decisions of Respondent stated in Section 40(2)(a) and (b) and the decision taken on 12.9.2017 by Acting CEO of Respondent, was not such a decision that can be dealt by Land Transport Tribunal. It is a creature of statute and the scope of it is narrow and it cannot be expanded to all the decisions of Respondent.
27. Even if I am wrong on the above, preliminary issues I consider the arguments stated in the written submission of the Plaintiff. At the outset it should be noted that the main argument stated in the paragraph 2 (as stated in (a) in paragraph 18 above) of the written submission of the Applicant is not an issue that determine this Judicial Review for following reasons.
- a. There is no Section 92(3)(c) of LTA in operation at time of filing of Judicial Review application, as this provision which was introduced through LTA (Amendment) 2017 which came in to operation on 7th April, 2017 was repealed by Land Transport (Amendment)(No3) Act 2017, which came in to operation on 26th September, 2017.
 - b. **TINs issued for excess carriage of loads, must be paid** within 90 days whether they elect to dispute or not and if not further legal consequences will occur with mandatory suspension of registration not only for the said vehicle but also for any other vehicle utilized for carrying loads.
 - c. Special provisions are being made for TINs relating to excess loads, through Regulations and this needs to apply to such actions of TINs so electing to dispute within 90 days will not grant any relief to the Applicant, as it is mandatory to pay the fixed fine in TIN whether one elects to dispute the TIN or not.
28. If the amendments that came in to force on 26th September, 2017 is applicable to the Applicant no renewal of Registration of vehicles of the Applicant that were used for carrying excess load can be allowed under the law as it was mandatory for the Respondent to suspend registration of such vehicles.

29. Prior to the enactment of two Amendments to LTA in 2017(1), the TINs issued if not paid within a stipulated time needs to be instituted by way of an action in court and the accused needs to appear in court on specified date.
30. The enactment of LTA (Amendment) 2017 (1) which was assented by the President on 28th March, 2017 this amendment came in to operation on 7th April, 2017 by a Government of Fiji Gazette published on the said date.
31. It should also be noted that the said LTA (Amendment) 2017(1) had made significant changes to the litigation of TINs and all the pending litigations at the time of enactment of said law, were deemed withdrawn and they were deemed to have been issued TINs under new provision of law on the date of commencement of the LTA (Amendment) 2017(1).
32. With this '*deeming*' provision the court is left with no alternate interpretation but to consider all pending TIN litigation as TINs issued on 7th April, 2017 irrespective of the time of the alleged infringement occurred. So there is no distinction as to the procedure and consequences of the procedure between such an infringement that occurred on 7th April and thereafter and the TINs that deemed issued on 7th April, 2017 in terms of the law, for alleged infringements that happened prior to that date and were pending before courts.
33. The TIN deemed issued on 7th April, 2017, is a legal fiction, but once it is created there cannot be any distinction as to treating such deemed TIN differently from others.
34. Since all existed litigations regarding TINs have been withdrawn and simultaneously deemed TINs issued under process set up in Section 92 of LTA. The application of law is retrospective to all TINs that were pending in courts 7th April, 2017. So not only Section 92 and 93 of LTA are retrospective but process and the Regulation made under such provision for implementation of such provision are retrospective by law, as it *deemed* to have been issued under this section (ie Section 93) and Regulation made in terms of the authority granted to the Minister in Section 92.

35. The mode of instituting litigation has shifted from the complaining authority to the accused. The time period given for payment of the fine, had increased to 90 days and if elected to dispute the TIN, that person needs to institute an action in the Magistrate's court.
36. Invariably the above change to the mode of institution of the actions needed further procedural changes as well. The Minister is empowered with making necessary Regulations.
37. Some of these changes were introduced by Regulations. The Regulations in terms of Section 113 (6)(h) of LTA were made, to cater to the changes, and they are called Land Transport (Traffic Infringement Notice) Regulations 2017.
38. The LTA (Amendment) 2017 is retrospective, as all the pending litigations for TINs *deemed* withdrawn by operation of law. They are not struck off, or the accused being discharged or acquitted, but all offences relating to pending litigation *deemed* TINs issued in terms of LTA (Amendment) 2017(1), or more specifically in terms of Section 92 of LTA. It need not state at this moment such *deemed* TINs are subjected to further amendments to LTA and Regulations as there cannot be distinctions between these *deemed* TINs and also for TINs issued on infringements happened on 7th April, 2017 and thereafter.
39. So, instead of applying the existed procedure, to all pending litigation, they all came under new uniform procedure introduced in 2017, by operation of law. Since all TINs issued prior to 7th April, 2017 are *deemed* TINs issued on 7th April there is no difference to all litigations of TINs irrespective of the date of alleged infringement.
40. It should be noted both LTA (Amendment) 2017 which came into operation on 7th of April, 2017 and the abovementioned, Land Transport (Traffic Infringement Notice) Regulations 2017 (Legal Notice 23) which came in to operation on the even date were further amended by Land Transport (Amendment)(No 3) Act 2017 (Act No 46 of 2017) and also Land Transport (Traffic Infringement Notice)(Amendment) Regulation 2017 (Legal Notice 86). The Act No 46 of 2017 and Regulations made under that (i.e Legal

Notice 86) came in to operation on 26th September, 2017 from the Government of Fiji Gazette.

41. All these amendments to the LTA are retrospective as they also equally apply to the pending actions before the court which were allegedly committed prior to 7th April, 2017. There are two amendments to the LTA introduced in 2017 and both these Amendments are accompanied by two Regulations. The amendments to LTA are retrospective as some uniformity was made as to the litigation of TINs issued prior to 7th April, 2017 and TINs issued after this date. It was done by way of '*deeming*' provisions which gives force to all prior litigation as deemed TINs issued on 7th April, 2017 irrespective of date of infringement.
42. Said Regulations which came in to operation on 26th September, 2017 amended Regulation 7 of Land Transport (Traffic Infringement Notice) Regulations 2017 and it had introduced new sub-regulations after Regulation 7(1) as 7(1A),7(1B),7(1C),7(1D)and 7(1E).
43. Counsel for the Respondent argued that this new sub-regulations had repealed the earlier Regulation 7(1) and had replaced with new 7(1A) to 7(1E). This is not the correct construction of the amendment introduced by [Legal Notice 86] Land Transport (Traffic Infringement Notice) (Amendment) Regulations 2017. It is an amendment to Regulation 7(1) through an insertion which does not repeal the existing provision but a further addition through insertion introduced in the said Amendment.
44. I do not wish to state more on the construction of Regulation 7 of the Land Transport (Traffic Infringement Notice) Regulations 2017(Legal Notice 23) after [Legal Notice 86] Land Transport (Traffic Infringement Notice) (Amendment) Regulations 2017 came in to force. It was an insertion and it had not repealed the earlier regulation 7(1) that came in to force on 7th April, 2017, as contended by the counsel for the Respondent.

45. Apart from Sub-regulations 7(1A) to 7(1E), two new sub-regulations 7(6) and 7(7) were also added through insertions to the Regulation 7 of the Land Transport (Traffic Infringement Notice) Regulations 2017 (Legal Notice 23).
46. Sub-Regulations 7(1A), 7(1B), 7(1C), 7(1D), 7(1E), which came in to operation on 26th September, 2017 through the Land Transport (Traffic Infringement Notice) Regulations 2017 (Legal Notice 86) state as follows

(1A) Notwithstanding anything contained in these Regulations, a person who elects to dispute or challenge a Traffic Infringement Notice in any court is, after 90 days from the date the Traffic Infringement Notice is issued, ineligible for the renewal of the person's licence or vehicle registration until-

- (a) The person pays the fixed penalty and late payment fee, if applicable; or*
- (b) There is a final determination by the court (including the determination of any appeal in any appellate court) of the dispute or challenge against the Traffic Infringement Notice.*

(1B) If a person to whom, a Traffic Infringement Notice has been issued pays the fixed penalty and late payment fee, if applicable, and also elects to dispute or challenge the Traffic Infringement Notice in any court, the person must notify the Authority on or before the point of payment of the fixed penalty and late payment fee, if applicable, of the person's intention to dispute or challenge the Traffic Infringement Notice.

(1C) If a person to whom a Traffic Infringement Notice has been issued pays the fixed penalty and late payment fee, if applicable, and also elects to dispute or challenge the Traffic Infringement Notice and the court subsequently makes a final determination in the person's favour (including the determination of any appeal in any appellate court), the Authority must refund the fixed penalty and late payment fee, if applicable, to that person.

(1D) Notwithstanding anything contained in these Regulations where a Traffic Infringement Notice has been issued for an offence relating to the carrying of excess load, the person to whom the Traffic Infringement Notice has been issued or in the case of an agent, the principal, must pay the fixed penalty for the offence within 90 days from the date the Traffic Infringement Notice is issued.

(1E) If the person or the principal, if applicable, does not pay the fixed penalty in accordance with sub regulation (1D), the Authority must suspend the registration of the person's or principal's vehicle and any

other vehicle the person or principal utilizes for the purpose of carrying loads''(emphasis added)

47. At the outset it should be noted that abovementioned Sub-Regulations do not make any distinction to pending litigation where TINs are deemed issued under Section 92 of LTA. The person who is issued with TIN regarding excess loads are treated differently from other infringements.
48. It is mandatory for such person to pay fixed penalty within 90 day period and if not vehicle registration must be suspended, by the Respondent and this suspension will extend even to such person's other vehicles that carry loads.
49. Though 90 day period is stipulated, in Sub-Regulation 7(1D) for payment. this time period had already lapsed, for all parties who were deemed issued with TINs under Section 93(3) of LTA. When Regulation 7(1D) came in to force on 26th September, 2017 since all TINs of pending litigation were deemed TINs issued on 7th April, 2017, 90 day time period had lapsed for them.
50. There are four types of TINs that allege excess loads, when one considers time of the issue of TINs when the Sub-Regulations came in to force on 26th September, 2017 and they are:
 - a. TINs that were issued prior to 7th April, 2017 and subject to litigation, were withdrawn but by law **deemed issued TINs on 7th April.**
 - b. **TINs issued from 7th April, 2017, to 26th September, 2017** where 90 day time period had lapsed.
 - c. TINs issued from 7th April, 2017, to 26th September, 2017 where 90 day time period had **not lapsed by enforcement date.**
 - d. TINs issued after 26th September, 2017.
51. The Sub-Regulation 7(1D) contains a non-obstinate clause '*notwithstanding anything*' and when the TIN is issued for an offence of carrying excess load the payment of fixed fine is mandatory.

52. The Sub-Regulation 7(1D) which came in to operation on 26th September, 2017 has not distinguished above four positions. Whether a party elects to dispute the TIN is irrelevant when the TIN is regarding excess carriage of loads in term of Sub-Regulation 7(1D) and its application is for all TINs where offence relate to carriage of excess loads. In my judgment application of Sub-Regulation 7(1D) is retrospective, as language is clear to understand the intention of the drafter as it had used words 'notwithstanding'. (i.e all TINs relating to excess carriage of loads needs to be paid irrespective of decision to dispute). This Sub-Regulation 7(1D) has overriding effect over all other Regulations issued as to the application of mandatory requirement to pay the fixed fine.
53. The time period given is 90 days from the **date of issue** of TIN. This is relevant in the implementation of mandatory provision contained in Regulation 7(1E).
54. Since the time period between 7th April, 2017 and 26th September, 2017 is more than 90 days (i.e 172 days) TINs issued under LTA (Amendment) 2017 came into force under amended law for alleged infringement of excess loads, where 90 day time period stated in Sub-Regulation 7(1D) has lapsed. This does not mean that such TINs are excluded from the application of Sub-Regulation 7(1D). The said Sub-Regulation is applicable *notwithstanding* any impediment, therein, as to the requirement to pay the fixed fine.
55. It is clear that all the alleged offenders who were deemed issued with TINs on 7th April, 2017 by virtue of Section 93(3) of LTA the time period of 90 day had lapsed, but they are required to pay the fixed fine irrespective of their election to dispute the TINs issued for excess loads.
56. This does not automatically make them excluded from the Sub-Regulation 7(1D). The application Sub-Regulation 7(1E) for 90 day period can be relaxed in the implementation rather than excluding TINs in the categories where 90 day had already lapsed when the law came into operation on 26th September, 2017

57. In terms of Section 93(2) of LTA , ' Any person to whom a Traffic Infringement Notice is deemed to have been issued under this section shall be subject to the process set out by **regulations as provided for under section 92**'. The Regulations that came in to operation are made by the Minister.
58. So implementation of Sub-Regulation 7(1E) should be reasonable, while the intention of the legislation in mind. The legislation did not make a distinction between pending actions for TINs deemed issued on 7th April, 2017 and the TINs issued after 7th April, 2017.
59. The Applicant is not challenging the Land Transport (Traffic Infringement Notice) Regulations 2017, but state that it cannot be applied to the Applicant with retrospective effect. This is not acceptable as the amendments introduced in 2017 to LTA were retrospective. Regulations made to implement such retrospective Amendments to LTA invariably needs to be retrospective.
60. This new procedure became applicable to all the charges of TINs irrespective of they have been committed prior to the amendment or not. The legislature desired to have uniform procedure adopted to all charges of infringements relating to TINs and this required retrospective application of amendments introduced to LTA in 2017.
61. The Amendments to LTA introduced in 2017 also introduced Land Transport (Traffic Infringement Notice) Regulations 2017 and since the Amendments are retrospective the regulations that specifically dealt with those amendments are required to be retrospective, rather than prospective. If not there would be anomaly with the law that was passed by the Parliament, with retrospective effect, and the Regulations passed in terms of the same law to give effect to amendment.
62. The Applicant's Judicial Review is not to review any of the Regulations but decision taken on upon them. It is mandatory for all persons issued with TINs relating excess loads to pay the fixed fine irrespective of whether they elect to dispute the TIN and when that has not

been done in 90 days from the date of the issue of TIN the Registration must be suspended and the issue of renewal will not arise.

63. The Sub-Regulation 7(7) that was introduced on 26th September, 2017, states that no person is liable for payment of late payment of fee in period 7th April, 2017 to 30th November, 2017 this would have done to prevent any inconvenience experienced by the alleged offenders in the implementation of Sub-Regulations made on 7th April, 2017 and also 26th September, 2017.. This indicate that the said Regulations that were introduced were retrospective.
64. So, it is reasonable not to suspend the registrations of all TINs deemed issued on 7th April, 2017 on 26th September, 2017 but to wait till the current registration lapsed and refuse to renew.
65. Considering the facts of this case the Respondent did not implement Sub-Regulation 7(1E) on 26th September, 2017 and suspend all the vehicles utilized for the carrying loads. The Respondent had waited till the date of renewal and had refused to renew the registration. This action cannot be stated as unreasonable.
66. Any such payment of fixed fine regarding TINs for carrying excess loads, could be refunded in terms of Sub-Regulation 7(1C) under the prevailing Regulations, if the Respondent prove the offence alleged in the TIN.
67. The Respondent can not only suspend the vehicle to which TIN was issued but also the person's or principle's any other vehicle utilized for the purpose of carrying loads. This is to prevent similar offences being committed by the replacement of the vehicle or using other vehicles. This can be extended to only the vehicles used for carrying loads only. It cannot be extend to Machinery where primary purpose is not to carry loads. So implementation of Sub-Regulation 7(1E) has to strictly confine to vehicles carrying loads. The definition of loads exclude people and clearly any car or SUV is clearly excluded from

that Sub-Regulation 7(1E). It should only be confined to vehicles that is capable of carrying excess loads similar to the vehicles that were issued with TIN for excess loads.

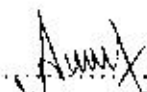
CONCLUSION

68. The Applicant has failed to exercise the internal appeal process for reconsideration of the decision of the acting CEO of Respondent, made on 12th September, 2017, in terms of Section 12 of I.TA. So, this application should be struck off. Even if I am wrong on that, the Amendments to I.TA and Regulations that came into force on 26th September, 2017, it is mandatory to the Respondent to suspend all vehicles involved in TINs relating to excess loads, if the fixed fine was not paid within stipulated time. The Applicant had failed to pay the fixed fine and are refusing to do pay it. As such no renewal of such registration for the vehicles possible. This suspension can extend to other vehicles that were not issued with TINs but are being used to carry loads by the Applicant. It should be noted such prohibition cannot be extended to all the vehicles that are being used by the Applicant for its commercial activities, and it confine to only vehicles that carry loads in term of the law. It should also be noted vehicles that are used for carrying people are excluded from definition of a load. Judicial Review is struck off. Considering the circumstances of the case and importance of interpretation of the relevant law, no cost is ordered.

FINAL ORDERS

- a. The motion for Judicial Review is struck off.
- b. Any vehicle of the Applicant that is not '*utilized for the purpose of carrying loads*' cannot be refused for renewal of registration in terms of Sub-Regulation 7(1E).
- c. Considering the importance of interpretation of the relevant provisions of law, no cost is ordered.

Dated at Suva this 23rd day of January, 2018


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Justice Deepthi Amararatunga
High Court, Suva