

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

**CRIMINAL APPEAL NO. HAA 104/105 of 2017**  
**(Magistrates' Court Case No. 1552 of 2016(a)**  
**/1552/2016(b))**

**BETWEEN** : VINAY VIKASH HIRE TRUCK & CONCRETE  
BLOCK SUPPLIES  
*APPLICANT*

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

**Counsel** : Mr A Dayal for the Appellant  
Ms T Colati for the Respondent

**Date of Hearing** : 19 December 2017

**Date of Ruling** : 2 February 2018

**RULING**

- [1] This is an application for an enlargement of time to appeal against conviction only.
- [2] The applicant is a limited liability company. Its registered office is in Nadi.
- [3] On 5 September 2016, the company was served with two traffic infringement notices (TINS) by the Land Transport Authority (LTA). The notices alleged that the company violated certain provisions of the Land Transport (Vehicle Registration and Construction) Regulations 2000 by allowing its vehicles to carry excessive loads on a public road. The

notices stated that if the fixed penalty was not paid within 21 days, the applicant was required to attend the Magistrates' Court on 1 November 2016 to answer the charges.

[4] After the 21 days had lapsed, the fixed penalty was not paid and the applicant did not appear in the Magistrates' Court on 1 November 2016.

[5] On 14 February 2017, the Magistrates' Court proceeded with a formal proof of the charges in the absence of the applicant. The learned Magistrate convicted the applicant of both charges and imposed a fine of \$9,000.00 for each offence. The total fine was \$18,000.00.

[6] On 26 September 2017, this application for an enlargement of time to appeal was filed. The application is supported by an affidavit from Mr Vinay Chand, who is one of the company directors.

[7] The proposed grounds of appeal are:

- (1) **THAT** there be a declaration that the Traffic Infringement Notice Numbers (TIN) 300-6480 formally proved by the Lautoka Magistrate Court on the 14<sup>th</sup> February 2017 are deemed to be withdrawn under the Land Transport Amendment Act 2017.
- (2) The order made by the Honourable Magistrate under the said TIN are deemed to be withdrawn under the Land Transport (Amendment Act) 2017.
- (3) **THAT** learned Magistrate erred in law in entering conviction against the Appellant as the Appellant was not properly served with the TIN.
- (4) That there be a declaration that the Tin No. 300-6480 was not properly served on the Appellant.

[8] The statutory time period to appeal a decision of the Magistrates' Court to the High Court is 28 days (section 248 of the Criminal Procedure Act 2009). The High Court has discretion to enlarge the 28-day appeal period for good cause (s 248 (2)). Section 248 (3) states that good cause without prejudice to its generality includes:

- i. A case where the appellant's counsel was not present in the Magistrates' Court and for that reason requires further time for the preparation of the petition;
- ii. Any case in which a question of law of unusual difficulty is involved;
- iii. A case where the sanction of the DPP or the commissioner of FICAC is required by the law.
- iv. The inability of the appellant or the appellant's lawyer to timely obtain a copy of the judgment appealed against.

[9] In determining if there is a good cause to enlarge time, the appellate courts may also consider the following factors:

- (i) The reason for the failure to file within time.
- (ii) The length of the delay.
- (iii) Whether there is a ground of merit justifying the appellate court's consideration.
- (iv) Where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed?
- (v) If time is enlarged, will the Respondent be unfairly prejudiced? (*Kumar v State; Sinu v State* [2012] FJSC 17; CAV0001.2009 (21 August 2012)).

[10] After referring to these factors, the Supreme Court in *Rasaku v State* [2013] FJSC 4; CAV0009, 0013.2009 (24 April 2013) said at [21]:

These factors may not be necessarily exhaustive, but they are certainly convenient yardsticks to assess the merit of an application for enlargement of time. Ultimately, it is for the court to uphold its own rules, while always endeavouring to avoid or redress any grave

injustice that might result from the strict application of the rules of court.

- [11] The decision appealed against was delivered on 14 February 2017. The application for an enlargement of time was filed on 25 September 2017. The appeal period expired on 14 March 2017. The length of the delay is about six months.
- [12] The reasons for the delay are contained in Mr Chand's affidavit. According to Mr Chand, he had no knowledge of the TINS issued against his company. He also did not have notice of the hearing that took place in the Magistrates' Court. He only came to know about the fines imposed by the Magistrates' Court when he tried to renew the wheel tax of the vehicles that were subject of the fines. After learning about the fines, Mr Chand engaged counsel to liaise with the LTA and the court to inquire why his company was fined. Several written correspondences were exchanged between Mr Chand's counsel, the LTA and the court registry. Eventually, Mr Chand came to know that on 5 September 2016, the LTA had issued TINS to the drivers of the two vehicles owned by his company. It has been suggested that the drivers did not inform Mr Chand of the TINS.
- [13] The TINS name the company as the accused – Vinay Vikash Hire Truck Services of Nadi. The drivers were not charged. The affidavit of service that is purportedly signed before a Magistrate or Justice of the Peace or Commissioner for Oaths states the accused (the company) was served with the TINS on 5 September 2016 at Lautoka. Counsel for the applicant submits that the affidavit of service is defective as the accused was never served with the TINS and the proceeding in the Magistrates' Court without notice to the accused was a nullity. This argument has substance.
- [14] The other complaint involves a question of law alone. After the proceedings in the Magistrates' Court had concluded on 14 February 2017, there was an amendment made to the Land Transport Act 1998. The amendment was:
- The principal Act is amended by deleting Section 93 and substituting the following-

*“Transitional*

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 are deemed to be withdrawn.

[15] Counsel for the applicant submits that the proceeding in the present case was instituted in the Magistrates’ Court prior to the commencement of the Land Transport (Amendment) Act 2017 and therefore the case is caught under section 93 (2) as deemed to be withdrawn.

[16] Counsel for the respondent submits that the phrase ‘all proceedings’ does not include proceedings that had already been concluded. Counsel further submits that all proceedings refer to proceedings that were active at the time section 93 (2) came into effect.

[17] I think the interpretation of 93 (2) will be a reoccurring controversy in the future. In the interests of justice, the Court should resolve the controversy.

**Orders of the Court:**

1. For these reasons, the application for an enlargement of time is allowed.
2. The applicant must file and serve a consolidated Pétition of Appeal (HAA 104/105) by 3 pm 9 February 2018.
3. Appellant’s written submissions must be filed and served by 3 pm 16 February 2018.

4. Respondent must respond by filing and serving written submissions by 3 pm 23 February 2018.
5. A hearing date will be assigned upon compliance with the above orders.



A handwritten signature in black ink, appearing to read "D. Goundar".

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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

MESSRS Dayal Lawyers for the Appellant  
Land Transport Authority for the Respondent