

IN THE HIGH COURT OF FIJI
AT LAUTOKA
IN THE WESTERN DIVISION

CIVIL APPELLANT JURISDICTION

Civil Appeal N0- HBA 20 of 2019

BETWEEN : **LAND TRANSPORT AUTHORITY** a statutory body located at Lot 1
Daniva Road, Valelevu, Nasinu.

APPELLANT

A ND : **RAJESH THAKUR** of Cuvu, Sigatoka, as Administrator of the Estate of
Ram Dulari Thakur of Sigatoka.

RESPONDENT

Appearances : **(Ms) Emele Volau Dauvere for the appellant**
: **Mr. Shivnay Vishaal Nand for the respondent**

Hearing : **Friday, 22nd November, 2019.**

Ruling : **Friday, 13th December, 2019**

RULING

- (01) On 05th August, 2019 the Land Transport Authority (the appellant) filed an appeal against the judgment of the Land Transport Appeals Tribunal (the Tribunal) to the High Court.
- (02) This is an application for a stay of execution of the judgment of the Tribunal pending the determination of the appeal.
- (03) The appeal to the Tribunal arose from a decision of the Land Transport Authority's refusal to transfer Taxi Permit No; T490 to the respondent, Rajesh Prasad Thakur.
- (04) The notice of motion for stay of execution was filed on 16th August, 2019 and supported by the affidavit of Peni Komainavoka, the Manager Regulations of the Land Transport Authority, sworn on 15th August, 2019.
- (05) The application for stay of execution was vigorously opposed by the respondent. The respondent filed an affidavit in opposition sworn on 19th September, 2019. It should be

noted that the appellant did not file an answering affidavit, a course which it was entitled to.

- (06) The respondent, in his affidavit in opposition filed on 27th September, 2019 had raised a preliminary objection to the application for stay of execution. The respondent states as follows in paragraph (13) of his affidavit in opposition.

(13) As to paragraph 15 of the Affidavit, I take of the contents therein and say that the Notice of Appeal has been filed out of time.

- (07) The above is adequately reflected in the respondent's written submissions filed on 29th August, 2019 (reference is made to paragraphs 1.3, 1.4, 1.5, 1.7, 1.16, 1.17 and 1.18 of the written submissions).

(1.3) The Land Transport Appeals Tribunal delivered its judgment on 21st June, 2019. The Appellant filed its Notice of Originating Motion and Grounds of Appeal on 5th August, 2019 and the same was served on to the city agents of the Defendants Solicitors on 6th August, 2019 at 10.10am in Lautoka.

(1.4) The said Originating Motion was filed 45 days after the judgment was delivered and served a day after the same was filed.

(1.5) In the case of Prasad v Land Transport Authority [2007] FJHC 127; Civil Appeal 50.2004 (16 March, 2007) Justice Pathik dismissed an appeal which was 2 days out of time and was not properly served on the interested parties pursuant to Order 55 R 4(2) of the High Court Rules.

(1.7) The issue before the Court was whether the High Court has power to extend that 21 day period and if so whether it should do so.

(1.16) We submit to this Honourable Court that since there is no prescribed time limit stated in the Land Transport Act 1998 as to when an appeal from a Tribunal's decision should be filed, the Court ought to look at Order 55 Rule 4(2) which provides a prescribed time limit for doing any act or taking any proceeding.

(1.17) We submit that the Appellant failed to adhere to this crucial rule as the filing and service of Notice of Originating Motion and Grounds of Appeal was not done within 28 days prescribed time limit as per the Rules.

(1.18) We therefore submit for the Notice of Originating Motion and Grounds of Appeal to be dismissed due to non-compliance of Order 55 Rule

4(2) of the High Court Rules and further state that application for Stay cannot proceed without any Notice and Grounds of Appeal on foot.

- (08) The appellant did not respond to the challenge mounted by the respondent in his affidavit in opposition based on Order 55, rule 4(2) of the High Court Rules, 1988.
- (09) I turn to consider the respondent's preliminary point in *limine* based on Order 55, rule 4(2) of the High Court Rules, 1988.

The respondent's preliminary objection calls into consideration Order 55, rule (4) 2 of the Rules of High Court. Order 55, rule 4(2) reads as follows;

The notice must be served, and the appeal entered, within 28 days after the date of the judgment, order, determination or other decision against which the appeal is brought.

- (10) Order 55, rule 4(2) provides that the originating motion by which an appeal is to be brought from a tribunal to the High Court must be served and entered within 28 days of the decision against which the appeal is brought.
- (11) Section 48 of the Land Transport Act provides;

A decision of the Tribunal shall be subject to an appeal, only on points of law, to the High Court.

The Land Transport Act does not prescribe the appeal period.

- (12) I note that;
- (A) The Land Transport Appeals Tribunal delivered its judgment on 21st June, 2019.
 - (B) The appellant filed its Notice of Originating Motion and Grounds of Appeal on 05th August, 2019 and the same was served on the city agents of the respondent's solicitors on 06th August, 2019.
 - (C) Therefore, the Notice of Originating Motion and Grounds of Appeal have been filed 45 days after the judgment was delivered by the Land Transport Appeals Tribunal.
- (13) **The Notice of Originating Motion and the Grounds of Appeal have been filed out of time.** The need to comply with the requirements of Order 55, rule 4(2) has been overlooked. **The appellant's notice of motion for stay is based on the appeal and in paragraph (15) of the affidavit in support the appellant has annexed the grounds of appeal marked as LTA -5.**


The appellant should have sought leave of the Court under Order 3, rule 4 for leave to appeal out of time. The appellant failed to do so. The period could be extended by the Court under the powers given by Order 3, rule 4. No formal application for leave to appeal out of time was made. The appellant has to provide grounds for its extension.

- (14) I uphold the preliminary objection raised by the respondent. There is no notice of originating motion and grounds of appeal on foot. Therefore, I cannot determine the application for stay execution of the judgment. For this reason, the application must fail and it is dismissed.

ORDERS

- (1) The application for stay of execution of the judgment is dismissed.
- (2) I make no order as to costs.




13/12/2019.
Jude Nanayakkara
[Judge]

At Lautoka,
Friday, 13th December 2019