

IN THE HIGH COURT OF FIJI
AT LABASA
APPELLATE JURISDICTION

Criminal Appeal No. 21 of 2018

LAND TRNSPORT AUTHORITY (“LTA”)

V

NASOQO INVESTMENT LIMITED (“NIL”)

Counsel : Mr. G. Stevens for LTA
Mr. A. Kohli with Miss R. Raj for NIL

Date of Hearing : 3 April 2019

Date of Judgment : 17 April 2019

JUDGMENT

1. On the 21st June 2017 in Vunivau, Bua, the driver of a vehicle owned by NIL was stopped by an authorized officer of the LTA who suspected that it was overloaded. The vehicle was permitted to be of a gross weight of 26.8 tonnes but when weighed it was of 41.34 tonnes, an excess of 14.54 tonnes. A Traffic Infringement Notice (“TIN”) was served on the driver as agent of NIL.
2. On the 29th September, a Director of NIL wrote to the Magistrates Court at Labasa stating that he wanted to dispute the alleged infringement.

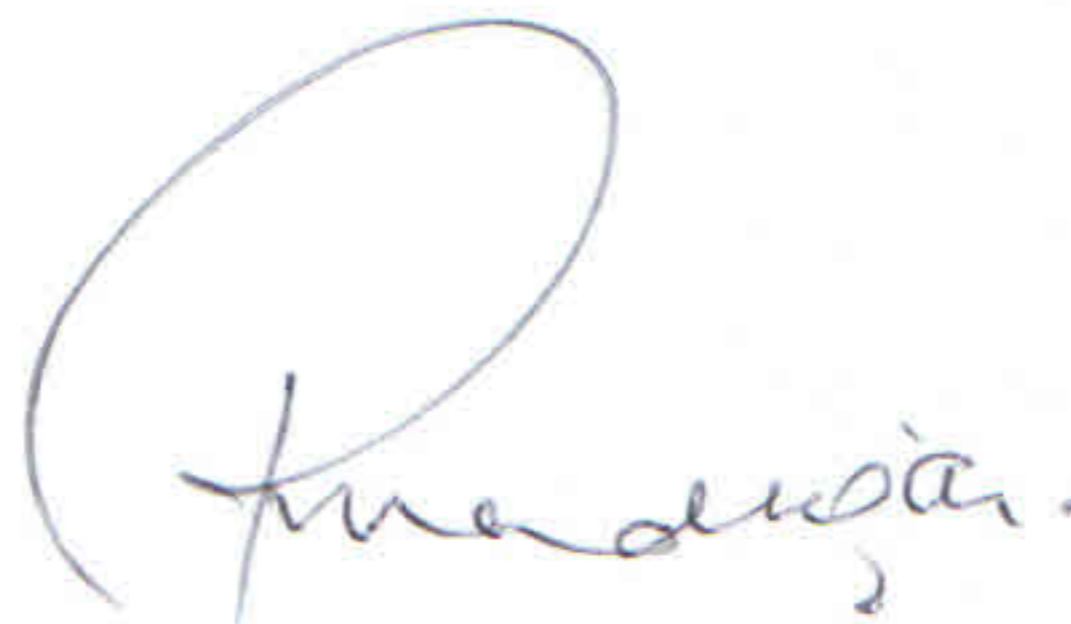
3. The matter was heard before a Resident Magistrate in Labasa on the 13th February 2018, when the LTA called two witnesses to attest to the arrest of the vehicle, the weight of the vehicle when arrested, and the serving of the TIN on the named driver, as agent of the vehicle owner.
4. The LTA then closed its case. Counsel for NIL moved for time to file an application for no case to answer. Time was given to both parties to file submissions.
5. Four months later, on the 12th June 2018 the Resident Magistrate ruled that there was no case to answer, and then acquitted the Respondent.
6. By these proceedings, the LTA appeals that decision to stop the case and acquit the respondent company.
7. Both parties have filed detailed and comprehensive submissions in this appeal and while this Court would find favour with the grounds and submissions of the LTA, unfortunately the Court does not have jurisdiction to determine the appeal.
8. Section 246(2) of the Criminal Procedure Act 2009 reads:

“No appeal shall lie against an order of acquittal except by, or with the sanction in writing of the Director of Public Prosecutions or the Commissioner of the Fiji Independent Commission against Corruption”.
9. There being no consent filed from either of those agencies, the legislation mandates that there can be no appeal.

10. It matters not that the Respondent's original application for no case was ill conceived. It was premised on the basis that the driver was not given the opportunity to off load part of the overweight goods, when the Land Transport (Vehicles Registration and Construction) Regulations 2000 makes that an option on the part of the arresting officer, not a duty. The word used in the sections is "**may**" and not "**must**".
11. Unfortunately the learned Magistrate was led into error by the ill-conceived and misleading half time submissions of counsel below.
12. The appeal is dismissed not for lack of merit, but for lack of jurisdiction.

Orders

1. The appeal is dismissed.
2. No order for costs is made.



P. K. Madigan
Judge

At Labasa
17 April 2019

