

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 323 of 2019

Merchant Finance PTE Limited
Plaintiff

v

Land Transport Authority
First defendant

Maiyale Investments Limited
Second defendant

Counsel: Mr A. Pal for the plaintiff
Ms L. Malani for the first defendant
The second defendant is absent and unrepresented
Date of hearing: 27th March, 2020
Date of Ruling : 30th July, 2020

Ruling

1. The first defendant moves to strike out the plaintiff's originating summons on the grounds that it discloses no reasonable cause of action, is scandalous, frivolous or vexatious and is an abuse of process.

2. The plaintiff, in its originating summons seeks a declaration that fines and penalties outstanding under the Land Transport(Traffic Infringement Notice)Regulation, 2017,(LTINR) are excluded from Schedule 1 of the Land Transport (Fees and Penalties) Regulations,2000,(LTFPR); and, an Order that the first defendant renews and transfers the registration of motor vehicles IP 253, IP 254, IP 329, JI 065, JI 066, JI 420 and EV 091 from the second defendant to the plaintiff, on payment of the prescribed transfer fees by the plaintiff.
3. Dineshwar Lal, a Consultant with the plaintiff in his affidavit in support states that the second defendant obtained a number of credit facilities from the plaintiff and provided 8 vehicles as securities. The first defendant has advised that it would not transfer the registrations of vehicles repossessed by the plaintiff, until all outstanding fines imposed on the second defendant by the first defendant were cleared. This position is not in conformity with the Land Transport Act, 1998, and its Regulations. Overdue fines must be held on the account of the second defendant and not to vehicles subject to Bills of Sale or Hire Purchase Agreements.
4. The affidavit in support of the summons to strike out states that a Consultant of the plaintiff has deposed to the affidavit. There is no authority of the plaintiff attached. The plaintiff is required to comply with the provisions of the Land Transport Act,(Act) the Land Transport (Vehicle Registration and Construction) Regulation,2000,(LTVRCR) and the LTINR. The plaintiff can claim the penalties from the second defendant or incorporate same into mortgage sales.

The determination

5. The plaintiff contends that Schedule 1 of the LTFPR does not refer to the LTINR. It is further contended that Regulation 7 of LTINR only prohibits the renewal of a person's license not the transfer of the registrations of vehicles.

6. The first defendant argues that Regulation 8(1)(f) of the LTVRCR prohibits the registration or renewal of registration of a vehicle, until outstanding fees or penalties under the Act or regulations have been paid in full. Penalties and late payment fees for offences under the Regulation are statutory penalties on the title of a vehicle. §

7. Regulation 4 of the LTFPR states that a penalty is payable on the issue of a TIN “*in respect of an offence against the section of the Act or regulation*”.

LTINR

8. Regulation 5(2)(a) states that a TIN “*must be served personally upon the person alleged to have committed the offence..*”. Regulation 7 provides that :

If a person to whom a Traffic Infringement Notice is issued does not undertake any of the actions in Regulation 6 within the prescribed period, the person is –

- (a) liable to pay a late penalty fee in addition to the fixed penalty;*
- (b) issued a departure prohibition order preventing the person from leaving Fiji; and*
- (c) ineligible for the renewal of the person’s license or the vehicle registration,*
until the person undertakes one of the following actions_

9. LTVRCR

Regulation 8(1)(f) states:

The Authority must not register or renew the registration of a vehicle unless it is satisfied that –

- (f) any outstanding fees or penalties under the Act of Regulations have been paid in full.*

10. Regulation 14(7)(a) requires a registered owner within 7 days of seizure of a vehicle to inform the Authority and deliver the certificate of registration. Sub-section (b) requires the repossessor to apply to the Authority to be registered as the owner. If the registered owner fails to do so, the Authority may register the vehicle in the name of the new owner, without prejudice to prosecution for an offence.

11. The Authority may refuse to transfer the registration until “*any outstanding prescribed fees have been paid in full*”: Regulation 14(9).

12. The Regulations I have referred to above, raise a contentious issue as to on whom the liability lies to pay a penalty imposed by a TIN, subsequent to the repossession of a vehicle. In my view, that must be addressed in depth at a substantive hearing.

13. In *Dey v Victorian Railways Commissioners*, (1948-49) CLW 62 at pg 84 -85 Latham CJ said:

..the summary procedure.. was appropriate only to cases which were plain and obvious, so that any master or judge could say at once that the statement of claim was insufficient, even if proved, to entitle the plaintiff for what he asked...If, as a result of argument, the court reaches a clear decision which could not be altered by any evidence which could be adduced at the trial, then it is proper in the interests of both parties to dismiss the action instead of allowing the parties to incur completely useless expense. (emphasis added)

14. Lord Pearson in *Drummond -Jackson v. British Medical Association*, [1970]1 All ER 1094 at 1101 said “*the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious ..I think reasonable cause of action’ means a cause of action with some chance of success*”.

15. Gates J(as he then was) in *Razak v Fiji Sugar Corporation Ltd*, [2005] FJHC 720; HBC208.1998L (23 February 2005) cited the following passage from the judgment of O’Connor J of the High Court of Australia in *Burton v President &c., of the Shire of Bairnsdale*, [1908] HCA 57; [1908] 7 CLR 76 at p.92 :

Prima facie, every litigant has a right to have matters of law as well as of fact decided according to the ordinary rules of procedure, which give him full time and opportunity for the presentation of his case to the ordinary tribunals, and the inherent jurisdiction of the Court to protect its process from abuse by depriving a litigant of these rights and summarily disposing of an action as frivolous and vexatious in point of law will never be exercised unless the plaintiff’s claim is so obviously untenable that it cannot possibly succeed.(emphasis added)

16. *Orders*

- (a) The application to strike out the originating summons of the plaintiff is declined.
- (b) Costs in the cause.



A.L.B. Brito-Mutunayagam

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JUDGE
30th July, 2020