

IN THE HIGH COURT OF FIJI  
AT LABASA  
[APPELLATE JURISDICTION]

CRIMINAL APPEAL NO. 029 OF 2019

BETWEEN : LAND TRANSPORT AUTHORITY (LTA)  
  
The Appellant

AND : NASOQO INVESTMENT LIMITED  
  
The Respondent

Counsel : Mr V Chand for the Appellant  
Mr A Kohli for the Respondent

Date of Hearing : 17 June 2020

Date of Judgment : 26 February 2021

JUDGMENT

- [1] The respondent is a company. The director of the company is one Luke Naitaka. The company was involved in a logging business at Lekutu, Bua. The company owned a truck registration number IB 635 used for transporting timber.
- [2] On 8 November 2017, an Authorized Officer of the Land Transport Authority (LTA) issued a Traffic Infringement Notice (TIN) charging the company for permitting a person to drive a motor vehicle with an excess load contrary to Regulations 80, 87 and 122 of the Land Transport (Vehicles Registration & Construction) Regulations 2000. At the time the truck was being driven by one Ratu Pinau Tamaivena, an employee of the respondent. The charge alleged that the respondent who was the owner of the truck permitted Ratu Pinau Tamaivena to carry an excess load on the truck.

[3] The Traffic Infringement Notice was in the prescribed form, notifying the respondent of the following:

- (i) This offence carries a maximum penalty of \$14000.00 and demerit points. If you do not wish to contest this Notice, you are required to pay a Fixed Penalty of \$14000.00 to the Land Transport Authority.
- (ii) The payment of the Fixed Penalty is due within 90 days from the date of issue of this Notice and is payable at any Land Transport Authority Office nearest to you. All liability in respect of the offence will be discharged and no further action will be taken against you with respect to this particular offence.
- (iii) If you were not the driver of the motor vehicle at the time of the offence and wish to contest to this Notice, you must fill in a Statutory Declaration Form and disclose to the Land Transport Authority the name and address of the driver of the motor vehicle at the time of the offence (including other relevant information and necessary documentation) within 90 days from the date of issue of this Notice.
- (iv) If you wish to contest this Notice for any other reason, you may elect to dispute this Notice in court.
- (v) If you fail to pay the Fixed Penalty, provide a Statutory Declaration or dispute this Notice in court within 90 days from the date of the issue of this Notice, you-
  - (a) Will be liable to a late payment fee equivalent to 50% of the fixed penalty, in addition to the Fixed Penalty;
  - (b) Will be issued a departure prohibition order preventing you from leaving Fiji; and
  - (c) Will not be able to renew your licence or vehicle registration.
- (vi) You may pay your Fixed Penalty and late payment fee in a single payment or in installments.
- (vii) The departure prohibition order and your ineligibility for licence or vehicle registration renewal will continue until you pay your Fixed Penalty and late payment fee in full or provide a Statutory Declaration or elect to dispute this Notice in court.
- (viii) If you do not pay your Fixed Penalty and late payment fee in full or provide a Statutory Declaration or elect to dispute this Notice in court within 12 months from the date this Notice is issued to you, this Notice will take effect as a conviction and the Land Transport Authority may suspend your licence and seek the maximum penalty and demerit points applicable, from the court.

[4] On or about 29 October 2018, the respondent filed a motion seeking the following reliefs:

- (i) An urgent hearing date.

- (ii) The Traffic Infringement Notice issued on 8 November 2018 be dismissed.
- (iii) Costs on indemnity basis.

- [5] The respondent's motion was supported by an affidavit from the director, Mr Naitaka. Mr Naitaka challenged the Traffic Infringement Notice issued to his company on the basis that neither his driver nor he was served with the Notice.
- [6] On 10 September 2019, the Magistrates' Court made the following orders after hearing the motion:
- (i) The Traffic Infringement Notice No 3259512 issued on 8 November 2017 is dismissed.
  - (ii) Fine, including any late fee paid by the respondent to the Land Transport Authority as per the Traffic Infringement Notice No. 3259512 to be refunded to the respondent within 21 days.
  - (iii) Indemnity costs refused.
- [7] On 14 November 2019, the Land Transport Authority filed an application for an enlargement of time to appeal the decision of the Magistrates' Court after the statutory appeal period of 28 days expired on 8 October 2019. The appeal is late by about one month. The reasons for the delay are explained in the LTA's affidavit.
- [8] The proposed grounds of appeal are:
- a) **THAT** the Learned Magistrate erred in law and/ or in fact when he misdirected himself in the ruling as to the correct application of the law/ regulation to the facts, in that he failed to uphold that regulation 5 (7) of the Land Transport (Traffic Infringement Notice) Regulation 2017 [Legal Notice 23] only require notification to the principal if the Traffic Infringement Notice No. 3259512 even though served on the agent or driver, as such the notification requirements to the principal under regulations 5 (7) (a) (b) is made redundant and not required because the company/principal himself has been issued the said TIN.
  - b) **THAT** the Learned Magistrate erred in law and/or in fact when he failed to differentiate between the use of the term 'services' under the regulation 5 (2) (a) and the use of term 'issued' under regulation 5 (7) and that the Appellant reasonably believe that the regulation make a specific differentiation between

'served' and issued' in that the said TIN was 'served' on the Driver/Agent in compliance with regulation 5 (2) (a), but the TIN was issued to the Principal since the name of the Company and not the driver was written on the said TIN.

- c) **THAT** the Learned Magistrate erred in law and/or in fact when he failed to consider the legal principle or maxim of *Quit facit per alium facit per se* that can apply, as service on or agent/servant, acting in the course of employment for the benefit of the principal/ master, is service on the Master/principal and the regulation 2, regulation 5 (2) (a) regulation 5(7) and regulation 7 (ID) and 7 (IE) of the Land Transport Traffic Infringement Notice) Regulation 2017 implied this legal principle.
- d) **THAT** the Learned Magistrate erred in law and in fact when he failed to consider that TIN No. 3259512 was issued to Nasoqo Investment Limited on 08 November 2017 but the (sic) seemed to elect as per their sworn affidavit on 29 October 2018 which clearly is out of time and in contravention of the 90 days period required by regulation 6 of the Land Transport (Traffic Infringement Notice ) Regulation 2017, and further, in any case the Learned Magistrate further failed to consider that the Affidavit of Luke Matairavula in Support of his Notice of Motion shows no evidence that it was ever filed in Court on that date per on any other dates.

- [9] Both the application for an enlargement of time and the substantive appeal were heard together.
- [10] Section 246 (2) of the Criminal Procedure Act prohibits an appeal against an acquittal without a sanction of the Director of Public Prosecutions (the DPP).
- [11] On or about 2 October 2019, the appellant wrote to the DPP for his sanction to appeal the orders of the learned magistrate in this case.
- [12] On 31 October 2019, the DPP responded to that request stating his consent was not required as the appeal was against a dismissal of a TIN and not against an order of acquittal. By the time the LTA received the DPP's response, they were out of time to appeal.
- [13] In my judgment, the length of the delay is not substantial and the appellant has shown good cause for an enlargement of the statutory appeal period. The appeal involves questions of law of unusual difficulty for consideration by this Court.

**Whether the Traffic Infringement Notice was invalid for lack of service?**

- [14] Grounds one, two and three raise a common issue. The issue is what constitutes a valid service of a TIN under the LTA laws?
- [15] The substantive legislation is the LTA Act 1998. The subsidiary legislation is the Land Transport (Traffic Infringement Notice) Regulation 2017.
- [16] At the hearing to contest the TIN, the parties agreed not to call any oral evidence but rely upon submissions and documents tendered by the parties. One of the documents that the LTA relied upon was a written statement of the LTA licensed weighbridge officer, Mishaal Prasad. Mr Prasad said that he gave the TIN to the driver of the vehicle, Ratu Pinau Tamivena upon spot check of the load on 8 November 2017.
- [17] The others documents were internal email exchanges between the LTA staff raising the issue whether they can proceed to the hearing when the company (the principal) had not been notified of the TIN that had been given to the driver. There was some suggestion that the company did not have an office to effect service of the TIN. The LTA's contention was that the service of the TIN on the driver of the vehicle was a valid service on the company who owned the vehicle.
- [18] The facts relied upon by the learned magistrate to determine the validity of the contested TIN are contained in paragraph 6 of the impugned Ruling. The learned magistrate said:

The facts established before this court are as follows:

Mr Luke Matavura Naitaka is the Director of Nasoqo Investment Limited. His driver Mr Ratu Pinau Tamaivena drove Motor Vehicle Registration Number IB 635 in question carrying Pine Logs on the 8<sup>th</sup> day of November 2017 at Lekutu. While carrying out Pine Logs, the vehicle was stopped and directed on to the scale by Mr Mishaal A Prasad, the authorized weighbridge officer employed by the Land Transport Authority.

Upon weighing it was found that the vehicle was carrying the load with the weight of 40.64 tons of Pine Logs when the vehicle permissible gross weight is 26.40 tones

and the excess weight of the vehicle is 14.26 tones. Vide witness statement form submitted by the counsel for the Authority.

The driver was informed the offence that he had committed and issued with a TIN and personally served to the driver namely Mr Ratu Pinau Tamaivena by the authorized officer.

The Director of Nasoqo Investment Limited Mr Luke Matavura Naitaka was never directly served either in person or via an electronic mode approved by the authority.

- [19] After establishing the facts, the learned magistrate referred to Regulation 5 of the Land Transport (Traffic Infringement Notice) Regulations 2017 and concluded that the service of the TIN on the driver of the vehicle did not constitute a service on the company/accused/respondent.
- [20] However, the learned magistrate did not accept the respondent's contention that the TIN was not served on the driver of the vehicle. He found that the TIN was personally served on the driver on 8 November 2017 (established fact number 5).
- [21] The learned magistrate further found that the driver was an agent of the respondent and that the agent was served with the TIN in compliance with Regulation 5(2)(a). He concluded that the LTA's statutory obligation did not cease after the agent was served with the TIN.
- [22] The learned magistrate held that after an agent is served with a TIN pursuant to Regulation 5(2)(a), the LTA must also serve the principal with the TIN within 21 days from the date of the offence. The learned magistrate held that the TIN in the present case was invalid because it was not served on the principal, the accused within 21 dates from the date of the alleged offence.
- [23] Regulation 5 of the Land Transport (Traffic Infringement Notice) Regulations 2017 states:

(1) A Traffic Infringement Notice must be issued and despatched by the Authority within 21 days from the date the offence is committed and any Traffic Infringement Notice issued beyond this period is deemed invalid.

(2) Pursuant to sub regulation (1), a police officer or authorized officer must despatch a Traffic Infringement Notice in respect of the alleged commission

of a fixed penalty offence under the Act or the subsidiary laws made under the Act-

- a) by serving the Traffic Infringement Notice personally upon the person alleged to have committed the offence, acting in his or her own capacity or as an agent;
- b) where the presence, at any time or for any period of time, of a motor vehicle in a place is evidence of the commission of the fixed penalty offence, by affixing a Traffic Infringement Notice to the vehicle in a conspicuous position; or
- c) by serving through any electronic means as approved by the Authority, including by electronic mail to a valid electronic mailing address submitted by the person to the Authority and verified by the Authority.

(3) Notwithstanding sub regulation (2), a Traffic Infringement Notice may also be despatched in the following ways in the case of an offence under Part 3-

- (a) by serving the Traffic Infringement Notice through registered mail sent to the owner of the motor vehicle's postal address last recorded by the Authority; or
- (b) by serving the Traffic Infringement Notice at the owner of the motor vehicle's physical address last recorded by the Authority upon a person who resides there, provided the person is not below the age of 18 years;

(4) If the Traffic Infringement Notice is affixed to a motor vehicle pursuant to sub regulation (2) (b), the Traffic Infringement Notice must –

- (a) is issued by reference to the registered number of the motor vehicle; and
- (b) bear the date on which the Traffic Infringement Notice was affixed to the motor vehicle.

(5) In these regulations, service is deemed to be affected if the Traffic Infringement Notice-

- (a) is in the form prescribed in Form 1 or Form 1A in the Schedule to the Land Transport (Prescribed Forms) Regulations 2000;
- (b) has been despatched to the person in accordance with this regulation; and
- (c) in the case of an offence detected by the photographic detection device, is accompanied by a Statutory Declaration form, as prescribed in Form 1B in the Schedule to the Land Transport (Prescribed Forms) Regulations 2000.

(6) The Authority may notify a person to whom a Traffic Infringement Notice is issued of the person's alleged commission of a fixed penalty offence under

the act or the subsidiary laws made under the act and such notification may be made by-

(a) Short Message Service (SMS) messaging to a registered mobile phone contact submitted by the person to the Authority and verified by the Authority; or

(b) by electronic mail to a valid electronic mailing address submitted by the person to the Authority and verified by the Authority.

(7) Where a Traffic Infringement Notice is issued to an agent, the authority must notify the principal prior to the expiry of the prescribed period and such notification may be made by-

(a) Short Message Service (SMS) messaging to a registered mobile phone contact submitted by the person to the Authority and verified by the Authority; or

(b) by electronic mail to a valid electronic mailing address submitted by the person to the Authority and verified by the Authority.

[24] In the present case, the owner of the vehicle carrying the excess load was issued with the TIN and not the driver of the vehicle. The person who was alleged to have committed the offence was the respondent. The offence was permitting another person to drive a motor vehicle with an excess load.

[26] The word 'permit' is not defined in the Regulations but the ordinary meaning of 'permit' is 'to give permission to someone or for something' (Concise Oxford English Dictionary. 12 ed).

[27] For a company to be guilty of permitting a person to drive a motor vehicle with an excess load, the LTA is required to prove that the owner or the director of the company allowed the driver to drive the vehicle with an excess load.

[28] The LTA's submission is that the respondent (the company) was served with the TIN through an agent, the driver of the vehicle under Regulation 5(2)(a) of the Land Transport (Traffic Infringement Notice) Regulations 2017.

[29] Regulation 5(2)(a) expressly requires service of the TIN "personally upon the person alleged to have committed the offence, acting in his or her own capacity or as an agent".



- [30] Regulation 2 defines an agent as 'a person who is authorized by a principal to act on the principal's behalf and includes an employee acting under the instructions of his or her employer' and the definition of a person includes 'any company, association or body of person, corporate or incorporate'.
- [31] The definition of agent under the Land Transport (Traffic Infringement Notice) Regulations 2017 is much broader than the definition of the agent under the Companies Act 2015. Any employee acting under the instructions of his employer is an agent under the Land Transport (Traffic Infringement Notice) Regulations 2017.
- [32] In this case, it was the driver of the vehicle who allegedly committed the traffic infringement acting as an agent of the company that owned the vehicle. A company is liable for an alleged traffic infringement by an employee if the employee was acting under the instructions of his employer at the time the alleged infringement occurred. Service of a TIN on an agent, is therefore, service on the principal under Regulation 5(2)(a).
- [33] When a TIN is served on an agent, Regulation 5(7) requires the LTA to notify the principal, before the expiry of the period to pay the fixed penalty. The Regulations does not prescribe a specific method for the notification but states that it may be by a mobile SMS message or email.
- [34] Regulation 6 provides that the prescribed period to pay the fixed penalty is 90 days from the date the TIN is issued.
- [35] Despite Regulation 5(7) being silent on the effect of non-compliance on the validity of the TIN, the learned magistrate held that the TIN was invalid for lack of service on the principal/respondent. He came to that conclusion by imputing the obligation created on the LTA by Regulation 5(1) to issue and despatch a TIN within 21 dates from the date of the offence. In other words, the learned magistrate took the words of Regulation 5(1) and read in Regulation 5(7).

[36] In my judgment, the learned magistrate made an error of law to read the words of Regulation 5(1) in Regulation 5(7). Regulation 5(1) creates an obligation on the LTA to issue and despatch a TIN within 21 days from the date of the offence for the TIN to be valid. If a TIN is served on an agent such as the driver of the vehicle and not the owner of the vehicle involved in the traffic infringement, Regulation 5(7) requires the LTA to notify the owner of the TIN issued to the driver before the expiry of the 90 days to pay the fixed penalty.

[37] The LTA has a discretion regarding the methods of notification. If the LTA does not comply with its obligation to notify the principal regarding the TIN that was served on the driver, the TIN remains valid and enforceable even if the owner has no knowledge of the TIN issued to the agent. Regulation 5(5) clearly states that service is deemed to be effected if the TIN is in the prescribed form and has been despatched to the person in accordance with this regulation.

[38] The TIN in the present case was in the prescribed form and was despatched to the agent in accordance with the regulation. Service was deemed to have been effected on the respondent through the agent.

[39] I accept that the courts have moved away from the strict application of the literal rule in constructing legislation. As Lord Denning said in *Nothman v London Borough of Barnet* (1977) ALL ER 1243:

It is no longer necessary for the judges to wring their hands and say: 'There is nothing we can do about it'. Whenever the strict interpretation of a statute gives rise to an absurd and unjust situation, the judges can and should use their good sense to remedy it – by reading words in, if necessary so as to do what Parliament would have done had they had the situation in mind.

[40] So what did the legislature intend to achieve by the Land Transport (Traffic Infringement Notice) Regulations 2017. Regulation 3 sets out the objectives as follows:

- (a) enforce traffic safety laws;
- (b) deter illegal activities on the road;

- (c) ensure that the use of motor vehicles is regulated for the purposes of safety, protection of the environment and law enforcement;
- (d) identify and record images of motor vehicles that exceed the speed limit or enter an intersection in contravention of red light or red traffic arrow; and
- (e) establish a system that identifies each motor vehicle used on the road and the person who is responsible for it.

[41] If the purpose of the Regulations is to empower the LTA to create road safety for the public through enforcement of the traffic laws, then the court must give effect to that purpose in constructing the Regulations.

[42] In this case, the vehicle that was involved in carrying an excess load was owned by a company. The driver was an agent of the company. The LTA alleged that the company was responsible for the traffic infringement though the driver who was acting on the instructions to drive the vehicle.

[43] The TIN was issued and despatched within 21 days from the date of the traffic infringement to the company, and served on the driver acting as an agent of the company. The TIN was valid and enforceable against the company even when the LTA had not notified the company. Any relief for the company arising from the lack of notice of the TIN is provided by Regulation 7. There is no express power to dismiss a TIN for lack of notification under Regulation 5(7).

[44] For these reasons, there was no justification for the learned magistrate to read the words from Regulation 5(1) in Regulation 5(7) to invalidate and dismiss the TIN in this case. Grounds one, two and three are allowed.

**Whether the respondent was time barred to contest the TIN?**

[45] The second issue is whether the respondent was time barred to contest the TIN. This issue was not raised in the Magistrates' Court, and therefore, the learned magistrate did not make any pronouncement on the issue.

[46] Regulation 6 the Land Transport (Traffic Infringement Notice) Regulations 2017 states:

A person to whom a Traffic Infringement Notice is issued, is liable to a fixed penalty and must within 90 days from the date the Traffic Infringement Notice is issued, undertake one of the following actions-

- (a) pay the fixed penalty in a single payment or by installments;
- (b) make a Statutory Declaration to the Authority in accordance with section 85 (3) or 85A (2) of the Act; or
- (c) elect to dispute the fixed penalty in court.

[47] Ninety days is the statutory period to pay a fixed penalty prescribed in a TIN.

[48] In the present case, the TIN was served on the agent on 8 November 2017. The motion to contest the TIN was filed on 29 October 2018, that is, almost one year after the TIN was issued and served.

[49] After the 90 days had expired, the LTA went ahead and enforced the prescribed fixed penalty in the TIN pursuant to Regulation 7 of the Land Transport (Traffic Infringement Notice) Regulations 2017.

[50] Regulation 7 provides:

(1) 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 payment 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 licence or vehicle registration, until the person undertakes one of the following actions-
  - (i) pays the fixed penalty and late payment fee in a single payment or by installments;

- (ii) makes a statutory Declaration to the Authority in accordance with section 85 (3) or 85 A(2) of the Act; or
  - (iii) elects to dispute the fixed penalty in court
- (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 persons' 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 their dispute or challenge against the Traffic Infringement Notice
- (IB) 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.
- (IC) 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.
- (ID) 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.
- (IE) if the person or the principal, if applicable, does not pay the fixed penalty in accordance with the sub regulation (ID), 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.
- (2) 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 Authority must notify the Director of Immigration at the end of the prescribed period.

- (3) Upon receipt of the notification from the Authority under the sub regulation (2) the Director of Immigration must issue to the person a departure prohibition order stating-
  - (a) The reasons for the issue of the departure prohibition order;
  - (b) The fixed penalty and late payment fee that the person must pay; and
  - (c) That the departure prohibition order may be lifted if the person to whom it has been issued undertakes one of the actions listed in sub regulation (1).
- (4) If a departure prohibition order is issued to a person under this regulation, the person to whom the departure prohibition order is issued may pay in full the fixed penalty and late payment fee that the person is liable to, to the Authority or, if the person intends to leave Fiji, to the Department of Immigration at an International Airport in Fiji.
- (5) Pursuant to sub regulation (4), if a person pays in full the penalties or fees that the person is liable to, the departure prohibition order is deemed to be lifted and the person must not be prevented from leaving Fiji on the basis of the departure prohibition order issued under this regulation.
- (6) In this regulation, 'load' does not include the carriage of passengers.
- (7) Notwithstanding anything contained in these Regulations, a person is not liable to pay the late payment fee in the period from 7 April 2017 to 15 January 2018.

[51] In this case, the respondent was not eligible to have his vehicle's registration renewed until such time the respondent undertook one of the actions under Regulation 7(1)(c). Further, the LTA had power to suspend the registration of the respondent's vehicle and any other vehicle that the respondent utilized for the purpose of carrying loads under Regulation 7(1E).

[52] It is clear that under Regulation 7(1)(c)(iii) a person issued with a TIN has an option to dispute a fixed penalty in court in order to have his vehicle's registration renewed even after the statutory period of 90 days to pay the fixed penalty had expired and the fixed penalty had been paid. That person remains liable to the penalty unless the court subsequently makes a final determination in the person's favour and orders a refund of the paid penalty and any late payment fee.

[53] For these reasons I conclude a person issued with a TIN is not time barred to contest the TIN in court after the expiry of the 90 days to pay the fixed penalty. In

this case, the respondent was not time barred to contest the TIN in court after the expiry of 90 days to pay the fixed penalty. Ground 4 fails.

[54] In summary, the respondent was permitted to contest the TIN, but the Magistrates' Court made an error of law to invalidate and dismiss the TIN.

[55] **Orders of the Court are:**

- The LTA is granted an enlargement of time to appeal.
- The appeal is allowed.
- The orders made by the learned magistrate are set aside.



  
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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

Legal Officer- Land Transport Authority for the Appellant

Kohli & Singh Labasa for the Respondent