

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

CRIMINAL APPEAL NO. HAA 057 OF 2020

BETWEEN : LAND TRANSPORT AUTHORITY
The Appellant

AND : VINOD KUMAR
The Respondent

Counsel : Mr V Chand & Ms V Nasilasila for the Appellant
Ms N Mishra for the Respondent

Date of Hearing : 9 April 2021

Date of Judgment : 15 October 2021

JUDGMENT

- [1] The respondent is a bus driver. On 23 March 2019, the Land Transport Authority (LTA) issued him with a Fixed Penalty Notice for an offence of receiving a fare in cash from a passenger on a public transport contrary to Regulation 5 (4) of the Electronic Fare (Omnibus) Amendment Regulation 2017 and Electronic Fare Ticketing (Omnibus) (Amendment) Regulation 2018. The fixed penalty was \$150.00 to be paid within 30 days.
- [2] The respondent elected to contest the Fixed Penalty Notice in court.
- [3] On 28 May 2019, the case was called in the Magistrates' Court at Suva. Thereafter, the case was adjourned on numerous occasions. The respondent represented himself. The LTA was represented by counsel.

- [4] On 22 October 2020, the respondent informed the learned magistrate that he wanted his case dismissed. Counsel for the LTA responded saying that the matter should take normal cause. The learned magistrate further adjourned the case for a ruling.
- [5] On 28 October 2020, the learned magistrate gave a written ruling in which he declared that the Fixed Penalty Notice issued to the respondent was null and void based on the *Pasifika Enterprise v LTA* [2020] FJHC 517; HBC262.2019 (6 July 2020). This is an appeal by the LTA against that ruling.
- [6] The LTA filed the appeal late, but on 29 January 2021, I granted an enlargement of time to appeal based on the merits of the appeal.
- [7] It is clear that the learned magistrate gave his ruling based on the High Court's decision in the case of *Pasifika* where the owner of a vehicle was issued with a Traffic Infringement Notice for an overloading offence. The Notice gave the accused to either pay a fixed penalty or to provide a statutory declaration or to dispute the Notice in Court within 90 days. The accused challenged the TIN in the civil jurisdiction of the High Court on the basis that it was void and illegal as it contravened sections 14 (2) (a) and 15 (1) of the Constitution.
- [8] On 6 July 2020, the High Court upheld the constitutional challenge and declared that the TIN issued to the accused for an overloading offence contravened sections 14(2) and 15 (1) of the Constitution, and therefore, was null and void. The reasons for declaring the TIN invalid are summarized in paragraph 38 of the judgment as follows:
- [38] The deeming conviction notice not only violates the right to a fair trial before a court of law (section 15(1) of the Constitution) but also the right of presumption of guaranteed under section 14(2) of the Constitution. Therefore, the notice is invalid as it is consistent (sic) with the Constitution.
- [9] After the pronouncement, the LTA applied for a stay of the judgment pending appeal. On 16 October 2020, the High Court refused to grant a stay saying that

the impugned judgment was a declaratory judgment and not an enforceable executory order.

[10] The LTA then appealed to the Court of Appeal and sought a stay of the High Court's judgment. On 4 February 2021, the Court of Appeal granted a stay of the judgment pending determination of the appeal.

[11] By the time the Court of Appeal stayed the decision in *Pasifika*, the learned Magistrate had dismissed the Fixed Penalty Notice issued to the respondent based on that decision.

[12] The LTA's grounds of appeal are as follows:

- i. That the Leaned Magistrate erred in law and/or in fact when it failed to inform itself that it did not have a power or jurisdiction to hear matters of allegation or violation of breach of Bill of rights and he further failed to refer the matter to the High Court pursuant to Division 1 and 2 of the Criminal Procedure Act 2009 and pursuant to Section 44 (1) (3) of the Constitution, and the High Court (Constitutions Redress) Rules 2015.
- ii. The Learned Magistrate erred in law and/or in act when he held that the presence of deeming conviction notice on the Traffic Infringement Notice invalidates the Traffic Infringement Notice.
- iii. The Learned Magistrate erred in law and/or in fact when he held that the deeming provision of a conviction under regulation 9 of the Land Transport (Traffic Infringement Notice) Regulations 2017 violates the Respondent's rights under section 14 (2) and 15 (1) of the Constitution.
- iv. That the Learned Magistrate erred in law and/or in fact when it did not consider that the Pasifika Ruling was only for one specific TIN and does not affect other TINs in the Magistrate's Court, as each TIN/matter is issued will be disputed and evaluated on its own basis and facts in the Criminal Court.
- v. That the Learned Magistrate erred in law and/or fact in considering a Civil Court declaration to be the basis for striking out a criminal charge because it is a criminal offence that was instituted under the Criminal Jurisdiction for the violation of the Land Transport (Traffic) Regulation 2000, the Land Transport (Vehicle Registration and Construction) Regulation 2000 and the Land Transport Act 1998.

[13] The Magistrates' Court is a subordinate court created the Magistrates Court Act 1944. The jurisdiction of the court is governed by statute. Section 17 of the Magistrates Court Act provides for the criminal jurisdiction. Section 17 reads:

In the exercise of their criminal jurisdiction Magistrates shall have all the powers and jurisdiction conferred on them by the Criminal Procedure Act 2009, this Act or any other law for the time being in force.

- [14] Section 17 of the Magistrates' Court Act is consistent with section 101 (2) of the Constitution, which states:

The Magistrates Court has such jurisdiction as conferred by a written law.

- [15] Sections 72-75 of the Criminal Procedure Act governs criminal proceedings initiated by Fixed Penalty Notice. Section 74 (1) (a) of the Criminal Procedure Act states:

Where proceedings are instituted by means of-

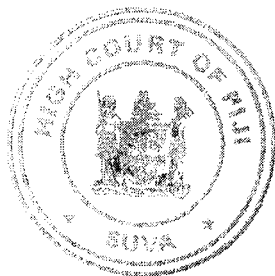
The service upon a person of a fixed penalty notice (in this section referred to as "the notice"); the provisions of this section apply in relation to the charge set out in the notice (in this section referred to as "the charge").

- [16] In this case, the respondent elected to contest the Fixed Penalty Notice. He did not pay the fixed penalty and he gave his intention to contest the Notice in writing. When the proceedings were initiated under section 74 (1) (a) of the Criminal Procedure Act the parties were served with the notice of hearing.

- [17] Section 168 of the Criminal Procedure Act states that the court shall proceed to hear the case if both the complainant by (in person or by a lawyer), and the accused person appear before the court. The LTA was the complainant/prosecution, represented by counsel. The accused/respondent elected to represent himself. The charge was contained in Fixed Penalty Notice.

- [18] The procedure for trials in the Magistrates' Court are contained in Part XIII of the Criminal Procedure Act. The Act does not give the Magistrates' Court power to declare a Fixed Penalty Notice null and void on constitutional grounds without adjudicating on the charge.

- [19] *Pasifika* is a civil declaration on the validity of a specific Fixed Penalty Notice on constitutional grounds. *Pasifika* is not a binding authority to declare all Fixed Penalty Notices null and void on constitutional grounds.
- [20] The Magistrates Courts does not have power to hear constitutional redress. Constitutional redress matters can only be heard by the High Court pursuant to section 44 of the Constitution. The learned Magistrate had the power to proceed to the hearing of the charge and then decide the validity of the charge at the end of the prosecution case. He did not have the power to declare the Fixed Penalty Notice null and void before hearing the charge.
- [21] I would uphold the grounds of appeal pertaining to lack of jurisdiction and incorrect application of the *Pasifika* case. I do not find it necessary to make any pronouncement on the correctness of the constitutional pronouncement on the Fixed Penalty Notice by the High Court in *Pasifika*. That is a matter for the Court of Appeal.
- [22] The appeal is allowed and the ruling of the learned magistrate is set aside.
- [23] The case is to proceed to hearing before a different magistrate.
- [24] The case is listed for mention on 5 November 2021 9.30 am before the Chief Magistrate to assign the case to a new magistrate.



A handwritten signature in black ink, appearing to be "Daniel Goundar".

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Hon. Mr Justice Daniel Goundar

Solicitors:

Legal Officer – LTA for the Appellant

Legal Aid Commission for the Respondent