

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**APPELLATE JURISDICTION**

**CRIMINAL APPEAL CASE NO. HAA 33 OF 2020**

**BETWEEN:**                      **MOHAMMED FARUK**                      **APPELLANT**

**A N D:**                              **LAND TRANSPORT AUTHORITY**                      **RESPONDENT**

**Counsel:**                      Appellant In Person  
Mr. W. Raiubi with Ms. L. Malani for Respondent

**Date of Hearing:**      04<sup>th</sup> September 2020

**Date of Judgment:**    27<sup>th</sup> January 2021

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**RULING**

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1.      The Appellant filed this Notice of Motion, seeking the following orders *inter alia*:
  - (i)    *That the Applicant be granted leave of the Court for Appeal from Suva to be heard at Lautoka*
  - (ii)   *That the Applicant be granted Appeal out of Time in this Court.*
  - (iii) *That the time and service of this Motion be abridged.*

2. The Notice of Motion is being supported by the Affidavit of the Appellant, explaining the factual grounds of this application. The Respondent filed an affidavit of Mr. Deo Reddy, objecting to this application. The parties were then directed to file their respective written submissions, which they filed as per the directions.
3. The Appellant had been issued and served with four Traffic Infringement Notices (TIN) in February 2018 by the Respondent. The Appellant had taken steps to dispute those four TIN in the Magistrate's Court. Accordingly, the learned Magistrate at Nasinu Magistrate's Court had conducted the hearing on the 21st of November 2019. The learned Magistrate, in his ruling dated 27th of March 2020, found those four Traffic Infringement Notices are valid. Aggrieved with the said decision, the Appellant filed this Notice of Motion, seeking an order enlarging the time within which the Appellant to file a Petition of Appeal against the said decision.
4. An appeal to the High Court has to be lodged within 28 days of the decision (*vide section 248 (1)*). However, Section 248 (2) of the Criminal Procedure Act states that the High Court may at any time, for a good cause, enlarge the period of limitation as stipulated under Section 248 of the Act. Moreover, Section 248 (3) of the Criminal Procedure Act has provided certain factors that shall be considered as good cause under Section 248 (2) of the Act. They are that:

*For the purposes of this section and without prejudice to its generality, "good cause" shall be deemed to include —*

- i) a case where the appellant's lawyer was not present at the hearing before the Magistrates Court, and for that reason requires further time for the preparation of the petition;*
- ii) any case in which a question of law of unusual difficulty is involved;*

- iii) *a case in which the sanction of the Director of Public Prosecutions or of the commissioner of the Fiji Independent Commission Against Corruption is required by any law;*
- iv) *the inability of the appellant or the appellant's lawyer to obtain a copy of the judgment or order appealed against and a copy of the record, within a reasonable time of applying to the court for these documents.*

5. The Supreme Court of Fiji in **Kumar v State; Sinu v State [2012] FJSC 17; CAV0001.2009 (21 August 2012)** has outlined some of the factors that the Court could take into consideration when it determines an application of this nature. Gates CJ held that:

*“Appellate courts examine five factors by way of a principled approach to such applications. Those factors are:*

- i) The reason for the failure to file within time.*
- ii) The length of the delay.*
- iii) Whether there is a ground of merit justifying the appellate court's consideration.*
- iv) Where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed?*
- v) If time is enlarged, will the Respondent be unfairly prejudiced?*

6. The Appellant claims that he lives in Nadi and the lockdown, imposed by the Government to contain the Covid 19 pandemic, prevented him from travelling to Suva to lodge his appeal in time. He had gone to High Court, Lautoka to lodge his appeal. The High Court Lautoka informed him that he must lodge his appeal with the Suva High Court.

7. The Covid 19 pandemic has undoubtedly caused myriads of disturbance in many aspects of our day to day life. The measures adopted to contain the pandemic, such as lockdowns, travel restrictions, and social distancing, have restricted the people's free movement. Hence, I find the Appellant's reason for failing to file the appeal within the time is a good cause.
8. Moreover, the Appellant submitted that the High Court in **Pasifika Enterprise v Land Transport Authority [2020] FJHC 517; HBC262.2019 (6 July 2020)** has ruled that the Traffic Infringement Notices, issued under the Land Transport (Traffic Infringement Notice) Regulations 2017, breach the Section 14 (2) and 15 of the Constitution, therefore, such Notices are unconstitutional. I find this is a very important legal issue to be determined in the appeal.
9. Having taken into consideration the above reasons, I grant the Appellant leave to file the Petition of Appeal within fourteen days of this order. However, I refuse to transfer this matter to the High Court in Lautoka.



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**Hon. Mr. Justice R.D.R.T. Rajasinghe**

**At Suva**

27<sup>th</sup> January 2021

**Solicitors**

Appellant In Person.

Office of the Land Transport Authority for the Respondent.