

In the High Court of Fiji

At Labasa

Civil Jurisdiction

Civil Action No. HBC 43 of 2016

Rajendra Deo Prasad

Plaintiff

v.

Dalip Chand & Sons Limited

First defendant

Land Transport Authority

Second defendant

Counsel: Mr A. Sen for the plaintiff
Mr V. Kapadia for the first defendant
Mr E. Mafi for the second defendant

Date of hearing: 9th May 2022

Date of Judgment: 24th March.2023

Judgment

1. The plaintiff and the first defendant are licensed operators of buses in Labasa. The plaintiff alleges that the first defendant is illegally operating on one of its routes without a valid license. The second defendant is the regulator of road transport.

2. The plaintiff, in his statement of claim states that he is the holder of Road Route Licence, (RRL) 12/23/34 which permits him to provide bus services to Basoga on Route 508. The first defendant holds RRL 12/23/23 issued by the second defendant on 16 April, 2012. The plaintiff states that the notice of grant did not include Route 507A and Route 507C. On 18 July, 2016, the first defendant commenced operations to Basoga from Labasa town, in breach of section 62(2) of the Land Transport Act, (LTA). The first defendant did not have the licence to operate to Basoga. The first defendant charges a lower than mandated bus fare to passengers in breach of Regulation 24(1) of the Land Transport (Public Service Vehicles) Regulations. The plaintiff claims general and special damages.
3. The first defendant's statement of defence states that Route 507A and Route 507C were inadvertently omitted in the 16th April letter. Route 507A and Route 507C were in the RRL 12/23/23 of Bulileka Transport Limited, (BTL). The first defendant has a valid RRL 12/23/23 granted by the second defendant which includes a bus service to Basoga via PWD yard. Appeals from decisions of the second defendant relating to Part VI, Public Service Vehicle Licencing must be filed in the Land Transport Appeals Tribunal.
4. The second defendants' statement of defence states that RRL 12/23/23 Route 507A Basoga/PWD/Labasa/Bulileka is listed under the routes of the first defendant. The timetables for Basoga routes of the plaintiff and the first defendant do not clash.

The hearing

PW1, *(the plaintiff)*

5. PW1 in evidence in chief said that his Route 508 covers the bus route from Nasca to Basoga. In 2016, the first defendant started operating its bus on his route at the same time as the plaintiff at 5.30 pm. The first defendant does not have a license for that route. PW1 said that he complained to the LTA. He has lost revenue estimated at \$30.00 per day, as passengers travel in the bus of the first defendant which is parked earlier than his bus at a cheaper fare.

6. In cross-examination, Mr Kapadia, counsel for the first defendant pointed out to PW1 that the first defendant's RRL 12/23/23 specifies that Route 507A:Basoga/PWD/Nasea/Bulileka, (Monday to Thursday) leaves Nasea at 5.30 pm and reaches Bulileka at 6pm, while the plaintiff's route 508 leaves Labasa from Monday to Saturday at 5.30 pm and reaches Basoga in 20 minutes at 5.50pm. The first defendant's journey takes 10 minutes more than the plaintiff's route. Route 507 A was transferred from Bulileka Transport Ltd to the first defendant. He said that the first defendant's Route 507 A states that the bus departs from Nasea to Bulileka, not via Basoga. The heading erroneously states departure is from Basoga. The route to follow strictly states that all trips are to go via Labasa hospital. The first defendant's license provides that the bus departs from Nasea at 5.30 pm and arrives in Bulileka at 6pm. PW1 denied that his route departs earlier than 5.30pm it was put to PW1 that bus fares are at a maximum and bus operators can charge lower than the maximum.
7. In re-examination, PW1 said that BTL operated the plaintiff's route 508 until 1996, Thereafter Latchman Buses commenced operating that route at 5.30 pm. The plaintiff bought over Latchman Buses. 507A was issued to the first defendant in 2012, but the Basoga route was not given to the first defendant. PWD is not on the route to Basoga.

DW1

8. DW1(*Rajneel Chandra, General Manager of the defendant*) in evidence in chief said that the defendant took over RRI. 12/23/23 from BTL by an Expression of Interest(EOI) called for by LTA. There was no challenge to his interest. DW1 said that Route 507 A trip is primarily Bulileka/ Labasa. Route 507 A Basoga/PWD/Labasa/Bulileka departs Nasea at 5.30 pm and proceeds to Basoga, PWD and Bulileka. It is a one way trip. The route and timetable is set out in the actual RRL. He commenced operating this route in 2016. The bus loads 4 to 5 passengers. The defendant has not been charging lower fares. The plaintiff's bus departs earlier.

9. In cross-examination, DW1 said that neither the words Valebasoga nor Basoga are written in the letter of 16th April, 2012 . He agreed that by letter of 9 February,2017, LTA informed first defendant that operating on the Basoga route is illegal and asked them to cease operations. He agreed that the plaintiff could not appeal as the RRL does not refer to Basoga. The RRL does not state to travel to Bulileka, inward and outward via Basoga. It was put to DW1 that the first defendant is following the heading of the RRL and not the route specified below. It was put to DW1 that his Route 507 A travels 6 km from the Bus Station to Basoga, comes back and goes to Bulileka, which is 16 kms.
10. In re-examination, he said that the plaintiff's trip on Route 508 took 20 minutes while the first defendant's trip on Route 507 A departs Nasea at 5.30 pm and arrives at Bulileka in half an hour after going to Bulileka.

DW2

11. DW2, (*Samuela Veitala, Senior Regulatory Analyst, LTA*) explained that RRL 12/23/23 was held by BTL and transferred by EOI to the first defendant.
12. In cross-examination, he was questioned as to how the heading to the Route 507 A states Basoga, but the route details do not mention Basoga. He agreed that there is no mention of Basoga in the route details. He also agreed that in terms of letter of 9 February,2017, from LTA , the plaintiff could not operate to Basoga. It was put to him that it is not possible to go from Labasa junction via the hospital to Basoga and Bulileka in 30 minutes.
13. In re-examination, DW2 said that it would take 20 mts to reach Basoga from Labasa bus station and 30 minutes to Bulileka, PWD yard.

The determination

14. *Agreed Facts*

- a. *The Plaintiff is the holder of a Road Route Licence No. (RRL No. 12/23/34) allowing Plaintiff inter-alia to provide bus services in Basoga area under Route 508 (subject to proof).*
- b. *The 1st Defendant is the holder of RRL No. 12/23/23 allowing the 1st Defendant to provide bus services inter-alia under Route 507A to Basoga area (subject to proof).*
- c. *The 1st Defendant acquired from the 2nd Defendant by Board Resolution of the 27th March 2012 RRL 12/23/23 under an Expression of Interest in respect of all services previously operated by Bulileka Transport Limited. (subject to proof)*

Issues

- i. *Whether the 1st Defendant has Route 507A and 507C in RRL 12/23/23 issued by the 2nd Defendant.*
 - ii. *Whether pursuant to Route 507C in RRL 12/23/23 the 1st Defendant has a bus service into Basoga from Labasa Town departing at 5.30pm.*
 - iii. *Whether the Plaintiff is entitled to any damages for loss of revenue.*
 - iv. *Whether the Plaintiff or the Defendants are entitled to costs on an indemnity basis.*
 - v. *As the 2nd Defendant issued a valid Road Route Licence to the 1st Defendant to operate from Labasa Town to Basoga at 5.30pm.*
15. Mr Kapadia, counsel for the first defendant provided a useful sketch of the road map to Basoga and Bulileka. From Nasea(Labasa bus station), the road proceeds past all Saints Secondary school up to Vaturekuka roundabout and branches left to Valebosaga Road to Basoga and right to Bulileka Road leading to PWD and Bulileka.
16. I have perused the respective licenses of the parties.
17. The plaintiff's RRL 12/23/34 as produced by PW1,(*the plaintiff of Northern Buses*) permits his services to operate from Labasa to Basoga from Monday to Saturday on Route 508. The details of the route provide that his bus is to depart Nasea at 5.30 pm and arrive at Basoga at 5.50 pm.

18. The first defendant's RRL 12/23/23 provides for bus services on Route 507 A Basoga/PWD/Labasa/Bulileka from Monday to Thursday. The details of the route provide that the bus departs Nasea at 5.30 pm and arrives at Bulileka at 6pm with all inwards and outwards trips to go via Labasa Hospital.
19. The case for the plaintiff is that Route 507A does not give the first defendant the right to operate from Nasea(Labasa Bus station) to Basoga for the following reasons. Firstly, Route 507 A was not granted to the first defendant. Secondly, while the heading reads "**ROUTE NO: 507A-BASOGA/PWD/NASEA/BULILEKA**", the route and time table specified to be followed in the license is to depart Nasea at 5.30pm and arrive at Bulileka at 6pm via Labasa Hospital.
20. It transpired that when BTL ceased business, LTA had called for expressions of interest. The first defendant applied and the LTA, by letter of 16th April,2012, informed the first defendant that its EOI for the following routes was conceded:

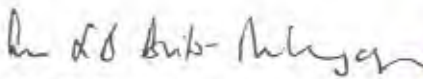
<i>Route 509A</i>	<i>Labasa/ Bouhale via Boca Road</i>
<i>Route 507</i>	<i>Bulileka/Anuve/Boca/Urata/Dreketilailai/Labasa</i>
<i>Route 507D</i>	<i>Vatunibale via Vatukekuka/Lowcost</i>

21. DW1 agreed that neither the words Valebasoga nor Basoga are written in the letter of 16th April, 2012.
22. In my view, clearly the grant does not cover a bus trip to Basoga.
23. The heading in RRL 12/23/23 of the first defendant's 507 A route states "**BASOGA/PWD/NASEA/BULILEKA**", from Monday to Thursday.
24. The route and timetable is specified immediately below as follows:
- Nasea dep 5.30*
Bulileka arr: 6.00 pm
Note: All inwards and outwards trips to go via Labasa Hospital

25. DW1 in evidence in chief said that “ *the whole route and timetable are in the actual RRL*”. In cross examination, he said that the route does not state that the inward and outward journey is to be via Basoga. He stated that there is no mention of Basoga in the route details.
26. DW1 and DW2 both agreed that the LTA, by letter of 9 February, 2017, informed the first defendant to cease operating its “ *illegal operation*” to Basoga terminus and “ *operate on route approved by the authority on RRL122323*”.
27. On a consideration of the evidence, in my view, the first defendant’s itinerary under Route 507 A was Nasea/ Bulileka via Labasa hospital, as provided in the route and time table details.
28. In my judgment, the first defendant has infringed on the plaintiff’s route.
29. The plaintiff claims that he has suffered financial losses at an average rate of FJD 30.00 per day. However, no evidence in support was produced of the claim.
30. Special damages has to be proved by evidence as to the loss of revenue.
31. The claim for special damages of loss of revenue is declined.
32. The plaintiff also claims general damages for harm and damage to his reputation and public standing. In my view, there is no basis for this claim nor the claim for exemplary damages.
33. Finally, I will deal with the contention of Mr Kapadia submitted that the plaintiff should have sought its remedy under the Land Transport (Public Service Vehicles) Regulations. Regulation 12 provides that the LTA may “ *cancel, vary or suspend a permit*”.
34. The present dispute arises from an interpretation of the license granted to the first defendant arising from a mis-description in the heading of the RRL as against the actual route details. The plaintiff does not challenge the grant of the license to the first defendant by the LTA

35. *Orders*

- a. The plaintiff's claim for damages against the first and second defendants for loss of revenue and his reputation and public standing is declined.
- b. The plaintiff's claim for exemplary damages against the first and second defendants is declined.
- c. I make no order as to costs.


A.L.B. Brito-Mutunayagam
JUDGE
24th March, 2023

