

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. HAA 10 of 2023

BETWEEN : **LAND TRANSPORT AUTHORITY**

APPELLANT

A N D : **KHAN BUSES LIMITED**

RESPONDENT

Counsel : Ms. N. Tikonayau for the Appellant.
: Mr. S. Nand for the Respondent.

Date of Submissions : 07 September, 2023

Date of Hearing : 18 September, 2023

Date of Judgment : 21 September, 2023

JUDGMENT

BACKGROUND INFORMATION

1. The respondent company was charged for one count of permitting another person to drive a motor vehicle with non-confirming mass plus load contrary

to regulation 80 (9) (d) and 87 (1) (a) and 122 of the Land Transport (Vehicle Registration and Construction) Regulations 2000.

2. It was alleged that Khan Buses Limited on 27th April, 2018 being the owner of motor vehicle registration number EN 684 permitted Sahil Sahem Gani to carry a load of gravel with a weight of 28.98 tons when the permissible gross weight is 19.89 tons the excess weight of the said vehicle is 9.09 tons.
3. The Traffic Infringement Notice was contested by the respondent company hence the matter went for hearing in the Magistrate's Court at Lautoka. The appellant called two witnesses in respect of the Traffic Infringement Notice issued.
4. At the end of the prosecution case the respondent through its counsel made a no case to answer application which was upheld by the court and the respondent company was acquitted as per the ruling on no case to answer dated 7th February, 2023.

APPEAL TO THE HIGH COURT

5. The appellant being aggrieved by the acquittal filed an appeal in this court which is late by six days. The respondent's counsel did not raise any objections hence this court will consider this appeal as a timely one.
6. Both counsel filed written submissions and also made oral submissions during the hearing for which this court is grateful.

PRELIMINARY OBJECTION

7. The respondent's counsel raised a preliminary objection that the appeal filed was contrary to section 246 (2) of the Criminal Procedure Act since there was

no evidence that the appellant had obtained the written sanction of the Director of Public Prosecutions.

8. This appeal is brought by the Land Transport Authority from the dismissal of a Traffic Infringement Notice and the subsequent acquittal of the respondent company. The learned Magistrate in his ruling on no case to answer had acted under section 178 of the Criminal Procedure Act by stating *“I dismiss the case and acquit the Applicant-Accused”*.

9. Section 178 of the Criminal Procedure Act states:

If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him or her to make a defence, the court shall dismiss the case and shall acquit the accused.

10. The word acquit in the ruling gives rise to an order of acquittal after the court heard the evidence of two witnesses called by the appellant. On the other hand if a Traffic Infringement Notice is dismissed without an order of acquittal the sanction of the Director of Public Prosecution is not required. There is a distinction between an order of acquittal and an order of dismissal.

11. Section 246 (2) of the Criminal Procedure Act states that no appeal shall lie against an order of acquittal except by, or with the sanction in writing of the Director of Public Prosecutions or of the Commissioner of the Independent Commission against Corruption.

12. It cannot be overlooked that section 246 (2) mentioned above is a mandatory provision which must be complied with for any appeal against the order of acquittal in the Magistrate’s Court. The appellant did not seek the sanction of the Director of Public Prosecutions hence there is no appeal properly before this court. This court does not have the jurisdiction to rule on this appeal.

ORDERS

1. The appeal is dismissed for lack of jurisdiction;
2. 30 days to appeal to the Court of Appeal.



**Sunil Sharma
Judge**



At Lautoka

21 September, 2023

Solicitors

**Manager Legal, Land Transport Authority, Valelevu, Nasinu for the Appellant.
Messrs S. Nand Lawyers, Lautoka for the Respondent Company.**