

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

HBA No. 18 of 2018

BETWEEN : **LAND TRANSPORT AUHTORITY**

APPELLANT

AND : **SAIRUSI NATUNA**

RESPONDENT

AND : **CHARLES FONG**

INTERESTED PARTY

AND : **PLATO LIMITED**

INTERESTED PARTY

BEFORE : **M. Javed Mansoor, J**

COUNSEL : **Mr. G. Stephens for the Appellant**

: **Respondent unrepresented**

Date of Hearing : **24 June 2020**

Date of Judgment : **29 December 2023**

JUDGMENT

APPEAL Land Transport Appeals Tribunal – Public service vehicle – Transfer of permit – Effect of expired permit – Land Transport Act 1998 - Land Transport (Public Service Vehicle) Regulations 2000

1. This is an appeal against the decision of the Land Transport Appeals Tribunal (tribunal), which ordered the transfer of a public service vehicle permit from the respondent to the second interested party.
2. The appellant is the authority for issuing, cancelling, transferring, renewing, and suspending all public service permits in Fiji. One such permit concerns the mini bus for public transport. The respondent was issued a permit on 21 December 2000 to operate a mini bus from Suva to Nausori and back.
3. The respondent lodged an application to transfer his MB 14 permit on 3 May 2013. The permit was due to expire on 5 June 2013. The second interested party, Plato Limited, was named as the transferee. The transfer application was made on medical grounds.
4. After the transfer application was received, the proposed transfer of the permit was advertised. The first interested party, Mr. Charles Fong, filed an objection by letter dated 20 May 2013. Mr. Fong is said to be the respondent's father. The objection was on the basis that the permit is family owned, and it has been financed by the family from the time it was issued. He denied that the respondent has a genuine medical ground to apply for transfer of the permit.
5. The objection to the transfer application was taken up by the appellant, and the respondent and his father participated at board meetings. The record shows that there were meetings on 12 September 2013, 14 July 2014, 13 October 2017 and 28 February 2018.
6. At the meeting on 12 September 2013, the board noted that the medical report was yet to be sighted. On 14 July 2014, the board refused to allow the transfer. That decision was appealed and the tribunal made a ruling on 12 May 2017

allowing the respondent to be seen by a medical practitioner and for a report to be submitted to the appellant.

7. The board minutes of 13 October 2017 states that the mini bus permit is to be retained within the family of the permit holder following a written withdrawal of the application. The permit holder was not present on the day. The withdrawal letter is also not a part of the record.
8. Following its public service vehicle board meeting on 28 February 2018, the authority declined to transfer the permit. This was communicated by letter dated 26 March 2018. The refusal to approve the transfer was on the ground that the permit has expired and the applicant lodged only the transfer application. The merits of the objection raised by Mr. Fong does not seem to have been considered. The appellant's refusal was the basis of the respondent's appeal to the tribunal.
9. In appeal, the tribunal, by its decision of 12 October 2018, held that the board erred in its decision and directed the immediate transfer of the mini bus permit from the respondent to the second interested party. The tribunal noted some of the inconsistent positions taken by the appellant, and stated that no reasons were given for refusing the application to transfer the mini bus permit to Plato Limited. It is this decision that is under appeal.

The appeal

10. The present appeal is based on the following grounds:
 - i. "The Tribunal erred in law in approving the application for transfer of Mini-Bus MB14 to Plato Limited when there was evidence to support the fact that the MB14 has expired back in 5th June 2013. The decision of the Tribunal is in breach of Regulations 11 (1) of Land Transport (PSV) Regulations & Regulations 11A (3) (a) Land Transport (PSV) (Amended) Regulations.
 - ii. The Tribunal erred in law when it approved transfer on the grounds that LTA is wrong to find that the permit had expired when it is before the Board is incorrect. The finding is perverse and unreasonable and made when there was evidence before the Tribunal that the Permit Holder has confirmed to the Board that he was aware that it is his responsibility to renew his applications, which the Tribunal had to take

into account under Regulations 3 (6) of Land Transport (PSV) Regulations which the Authority mandates to all permit holders to comply with prior to any transaction with the permit such as a transfer.

- iii.* The Tribunal erred in law in not requesting for a renewal of the permit by the permit holder prior to approval of transfer for which the Tribunal was empowered to do pursuant to Section 46 (1) of the Land Transport Act.
 - iv.* The Tribunal erred in law and its discretion was wrongly exercised in granting the approval for transfer when the time the Permit Holder has lodged for transfer in 3rd May 2013 the Permit Number MB14 wa still valid. It was the time the Tribunal has made its decision in 12th October 2018 which was some 4 years after the expiry of the permit the transfer was approved by the Tribunal. It is mandatory for the permit holder to renew the permit 28 days prior to expiry irrespective of whatever application it has which is still pending before the Authority.
 - v.* The Tribunal failed in law when holding that the Permit Holder was at liberty to transfer the permit to another, and the permit holder chose to transfer to Plato Limited. When there is substantial evidence that the Tribunal did not take into account provided for in the PSV Board Minutes of 13th October 2017 & 28th February 2018 that Sairusi Natuna had withdrawn its consent for transfer to Plato Limited and requested for the Mini Bus Permit to be now transferred to his family members”.
- 11.** The respondent was represented on a few occasions in this proceeding, but was unrepresented when the appeal was taken up for hearing. The appellant made oral submissions and filed written submissions. The third ground of appeal was not pursued at the hearing.
 - 12.** An appeal against the tribunal’s decision is available on points of law in terms of section 48 of the Act. The appellant submitted that in terms of section 47, the tribunal must have regard to those matters that the authority is required to consider, and that in this case the application before the appellant concerned the transfer of the permit. The appellant contends that the tribunal erred by dealing with the renewal and the transfer of the permit.
 - 13.** The basis of the appeal is that the tribunal did not have jurisdiction to make a renewal or transfer of the permit, and that the permit was void under the Land

Transport (Public Service Vehicle) Regulations 2000. The appellant says there is no jurisdiction to transfer an expired permit under the regulations.

14. The respondent's permit was valid for a period of three years. The appellant submitted that an application for the permit's renewal should have been made prior to expiry so that it was valid pending the transfer process.
15. The record does not disclose that the respondent made an application for renewal before the permit expired. The tribunal makes no mention of whether the renewal fee was paid with a renewal application.
16. The appellant says it became aware on 28 February 2018 that the permit had expired on 5 June 2013. The appellant submits that only a valid permit could be transferred, and as the permit had expired, it was not possible to transfer it.
17. The appellant submitted that a transfer could be made in respect of the unexpired term of a permit in accordance with regulation 11A (5) of the regulations. The regulation says the transfer of a permit is the transfer of the unexpired term of the permit. Regulation 10 A (3) states that the holder of a permit that has expired and has not been renewed is not entitled to the benefits under the permit. Regulation 10 (5) (b) says a public service vehicle licence is void if the permit is cancelled, suspended, revoked or has expired.
18. As the tribunal observes, the permit was valid when the transfer application was lodged on 3 May 2013. The permit expired on 5 June 2013. At its board meeting on 28 February 2018, the appellant discovered that the permit had lapsed and dismissed the transfer application.
19. The regulations say that an expired permit is void. There is no submission before the court that regulation 10 (5) (b) is unreasonable or *ultra vires* the Act. The court will, therefore, proceed on the basis that the transfer of an expired permit will not be possible in terms of the statute and the regulations.

20. Section 46 (2) of the Act states that the tribunal may dismiss the appeal or make such order as it thinks just and reasonable in the circumstances directing the authority to issue, transfer, or cancel any licence, certificate or permit, or to impose, vary, or remove any condition or restriction in respect of a licence, certificate or permit, and the authority must comply with the order.
21. The provision allows the tribunal to make orders concerning the issue or renewal of a permit. The tribunal's order is for the transfer and renewal of the permit, which has expired. Unfortunately for the respondent, he did not apply for a renewal of the permit when lodging the transfer application.
22. The consequences are unfortunate as the transfer application was made – as the tribunal notes – while the permit was valid. The issuing or renewal of a permit is an administrative matter, a task which the appellant is equipped to carry out. The controversy before the authority relates to the permit's transfer. As the permit has expired the respondent would not be entitled to an order for its transfer.

ORDER

- A. The decision of the Land Transport Appeals Tribunal is set aside.
- B. The parties will bear their costs.

Delivered at **Suva** this **29th** day of **December, 2023**.



M. Javed Mansoor
Judge