

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Judicial Review No. 37 of 2023

IN THE MATTER of the Land Transport Act 1988

AND

IN THE MATTER OF a decision dated 22nd August 2023 by the Land Transport Authority wherein it issued a “First Warning Letter” to Mohammed Sareem citing purported breaches of the Land Transport Act 1998

STATE –v- **THE ACTING BRANCH MANAGER CENTRAL EASTERN:** Land Transport Authority, Lot 1 Daniva Road, Valelevu, Nasinu

1st RESPONDENT

THE CHIEF EXECUTIVE OFFICER, Land Transport Authority, Lot 1 Daniva Road, Valelevu, Nasinu

2nd RESPONDENT

LAND TRANSPORT AUTHORITY a statutory body established under the Land Transport Authority Act 1998 having its registered office at Lot 1 Daniva Road, Valelevu, Nasinu.

3rd RESPONDENT

EX-PARTE **MOHAMMED SAREEM** OF 77 Fulaga Street, Samabula, Suva, Businessman

APPLICANT

APPLICATION FOR LEAVE TO APPEAL FOR JUDICIAL REVIEW

1. This is the application for leave to Appeal for Judicial Review filed by the Applicant on the 22nd of November 2023.

2. The application is made pursuant to Order 53 Rule 3 of the High Court Rules seeking a judicial review of a decision made by the Respondents to issue him with a purported “first warning letter, citing breaches of the LTA Act 1998.”
3. The Registry, marked the Notice to be heard *inter partes* and directions were then made for service.
4. This of course runs counter to the practice adopted in the High Court as stated by the Court of Appeal in the case of in Richard Krishnan Naidu v Attorney-General (2019) 1 FLR 541, (1999) FCA Reps 99/331 ABU 39/98 ; 27 August 1999; per Thompson, Ward & Tompkins, JJA, their Lordships stated as follows: -

“Opposed determination *inter partes* should be the exception rather than the rule. Normally, application for leave should be dealt with on papers. Otherwise risk that in effect there will be 2 hearings, a process which will delay the final resolution, increase the costs or occupy additional court time. Amendment to rules by deleting reference to application being made *ex parte* means court may determine application without hearing. Also, understandable temptation for Judge to determine the central issue when all evidence may not be before the court and that issue may not have been fully argued:”

5. Taking my cue from their Lordships, I find that this application will be made on the papers alone and I refer to the case of Proline Boating Company vs Director of Lands [2014] FJCA 159; ABU 0020 of 2013 (25 September 2013) where the Court of Appeal provided the following: -

“Lord Donaldson M.R. in R v. Monopolies and Mergers Commission, ex parte Argull Group [1986] 1 WLR 763 indicated the following approach when stating that:

"The first stage test, which is applied upon the application for leave, will lead to a refusal if the applicant has no interest whatsoever and is, in truth, no more than a meddling busybody. If, however, an application appears otherwise to be arguable and there is no other discretionary bar, such as dilatoriness on the part of the applicant, the applicant may expect to get leave to apply, leaving the test of interest or standing to be re-applied as a matter of discretion on the hearing of the substantive application. At this stage, the strength of the applicant's interest is one of the factors to be weighed in the balance. ..."

[86] Lord Donaldson's approach was endorsed by Purchas L.J. in R v. Department of Transport, ex parte Presvac Engineering Ltd (1992) 4 Admin. L.R. 121 when after considering extensively the decision of the House of Lords in the National Federation case (1981, supra), His Lordship said:

"Personally I would prefer to restrict the use of the expression locus standi to the threshold exercise and to describe the decision at the ultimate stage as an exercise of discretion not to grant relief because the applicant has not established that he has been or would be sufficiently affected."

6. I have considered the papers and I find it appropriate to grant leave for judicial review.
7. Pursuant to Order 53 rule 8 of the High Court Rules 1988, after having granted leave, I direct that the judicial review take its own course and the matter is adjourned for further directions.
8. The matter has already been heard inter partes therefore there is no need to order for the service of the documents filed with the Leave Application, however if there is anything further to be filed the Applicant may make the necessary application at the next mention of this matter.
9. So ordered



Mr. Justice U. Ratuville

Puisne Judge



Dated at Suva this 14th August 2024

***cc: 1. Land Transport Authority of Fiji
2. Daniel Singh Lawyers, Suva.***