

IN THE HIGH COURT OF FIJI
AT LABASA
MISCELLANEOUS JURISDICTION

Crim Misc No. HAM 32 of 2024

BETWEEN: **LAND TRANSPORT AUTHORITY**
a Statutory Authority having its Registered Office at Lot 1
Daniva Road Valelevu, Nasinu.

APPLICANT

AND: **ABDUL WAHAB t/a COLORMIX &**
HARDWARE SUPPLIES of Labasa

RESPONDENT

Counsel: **Ms. V. Nasilasila for the Applicant**
Mr. A. Sen for the Respondent

Date of Hearing: **24 September 2024**

Date of Judgment: **8 October 2024**

JUDGMENT ON NOTICE OF MOTION SEEKING REVIEW

Introduction

1. By Notice of Motion filed on 30 April 2024, Land Transport Authority (“the Applicant”) seeks the following Orders:
 - (a) That the Magistrates’ Court Ruling on No Case to Answer dated 24 October 2023 in the Labasa Magistrates’ Court, Miscellaneous 13 of 2021 be supervised.

- (b) That the proceedings before the Labasa Magistrates' Court on all Pending Excess Load Offences be stayed until the determination of the Application herein.
- (c) That the time and service of this Notice of Motion be abridged.
- (d) That the No Case to Answer Ruling made in the Magistrates' Court be remitted back to the Magistrates' Court for rehearing.

("the Application")

- 2. I am compelled to state at the outset that I consider the Application to be wholly misconceived, not least because, in my view, this Court has no jurisdiction to entertain the Application.

Background

- 3. The Respondent was issued with a Traffic Infringement Notice ("TIN") for permitting his vehicle to be driven with excess weight of 3.72 tonnes.
- 4. The Respondent disputed the TIN and the matter was listed for hearing before the learned Resident Magistrate at Labasa.
- 5. On 24 October 2023, the learned Magistrate ruled that there was no case to answer and acquitted the Respondent ("the impugned Ruling").
- 6. On 30 April 2024, the Applicant filed the Application.

The Application

7. The Applicant was unclear as to the nature of the Application. Despite describing itself as the Appellant, the Notice of Motion bears a heading indicating that it is seeking a Review.
8. However, the body of the Notice of Motion reveals the true nature of the Application: *“This Application is made pursuant to Section 100(6) of the Constitution of Fiji 2013 and under the Supervisory Jurisdiction of the High Court”*.
9. The supporting affidavit makes reference to *“the First issue for Supervisory before the High Court”* (sic) and also makes a number of complaints which bear the characteristics of grounds of appeal.

Submissions

10. Further to my directions, the parties filed written submissions for which I am grateful.
11. The Applicant’s written submissions run to no fewer than 26 pages and traverse a multitude of grievances which, because of the view I take on the fundamental issue of this Court’s jurisdiction to entertain the Application, it is not necessary for me to deal with.
12. The Applicant’s written submissions frame the crucial issue for my determination somewhat ungrammatically, but with commendable concision, at [14]:

“14. Whether the Honourable High Court Judge has the power to Review and Intervene on injustice made on the decision of the Learned Magistrate made on the 24th October, 2023 pursuant to Section 100(6) of the Constitution of Fiji 2013 and its Supervisory Jurisdiction.”

13. The Applicant submits that the learned Magistrate did not determine the Respondent’s guilt and the Applicant therefore had no right of appeal.
14. Relying on *Nitin Nitesh Nair v The State High Court Criminal Misc. No. HAM 201 of 2022* (Judgment 20 January 2023) (*“Nair”*), the Applicant argues that, in these circumstances, it is entitled to seek review or intervention of the High Court to ensure that justice is duly administered by the Magistrates’ Court.
15. In conclusion, the Appellant prays for the impugned Ruling to be set aside and the matter remitted for a rehearing.
16. The Respondent submits that the Application is wrong in form and substance.
17. Perhaps considering that any further elucidation would be otiose, counsel for the Respondent merely asserts that *“The Application by the Appellant is a gross abuse of process of Court, preposterous and misconceived.”*

Discussion

18. The Criminal Procedure Act provides the statutory framework for the appellate and revisionary jurisdictions of the High Court.

19. Part XV Division 1 deals with appeals to the High Court from Magistrates' Courts.
20. Section 246(1) provides a general right of appeal for any person dissatisfied with any judgment, sentence or order of a Magistrates' Court in any criminal cause or trial.
21. Relevant to the present Application, section 246(2) provides that no appeal shall lie against an order of acquittal except by, or with the sanction in writing of the Director of Public Prosecutions.
22. The Applicant's stated position that it had no right of appeal against the impugned Ruling is plainly wrong. The matters it now seeks to complain about could, with the sanction of the Director of Public Prosecutions, have been advanced as grounds of appeal against acquittal.
23. It would appear that the Applicant did not seek to rely on its right of appeal because those advising it wrongly advised that no such right existed.
24. Given that the Applicant enjoyed a right of appeal, the fact that it decided not to pursue an appeal against the Respondent's acquittal bars it from invoking the revisionary jurisdiction of the High Court. Section 260(5) provides:

“(5) Where an appeal lies from any finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.”

25. It may well be that the Applicant's uncertainty about the scope of this Court's revisionary jurisdiction caused it to cast its net wider and seek to invoke a nebulous "supervisory jurisdiction".
26. Whilst this is not the occasion for a detailed analysis of the scope of this Court's jurisdiction to "supervise" subordinate courts, not least because the parties did not advance any developed arguments on this issue, it is perhaps worth making some general observations.

A stand-alone supervisory jurisdiction?

27. The Applicant relies on section 100(6) of the Constitution:

"106. The High Court has jurisdiction to supervise any civil or criminal proceedings before a Magistrates Court or other subordinate courts and may, on an application duly made to it, make such orders, issue such writs and give such directions as it considers appropriate to ensure that justice is duly administered by the Magistrates Court and other subordinate courts."

28. On the face of it, the Constitution confers a very wide jurisdiction on the High Court to do what it considers to be necessary in the interests of justice.
29. However, in my view, it cannot sensibly be argued that this constitutionally enshrined supervisory jurisdiction overrides and transcends the statutory regimes which govern how our courts function.
30. To take but one example, it would throw the criminal justice system into chaos if a broad supervisory jurisdiction could be invoked to seek to overturn interlocutory rulings, such as a ruling that an accused person has a case to answer.

31. It is well settled in this jurisdiction that interlocutory rulings are, as a general rule, not appealable until the trial court has finally determined the question of guilt.
32. The underpinning rationale for this legal policy is that fragmentation of criminal proceedings would cause undesirable delay and impede the efficient administration of justice.
33. In my view, the High Court will rarely, if ever, consider it appropriate to exercise its supervisory jurisdiction when proceedings are alive in the Magistrates' Court.

Nair

34. The Applicant has cited *Nair* as a rare example of the High Court invoking its supervisory jurisdiction. Indeed, it is the only such example of which I am aware. That alone speaks volumes.
35. On my reading of *Nair*, Sharma J was not espousing a view that the supervisory jurisdiction of the High Court should be readily invoked. Quite the opposite. The learned Sharma J made it abundantly clear, at para. 15, that any application for the review of interlocutory orders of the lower courts should be viewed with extreme care so as not to impede or delay justice in that court.
36. The way I see it, Sharma J invoked the supervisory jurisdiction of the High Court in the unusual circumstances of *Nair* as a purely pragmatic measure to correct an inadvertent oversight in the Resident Magistrate's ruling in circumstances of exigency.

37. *Nair* should not be relied upon by parties to criminal proceedings, as it has been in the present case, to seek to circumvent the statutory regime for appealing or reviewing decisions of the Magistrates' Courts.
38. In the rare circumstances that the High Court considers it appropriate to invoke its supervisory jurisdiction, it is obviously the case that this can only be done when the proceedings remain live in the Magistrates' Court, as was the position in *Nair*.

Disposal

39. There are no live proceedings in the Magistrates' Court in this matter. The Respondent was acquitted.
40. It follows that there are no proceedings for this Court to supervise. Accordingly, for the reasons set out above, the Application must be dismissed.

Legality

41. Finally, I must add a few words about the obligation of parties to legal proceedings to abide by the decision of the court.
42. It is particularly important, in my view, that Statutory Authorities, such as the Applicant, do not flout binding court orders.
43. In the present case, the Resident Magistrate ordered, at para 29 of the impugned Ruling, that the fine was to be refunded within 14 days.

44. We are now almost a year on from the impugned Ruling and Mr Sen informs me, in a tone of understandable indignation, that the Applicant has still not refunded the fine. Mr Sen is under the impression that it is standard practice for the Applicant to be tardy in refunding fines to which it is not entitled.
45. I note that, rather than exercising its right to appeal against the impugned Ruling, the Applicant chose to sit on its hands for almost 6 months before filing what I have found to be a wholly misconceived challenge to the impugned Ruling.
46. It goes without saying that the fine must be refunded without further delay.



Hon. Mr. Justice Burney

Solicitors:

Land Transport Authority for the Applicant
Sen Lawyers for the Respondent