

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[APPELLATE JURISDICTION]

CRIMINAL APPEAL NO. HAA 04 OF 2025

IN THE MATTER of an Application in terms of Section 246 (1) and (4) and Section 248 (1) and (2) of the Criminal Procedure Act 2009.

AND IN THE MATTER of an Appeal against the decision of the Resident Magistrate, Magistrate's Court of Lautoka, in respect of Traffic/Miscellaneous Actions No. 511/17(A), 511/17(B), 511/17(C), and 511/17(D).

BETWEEN: **LAND TRANSPORT AUTHORITY**

APPELLANT/APPLICANT

AND: **AGGREGATE SOLUTIONS (FIJI) LIMITED**

RESPONDENT

Counsel: Ms. Joane Singh for the Appellant/Applicant
 Mr. Mohammed Yunus for the Respondent

Date of Hearing: 17 October 2025

Date of Judgment: 18 November 2025

JUDGMENT

[1] This is an Application filed by the Land Transport Authority (LTA) seeking an enlargement of time for the lodging of a Petition of Appeal against the decision made by the Magistrate's Court of Lautoka, in Traffic/Miscellaneous Actions No. 511/17(A), 511/17(B), 511/17(C), and 511/17(D).

- [2] In the year 2017, the Respondent Company (Respondent) was issued 4 Traffic Infringement Notices (TINs) for permitting another person to drive a motor vehicle with excess permissible gross weight load, contrary to Regulations 80 (9) (d), 87(1) (a) and 122 of the Land Transport (Vehicle Registration and Construction) Regulations 2000 ("VRC Regulations"). The 4 TINs were respectively as follows [Vide pages 46 – 49 of the Magistrate's Court Record]:
1. Traffic Infringement Notice issued on 2 May 2017- TIN Number 3151854;
 2. Traffic Infringement Notice issued on 26 May 2017- TIN Number 3165683;
 3. Traffic Infringement Notice issued on 7 July 2017- TIN Number 3173217; and
 4. Traffic Infringement Notice issued on 18 July 2017- TIN Number 3181016.
- [3] The Respondent elected to dispute the fixed penalty in Court pursuant to Regulation 6 (c) of the Land Transport (Traffic Infringement Notice) Regulations 2017. Accordingly, each Traffic Infringement Notice was assigned a separate case number. The case numbers assigned were Traffic Miscellaneous Case Nos 511/17(A), 511/17(B), 511/17(C), and 511/17(D) respectively. However, a decision was made for the 4 cases to be consolidated and to be heard together. The Consolidated Case Number was to remain as Traffic Miscellaneous Case No 511/17(A).
- [4] The matter proceeded in this manner for several years in the Magistrate's Court of Lautoka. On 16 January 2023, it is recorded that the matter is fixed for hearing on 11 September 2023 [Vide page 31 of the Magistrate's Court Record].
- [5] However, on 11 September 2023, an adjournment was sought by the Appellant since they were not ready for the hearing, as the witnesses for the Appellant were not present in Court. The Learned Resident Magistrate has recorded that in terms of Section 170 of the Criminal Procedure Act No. 43 of 2009 (Criminal Procedure Act), he does not see any good cause adduced by the Appellant to grant an adjournment [Vide page 31 of the Magistrate's Court Record].
- [6] At this stage, the Learned Counsel on behalf of the Respondent had made an application pursuant to Section 178 of the Criminal Procedure Act seeking an acquittal. It is recorded by the Learned Resident Magistrate that having considered

the overall facts of the case he was striking out the 4 Traffic Infringement Notices and acquitting the Respondent in all 4 cases [Vide page 32 of the Magistrate's Court Record].

- [7] Aggrieved by this Order the Appellant has filed this instant Application by way of a Notice of Motion for Enlargement of Time. The Notice of Motion, which was filed in Court on 17 February 2025, is supported by an Affidavit in Support, filed on the same day, by Paulini Matadradra, the Acting Branch Manager of the LTA Lautoka Branch.
- [8] On 5 May 2025, Sheik Shafil Saheb, Director and Operations Manager of the Respondent Company, filed an Affidavit in Response to the Affidavit in Support filed by Paulini Matadradra.
- [9] On 29 May 2025, an Affidavit in Reply was filed by Paulini Matadradra.
- [10] This matter was taken up for hearing before me on 17 October 2025. Counsel for both the Appellant and the Respondent were heard. Both parties filed Written Submissions and Supplementary Written Submissions, and referred to case authorities, which I have had the benefit of perusing.

THE AFFIDAVIT IN SUPPORT FILED BY PAULINI MATADRADRA

- [11] The Notice of Motion to Appeal out of Time, is supported by an Affidavit in Support filed by Paulini Matadradra, the Acting Branch Manager of the LTA Lautoka Branch. Therein, she deposes that the Appellant is a Statutory Body Corporate established under Section 6 of the Land Transport Act 1998 and is the Land Transport Regulator in Fiji.
- [12] She submits that the Appellant wishes to appeal the ex tempore Order made on 11 September 2023, by the Learned Resident Magistrate, Magistrate's Court of Lautoka, in Miscellaneous/Traffic Case Nos 511/17(A), 511/17(B), 511/17(C), and 511/17(D). A copy of the Certificate of Court Proceedings, dated 27 October 2023, is annexed to the Affidavit marked as Annexure LTA 1.
- [13] Ms. Matadradra deposes that on 2 May 2017, 26 May 2017, 7 July 2017 and 11 July 2017 (should be 18 July 2017), the Respondent was issued 4 Traffic Infringement

Notices (TINs) for permitting another person to drive a motor vehicle with excess permissible gross weight load, contrary to Regulations 80 (9) (d), 87(1) (a) and 122 of the Land Transport (Vehicle Registration and Construction) Regulations 2000 (“VRC Regulations”).

- [14] She is advised that on 11 September 2023, the matter was listed for mention as recorded by both Counsels for the Appellant and the Respondent, for the sole reason that on the previous call over date prior to 11 September 2023, the Director of the Respondent Company was not present in Court. On that day the Learned Resident Magistrate is said to have advised the Solicitors for the Respondent for their client to be present on the next day for the Court to fix a hearing date.
- [15] Ms. Matadradra further deposes that on 11 September 2023, the Learned Resident Magistrate had stated that the matter was for hearing and had proceeded to call the matter for hearing even though both Counsels have made applications for adjournment of hearing. The Counsel for the Appellant had informed Court that it was not ready to proceed with the hearing as all its witnesses were in Suva, because parties believed that this was only a call over date to fix the matter for hearing. She deposes that the Learned Resident Magistrate made the order ex tempore to dismiss the 4 Traffic Infringement Notices and acquit the Respondent accordingly.
- [16] Ms. Matadradra explains that as per the legislative requirements to appeal, the Appellant is required to obtain the sanction of the Director of Public Prosecutions (DPP) prior to filing an appeal against any acquittal in the Magistrate’s Court.
- [17] She is advised that the Solicitors of the Appellant wrote to the Office of the Director of Public Prosecutions (ODPP) to seek the Director’s sanction to appeal the Order of striking out and acquittal. At this time, the Appellant advised the ODPP that it was appealing out of time. This was due to the Certificate of Court Proceedings being received from the Magistrate’s Court Registry 18 days after the 28 days to appeal had lapsed. A copy of the letter seeking the sanction of the Acting DPP is annexed to the Affidavit marked as Annexure LTA 2.
- [18] Ms. Matadradra further deposes that while the Appellant was awaiting the sanction of the Acting DPP, on 16 May 2024, it filed a Notice of Motion and Affidavit in

Support for a Stay of the Order dated 11 September 2023 and Leave to Appeal Out of Time, in the High Court of Lautoka – Criminal Appeal No. HAA 15 of 2024. A copy of the said Notice of Motion is annexed to the Affidavit marked as Annexure LTA 3.

- [19]** It is deposed further that the Criminal Appeal No. HAA 15 of 2024 was called in the Lautoka High Court on 28 May 2024. The Court had been informed that the Appellant was still awaiting the sanction of the DPP and had anticipated that the sanction would arrive before the first call date in the said matter. However, since the ODPP was in the middle of transition things were delayed at that end. The High Court had directed the Appellant that the sanction of the DPP was still needed since this was an appeal in respect of an acquittal in the Magistrate’s Court. The Appellant had then decided to withdraw Criminal Appeal No. HAA 15 of 2024 to await sanction of the DPP.
- [20]** On 7 January 2025, the ODPP wrote back advising that the Acting DPP had sanctioned the appeal against the acquittal. A copy of the Memorandum received from the ODPP and a copy of the sanction of the Acting DPP are annexed to the Affidavit marked as Annexures LTA 4 and LTA 5 respectively.
- [21]** Ms. Matadradra states that due to the delay in receiving the sanction from the ODPP, the time period for filing of this appeal had lapsed and that the ODPP had further advised the Appellant to prepare and file an application seeking enlargement of time to file the appeal.
- [22]** Ms. Matadradra deposes that due to the above administrative processes and legislative requirements to appeal, there has been a delay to file this appeal against the acquittal of the Respondent. She is advised that there has been a delay of over 15 months since the appealable date lapsed.
- [23]** It is deposed that the Appellant has a good cause to seek an enlargement of the time to file this appeal as the delay was due to awaiting the DPP’s sanction. The Appellant has been ready to file its Notice and Grounds of Appeal awaiting the DPP’s sanction. A copy of the Notice and Grounds of Appeal is annexed to the Affidavit marked as Annexure LTA 6.

- [24] It is deposed that the Appellant's Petition and Grounds of Appeal are meritorious and have high chances of success. It is also stated that there would be no prejudice caused to the Respondent as the fixed penalty notices have been cleared by the Respondent and it can be reimbursement if the Appellant's appeal does not succeed.
- [25] Therefore, Ms. Matadradra prays that leave be granted for the Appellant to appeal this matter out of time.

THE AFFIDAVIT IN RESPONSE FILED BY THE RESPONDENT COMPANY

- [26] On 5 May 2025, Sheik Shafil Saheb, Director and Operations Manager of the Respondent Company, filed an Affidavit in Response to the Affidavit in Support filed by Paulini Matadradra.
- [27] Therein, he inter-alia deposes that although the Appellant has deposed that the order made by the Learned Resident Magistrate on 11 September 2023, was an ex tempore order, he does not believe that it was an ex tempore order. The order of acquittal was made because the LTA was not in a position to proceed with the trial of the matter on the said day. As such, the Learned Magistrate exercise his discretion and acquitted the Respondent Company as there was no evidence offered by the LTA.
- [28] He is further advised that even though the Counsel for the Respondent had informed Court that according to their record the matter was marked for mention, as per the Court Record, the matter was marked for hearing on 11 September 2023.
- [29] Furthermore, it is stated that on 16 January 2023, the deponent was present in Court on behalf of the Respondent Company. The Counsel for the Respondent was also present in Court on the same day. As such, it is denied that the Director of the Company was not present in Court on 16 January 2023. It is further denied that the Court advised the Respondent to have a Director present in Court on the next date (11 September 2023) to fix a hearing date in the matter.
- [30] It is further deposed that on 20 March 2024, despite having the TIN's dismissed on 11 September 2023, the LTA required the Company to pay the fine and fixed penalty for all the dismissed TIN's. The Company was told to pay this fine if they wanted

their vehicles to be passed by them. Accordingly, on 20 March 2024, his Company had paid the fine and fixed penalty for all the dismissed TIN's and were issued with receipts for same. The total amount of fixed penalty for all the four TIN's were FJ\$ 40,000.00 and the fine was FJ\$ 20,000.00. Therefore, the Company had to pay FJ\$ 60,000.00 to the Appellant.

- [31] On 9 April 2024, the Company requested for the refund of the monies paid to the Appellant. However, the Appellant had informed that the Company obtain a Court order for same. On 19 April 2024, their Lawyers also wrote to the Appellant to refund the fixed penalty and fines paid on the dismissed TIN's. However, the Company did not receive any refund.
- [32] Sheik Shafil Saheb further deposes that the Appellant decided to appeal the matter to the High Court only at this stage.
- [33] Furthermore, on 29 May 2024, their Lawyers filed a Notice of Motion and Affidavit in the Magistrate's Court of Lautoka, seeking orders for the refund of the fixed penalty and fines paid. On 22 November 2024, the Learned Magistrate ruled in favour of the application and ordered the Appellant to refund all fixed penalties including any late fees paid within 30 days of the said order.
- [34] It is further stated that the Appellant is trying to manipulate the system as they do not intend to refund the money paid by the Respondent Company. The Appellant had waited until the Company paid the fine and requested for the refund to initiate this appeal. Therefore, it is verily believed that the Appellant is reluctant to follow its own law, which states once a party is acquitted from the proceedings, the said party is entitled to a refund of the fine paid by him or her.
- [35] The Respondent further deposes that the delay in filing of this appeal is unreasonable and that they will be prejudiced if leave is granted to file an appeal out of time as prayed for by the Appellant. There has already been a substantial delay in the conclusion of this matter, as the relevant Traffic Infringement Notices had been issued sometime in the year 2017, which was over 8 years ago.

[36] Accordingly, the Respondent prays that this application be dismissed and heavy costs be awarded to them for the wastage of time and resources of the Court and the Respondent Company.

THE AFFIDAVIT IN REPLY FILED BY PAULINI MATADRADRA

[37] On 29 May 2025, an Affidavit in Reply was filed by Paulini Matadradra, in response to the above Affidavit filed by Sheik Shafil Saheb.

PROPOSED GROUNDS OF APPEAL AGAINST THE ORDER OF THE RESIDENT MAGISTRATE

[38] Following are the proposed Grounds of Appeal filed by the Appellant:

- (i) That the Learned Magistrate erred in law and/or in fact in failing to properly exercise his discretion pursuant to Section 170 (2) of the Criminal Procedure Act 2009 on granting an adjournment in this matter but for a good cause. That the Appellant had 'good cause' because they were not aware of the day and time of the hearing. The Parties were aware that these matters were listed for mention to fix hearing on 11 September 2023. However, the Court had proceeded to hearing thereafter striking out these matters due to the inability of the Appellant to call its witnesses.
- (ii) That the Learned Magistrate erred in law and/or in fact in failing to properly exercise his discretion under Section 166 (2) (b) of the Criminal Procedure Act in consideration of the circumstance and adjourned the hearing to some other date, the accused would not be prejudiced or placed in a detrimental position such as outlined under Sections 166 (2) (c) (i) (ii) and (iii) of the Criminal Procedure Act, because the Director of the Respondent Company was not locked up in prison or otherwise.
- (iii) That the Learned Magistrate erred in law and/or in fact by breaching the fundamental principle of natural justice which is the Appellant's right to be notified and heard on these matters.
- (iv) That the Learned Magistrate erred in law and/or in fact in failing to properly direct prosecution to open and close its case pursuant to Section 181 (1) of the Criminal Procedure Act as a requirement of proper procedure in criminal trials.

- (v) That the Learned Magistrate erred in law and/or in fact in failing to properly reach a decision, consequently striking out a criminal charge that was instituted under the criminal jurisdiction for the violation of the Land Transport (Traffic) Regulations 2000, the Land Transport (Vehicle Registration and Construction) Regulations 2000 and the Land Transport Act 1998.

THE LAW

[39] Section 246 of the Criminal Procedure Act deals with Appeals to the High Court (from the Magistrate's Courts). The Section is re-produced below:

“(1) Subject to any provision of this Part to the contrary, any person who is dissatisfied with any judgment, sentence or order of a Magistrates Court in any criminal cause or trial to which he or she is a party may appeal to the High Court against the judgment, sentence or order of the Magistrates Court, or both a judgement and sentence.

(2) 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.

(3) Where any sentence is passed or order made by a Magistrates Court in respect of any person who is not represented by a lawyer, the person shall be informed by the magistrate of the right of appeal at the time when sentence is passed, or the order is made.

(4) An appeal to the High Court may be on a matter of fact as well as on a matter of law.

(5) The Director of Public Prosecutions shall be deemed to be a party to any criminal cause or matter in which the proceedings were instituted and carried on by a public prosecutor, other than a criminal cause or matter instituted and conducted by the Fiji Independent Commission Against Corruption.

(6) Without limiting the categories of sentence or order which may be appealed against, an appeal may be brought under this section in respect of any sentence or order of a magistrate's court, including an order for compensation, restitution, forfeiture, disqualification, costs, binding over or other sentencing option or order under the Sentencing and Penalties Decree 2009.

(7) An order by a court in a case may be the subject of an appeal to the High Court, whether or not the court has proceeded to a conviction in the case, but no right of appeal shall lie until the Magistrates Court has finally determined

the guilt of the accused person, unless a right to appeal against any order made prior to such a finding is provided for by any law.

[Emphasis is mine].

[40] Section 248 (1) of the Criminal Procedure Act provides that *“Every appeal shall be in the form of a petition in writing signed by the appellant or the appellant’s lawyer, and (filed) within 28 days of the date of the decision appealed against.”*

[41] However, Section 248 (2) of the Criminal Procedure Act sets out that *“The Magistrates Court or the High Court may, at any time, for good cause, enlarge the period of limitation prescribed by this section.”*

[42] Section 248 (3) of the Criminal Procedure Act stipulates:

“For the purposes of this section and without prejudice to its generality, “good cause” shall be deemed to include —

(a) a case where the appellant’s lawyer was not present at the hearing before the Magistrates Court, and for that reason requires further time for the preparation of the petition;

(b) any case in which a question of law of unusual difficulty is involved;

(c) a case in which the sanction of the Director of Public Prosecutions or of the commissioner of the Fiji Independent Commission Against Corruption is required by any law;

(d) the inability of the appellant or the appellant’s lawyer to obtain a copy of the judgment or order appealed against and a copy of the record, within a reasonable time of applying to the court for these documents.”

[43] Section 256 of the Criminal Procedure Act refers to the powers of the High Court during the hearing of an Appeal. Section 256 (2) and (3) provides:

“(2) The High Court may —

(a) confirm, reverse or vary the decision of the Magistrates Court; or

(b) remit the matter with the opinion of the High Court to the Magistrates Court; or

(c) order a new trial; or

(d) order trial by a court of competent jurisdiction; or

(e) make such other order in the matter as to it may seem just, and may by such order exercise any power which the Magistrates Court might have exercised; or

(f) the High Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the Appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(3) At the hearing of an appeal whether against conviction or against sentence, the High Court may, if it thinks that a different sentence should have been passed, quash the sentence passed by the Magistrates Court and pass such other sentence warranted in law (whether more or less severe) in substitution for the sentence as it thinks ought to have been passed.”

[44] In terms of the provisions of Section 113 of the Land Transport Act No. 35 of 1998 (“Land Transport Act”), the Minister in charge of Transport has been given the power to make Regulations necessary to give effect to the provisions of the Act.

[45] Accordingly, the Land Transport (Vehicle Registration and Construction) Regulations 2000 (“VRC Regulations”), were promulgated and came into operation with effect from 10 July 2000. The regulations relevant for this case are Regulations 80 (9) (d), 87(1) (a) and 122.

[46] Regulation 80 of the VRC Regulations deals with ‘Maximum Loads’. Regulation 80 (9) is reproduced below.

“The maximum permissible aggregate mass, expressed as the GVM or GCM of the vehicle, in respect of all the axles of a motor vehicle, a trailer, articulated vehicle or combination vehicle is-

(a)

(b)

(c)

(d) the manufacturer’s gross vehicle mass or gross combination mass as the case may be, whichever is the least”.

[47] Regulation 87 of the VRC Regulations sets out the ‘Offence of Excess Load’ in the following manner:

“87 (1) It is an offence to drive, use or cause or permit to be driven or used in a public street any vehicle having a wheel load, axle load or aggregate axle load in excess of the limits prescribed by-

- (a) regulation 80;*
- (b) a permit issued under regulation 83;*
- (c) an exemption under regulation 4 (2); or*
- (d) Schedule 1 (road sign No 24) to the Land Transport (Traffic) Regulations 2000.*

(2) For the purpose of this regulation, the carrying of excess loads prescribed by regulation 80 or by a permit or exemption amounts to separate offences, except that exceeding the maximum axle load or aggregate axle load is not a separate offence from exceeding the maximum wheel loads on each axle.”

[48] Regulation 122 of the VRC Regulations provides: *“A person who fails to comply with the provisions of these Regulations commits an offence and is liable on conviction to the corresponding penalty prescribed for that offence in Schedule 2 of the Land Transport (Fees and Penalties) Regulations 2000.”*

PRINCIPLES RELATING TO ENLARGEMENT OF TIME FOR FILING OF APPEALS

[49] It has now been well established that there are several factors that an Appellate Court needs to take into consideration when dealing with such applications.

[50] In *(Kamlesh) Kumar v. State; (Mesake) Sinu v. State* [2012] FJSC 17; CAV0001.2009 (21 August 2012), His Lordship Chief Justice Anthony Gates has elaborated on the principles to be applied or considered by the Appellate Courts when exercising its discretion in such matters. These factors are:

- (i) The reasons for the failure to file within time;
- (ii) The length of the delay;
- (iii) Whether there is a ground of merit justifying the appellate court’s consideration;
- (iv) Where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed?
- (v) If time is enlarged, will the respondent be unfairly prejudiced?

ANALYSIS

- [S1] In this case the Respondent was acquitted in the 4 cases by the Learned Resident Magistrate of Lautoka, on 11 September 2023. In terms of Section 248 (1) of the Criminal Procedure Act, an appeal against this decision had to be filed within 28 days of the decision. Therefore, the appealable period lapsed on 9 October 2023.
- [S2] Furthermore, since this was an order of acquittal, in terms of Section 246 (2) of the Criminal Procedure Act, the filing of an appeal required the sanction in writing of the Director of Public Prosecutions.
- [S3] This application was filed in the High Court of Lautoka on 17 February 2025. Thus, these proceedings have been instituted over 16 months after the appeal period had lapsed (although the Appellant has computed the delay as 15 months).
- [S4] The reasons provided by the Appellant for the delay in filing the appeal is that it was due to the Certificate of Court Proceedings being received from the Magistrate's Court Registry only on 27 October 2023, which was 18 days after the 28 days appealable period had lapsed. Further reasons provided was that there was a delay in obtaining the required sanction in writing of the DPP.
- [S5] In terms of Section 248 (2) of the Criminal Procedure Act it is stated that the Magistrates Court or the High Court may, at any time, for good cause, enlarge the period of limitation prescribed by this Section for filing of an appeal. Section 248 (3) of the Criminal Procedure Act broadly sets out as to what good cause shall deem to include. In terms of Section 248 (3) (b) this includes cases where the sanction of the DPP is required in terms of the law.
- [S6] In *(Kamlesh) Kumar v. State; (Mesake) Sinu v. State* (supra), the Supreme Court has elaborated on the principles to be applied or considered by the Appellate Courts when exercising its discretion in such matters.

- [57] It is conceded that the Certificate of Court Proceedings was received from the Magistrate's Court Registry only on 27 October 2023, which was 18 days after the 28 days appealable period had lapsed. However, it had taken the Appellant over 6 months thereafter to seek the sanction in writing of the DPP.
- [58] A copy of the letter seeking the sanction of the Acting DPP is annexed to the Affidavit in Support filed by Paulini Matadradra, marked as Annexure LTA 2. The said letter which is signed by Mr. Vicky Chand, Manager Legal Services, is dated 14 May 2024. This is 7 months after the appealable period had lapsed on 9 October 2023.
- [59] Therefore, it is manifest from the above that it took the LTA over 7 months to even make the request to the DPP seeking sanction in writing. This is totally unacceptable. No reasonable explanation has been provided by the LTA as to the reason they delayed by such a long period of time to seek the written sanction of the DPP.
- [60] On 7 January 2025, the ODPP wrote back to the LTA advising that the Acting DPP had sanctioned the appeal against the acquittal. A copy of the Memorandum received from the ODPP and a copy of the sanction of the Acting DPP are annexed to the Affidavit in Support filed by Paulini Matadradra, marked as Annexures LTA 4 and LTA 5 respectively.
- [61] It had taken nearly 8 months for the Acting DPP to give its sanction in writing, pursuant to the request made by the LTA. However, I find that there has been no follow up action taken by the LTA or evidence of any form of communication made by the LTA to the ODPP during this long period of time (Between 14 May 2024 and 7 January 2025). It seems that not even a single reminder has been sent to the Office of the DPP stating the urgency in the matter and the importance of obtaining the DPP's sanction without further delay.
- [62] Furthermore, although the written sanction of the Acting DPP was said to have been received on 7 January 2025, this application was filed in the High Court of Lautoka only on 17 February 2025. As can be observed, it has taken the Appellant over 40 days in

filing this application, even after receipt of the written sanction of the Acting DPP. It must be reiterated once again that in terms of Section 248 (1) of the Criminal Procedure Act, an appeal had to be filed within 28 days of the decision appealed against.

[63] Therefore, in the instant case, the reasons for the failure to file the appeal within time is not at all acceptable. The length of the delay of 16 months in instituting these proceedings also cannot be acceptable.

[64] However, in terms of the principles set out in *(Kamlesh) Kumar v. State; (Mesake) Sinu v. State* (supra), even where there has been substantial delay, nonetheless the Appellate Court has to consider whether there are grounds of appeal that will probably succeed. In other words, whether there is a ground of merit justifying this Court's consideration.

[65] Therefore, it is necessary for this Court to go into the proposed Grounds of Appeal filed by the State to determine this fact.

The Grounds of Appeal

[66] There are five Grounds of Appeal proposed by the Appellant. It is my opinion that the said Grounds of Appeal are all inter-connected. The Grounds of Appeal relate to the manner in which the Learned Resident Magistrate is said to have exercised his discretion in the matter.

[67] In this case, the Appellant contends that the Learned Resident Magistrate had not duly exercised his discretion in terms of Section 166 and Section 170 of the Criminal Procedure Act.

[68] For ease of reference, Section 166 of the Criminal Procedure Act (which is titled *Non-appearance of complainant at hearing*) is re-produced below:

166. — (1) This section applies to any case in a Magistrates Court, where —

(a) the accused person —

(i) appears in obedience to the summons at the time and place appointed in the summons for the hearing of the case; or

(ii) is brought before the court under arrest; and

(b) the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear—

(i) in person; or

(ii) by his or her lawyer.

(2) In the circumstances stated in sub-section (1), the court shall —

(a) dismiss the charge; or

(b) adjourn the hearing of the case until some other date, upon such terms as it determines if there are reasons for not dismissing the case; and

(c) upon any adjournment the court shall—

(i) admit the accused to bail; or

(ii) remand the accused to prison; or

(iii) take such security for his or her appearance as the court determines.

(3) The expression "lawyer" in this section and in this Part shall in relation to a complaint include any prosecutor.

[69] Section 170 of the Criminal Procedure Act is titled "Adjournment". Section 170 (1) and (2) states as follows:

170. — (1) During the hearing of any case, the magistrate must not normally allow any adjournment other than from day to day consecutively until the trial has reached its conclusion, unless there is good cause, which is to be stated in the record.

(2) For the purpose of sub-section (1) "good cause" includes the reasonably excusable absence of a party or witness or of a party's lawyer.

[70] Furthermore, Section 171 of the Criminal Procedure Act (which is titled *Non-appearance of parties after adjournment*) provides as follows:

171. — (1) *If at the time or place to which the hearing or further hearing is adjourned*

—

(a) the accused person does not appear before the court which has made the order of adjournment, the court may (unless the accused person is charged with an indictable offence) proceed with the hearing or further hearing as if the accused were present; and

(b) if the complainant does not appear the court may dismiss the charge with or without costs.

(2) If the accused person who has not appeared is charged with an indictable offence, or if the court refrains from convicting the accused person in his or her absence, the court shall issue a warrant for the apprehension of the accused person and cause him or her to be brought before the court.

[71] In this case, the Magistrate's Court Record bares proof to the fact that on 16 January 2023, it is recorded that the matter is fixed for hearing on 11 September 2023. On the said day one Mr. Lomaloma had appeared on behalf of the Prosecution (The LTA). The Respondent had been represented by one Ms. Ali [Vide page 31 of the Magistrate's Court Record].

[72] However, on 11 September 2023, an adjournment was sought by the Appellant since they were said to be not ready for the hearing, as their witnesses were not present in Court. Even on the said day the Appellant was represented by Mr. Lomaloma. The Respondent had been represented by Mr. Yunus. The Learned Resident Magistrate has recorded that in terms of Section 170 of the Criminal Procedure Act he does not see any good cause adduced by the Appellant to grant an adjournment and had gone on to strike out the four cases and acquit the Respondent Company from the proceedings [Vide pages 31 and 32 of the Magistrate's Court Record].

[73] The Appellant asserts that on 11 September 2023, the matter was not for hearing but for mention to fix the matter for hearing. However, the Magistrate's Court Record states otherwise. Although, it is recorded that both Counsel had invited the Court to record the fact that they were under the impression that the case was mentioned to fix a hearing date, the Learned Magistrate has emphasized and highlighted that "*According to the case record, it is very clear today it is fixed for hearing*".

- [74] It is clear that in this instance the Learned Magistrate had acted in terms of the provisions of Section 170 (1) of the Criminal Procedure Act which provides: *“During the hearing of any case, the Magistrate must not normally allow any adjournment other than from day to day consecutively until the trial has reached its conclusion, unless there is good cause, which is to be stated in the record.”* The Learned Magistrate has determined that there was no good cause to grant an adjournment having considered the overall facts of the case.
- [75] At this stage, the Learned Counsel on behalf of the Respondent had made an application pursuant to Section 178 of the Criminal Procedure Act seeking an acquittal. It is recorded by the Learned Resident Magistrate that having considered the overall facts of the case he was striking out the 4 Traffic Infringement Notices and acquitting the Respondent Company in all 4 cases [Vide page 32 of the Magistrate’s Court Record].
- [76] This Court is bound to accept the record of the proceedings maintained at the Magistrate’s Court as accurate.
- [77] The Appellant alleges that the Learned Magistrate erred in law and/or in fact in failing to properly exercise his discretion under Section 166 (2) (b) of the Criminal Procedure Act. However, I am of the opinion that the provisions of the said Section were not applicable at the given stage of the proceedings in the Magistrate’s Court and as such is not relevant. The provision of law that was relevant and appropriate to deal with the matter at that stage was Section 170 (1) of the Criminal Procedure Act, read with Section 171 (1) (b) of the Criminal Procedure Act.
- [78] Section 171 (1) (b) of the Criminal Procedure Act reads: *If at the time or place to which the hearing or further hearing is adjourned — if the complainant does not appear the court may dismiss the charge with or without costs.*
- [79] Therefore, I am of the opinion that the proposed Grounds of Appeal have no merit. Considering the facts of this case in its totality, I am of the opinion that an enlargement of time should not be allowed for the Appellant to file their Petition of Appeal out of Time.

[80] In any event, I am of the opinion that if an enlargement of time is granted at this stage, it would cause grave prejudice to the Respondent. This is due to the fact that there has already been a substantial delay in the conclusion of this matter. The relevant Traffic Infringement Notices had been issued against the Respondent sometime in the year 2017, which is over 8 years ago.

NON COMPLIANCE WITH THE ORDER MADE BY THE LEARNED RESIDENT MAGISTRATE

[81] It is further noted that although the Respondent had been acquitted from the 4 cases, they were compelled by the Appellant to pay the fixed penalties noted in each Traffic Infringement Notice. Accordingly, on 20 March 2024, the Respondent Company had paid the fixed penalty (amounting to a total of FJ\$ 40,000.00); and an additional fine (amounting to a total of FJ\$ 20,000.00). The total sum paid by the Respondent to the Appellant was FJ\$ 60,000.00.

[82] As such, the Respondent had to make an application by way of Notice of Motion, which was supported by an Affidavit filed by Sheik Shafil Saheb, Director and Operations Manager, seeking a refund of the said fixed penalty and additional fine.

[83] On 22 November 2024, Learned Resident Magistrate Ms. Seini Puamau made a Ruling that the Appellant refund to the Respondent all fixed penalties, including any late fees paid in respect of the Traffic Infringement Notices within 30 days. The Respondent submits that the Appellant has not complied with this directive up to date. I find that this is highly inappropriate. The Land Transport Authority, which is the Land Transport Regulator in Fiji, has conducted itself in an extremely high-handed manner in these proceedings and taken the law onto themselves. This is in spite of the Learned Resident Magistrate stipulating in her Ruling as follows [At paragraphs 14 to 16 of the Ruling]:

“14. Should the Land Transport Authority finally file an appeal against the orders of acquittal, it may apply to the High Court for stay of these orders under the inherent power of the High Court.

15. However, in light of the fact that no appeals have yet been filed and in light of the fact that the Land Transport Authority is now significantly out of time in terms of any appeals it may wish to file in respect of the initial orders of acquittals, it is best

that the Court issue an order for refund and give the Land Transport Authority 30 days to do the needful.

16. I hope that the Land Transport Authority will act in all respects as a model litigant and will do the right thing in a timely manner as its duty to do within a fair and democratic society. This is an important component of what it means to be committed to the rule of law.”

[84] Considering all the facts and circumstances of this case, I am of the opinion that costs should be ordered against the Land Transport Authority in these proceedings. In determining the quantum of the costs to be awarded I have considered the costs that the Respondent would have had to incur during the course of these proceedings; the costs the Respondent would have had to incur in defending the High Court of Lautoka – Criminal Appeal No. HAA 15 of 2024 (which action was later withdrawn by the Appellant); and the costs the Respondent would have had to incur in making the application before the Magistrate’s Court of Lautoka, seeking a refund of the fixed penalty and additional fines, which they were compelled by the Appellant to pay.

FINAL ORDERS

[85] In light of the above, the final orders of this Court are as follows:

1. Leave for enlargement of time to file Petition of Appeal is refused.
2. The appeal is dismissed.
3. The order of acquittal made by the Learned Resident Magistrate, Magistrate’s Court of Lautoka, on 11 September 2023, is affirmed.
4. The Appellant is hereby directed to comply forthwith with the Ruling made by the Learned Resident Magistrate Ms. Seini Puamau, on 22 November 2024.
5. I order the Appellant to pay to the Respondent costs which is summarily assessed in the sum of \$10,000 within 30 days of this Judgment.




Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

At Lautoka

This 18th Day of November 2025

Solicitors for the Applicant:

Office of the Land Transport Authority, Nasinu.

Solicitors for the Respondent:

Messrs M.Y. Law, Barristers & Solicitors, Ba.