

**IN THE MAGISTRATE'S COURT AT LABASA**  
**CRIMINAL JURISDICTION**

*Traffic Case No. 677 of 2017*

**LAND TRANSPORT AUTHORITY**

v

**NASOQO INVESTMENT LIMITED**

Counsels : **Mrs Nasilasila. V** for the Prosecution  
**Ms Raj. R** for the Accused

Ruling : **12 June 2018**

**RULING**

**NO CASE TO ANSWER**

1. Traffic Infringement Notice No. 3150045 (TIN) was issued to the accused for the offence of *Permitting Another Person to Drive a Motor Vehicle with Non Conforming Mass plus Load* contrary to *Regulation 80(9)(d), 87(1)(a) and 122 of the Land Transport (Vehicle Registration and Construction) Regulation 2000.*
2. The particulars of the offence are;-  
*"Nasoqo Investment Limited on the 21<sup>st</sup> day of June 2017, at Vunivau, Bua, in the Northern Division being the owner of motor vehicle registration No. IB 635 at Vunivau, Bua, permitted Mr Osea Baleyasavu Sakumeni to carry logs with weight of 41.34 tonnes when the vehicle permissible gross weight is 26.8 tonnes. The excess weight of the vehicle is 14.54 tonnes."*

3. The fixed penalty amount for the TIN issued in this case is \$14,000.00.
4. On 29 September 2017, the Magistrate Court Registry received a letter from Luke Naitala the Director of Nasoqo Investment Limited (NIL) stating that he wanted to dispute the TIN. Later on 10 November 2017, the Counsel for NIL filed a notice of motion and an affidavit deposed by Luke Matavara Naitala. The motion stated that NIL wish to dispute the TIN among other orders.
5. On 30 January 2018, the Counsel for the defence confirmed that he has received the full disclosures. Luke Naitala who appeared as Accused pleaded not guilty to the charge. The matter was listed for trial on 13 February 2018.
6. At the trial, the Prosecution called two officers from the Land Transport Authority (LTA) to the stand and closed her case. The Counsel for the defence makes a no case to answer application and filed their submission of no case to answer on 6 March 2018. The LTA filed their answering submission on 28 March 2018.
7. The defence submitted that the TIN is irregular as it contravene *section 86(4) & (6) and section 90(1) & (3) of the Land Transport (Vehicle and Construction) Regulation*. Therefore, there is no case to answer as the driver was not given the opportunity to offload the excess log.
8. *Regulation 86 of the Land Transport (Vehicle Registration & Construction) Regulation* provides for the use of weighing devices. The relevant sub-regulations to this case are;-

*“(4) If a vehicle weighed under subregulation (1) is in excess of the prescribed limit, the police officer or authorised officer may require the driver to remove the excess load.*

*(6) A person who fails to comply with subregulations (2), (3) or (4) commits an offence.”*

9. *Regulation 90 of the Land Transport (Vehicle Registration & Construction) Regulation states;-*

*"(1) If a police officer or authorised officer finds that a motor vehicle has excess load, the officer may direct the driver or person in charge of the vehicle to remove the excess load from the vehicle before he or she can proceed.*

*(3) A person who fails to comply with subregulation (1) commits an offence"*

10. The regulations must be read in totality to give holistic meaning and effects to the regulations. Regulations must be consistent with each other and supplement each other and in rare occasion where contradictory provisions can be found. *Regulation 86* cited above is for the use of weighing devices which is the portable scales used in this case to determine if there is any excessive loading. *Regulations 86(4)* and *90(1)* aforementioned gives discretion to the authorised officer to inform the driver to off load the excess load. This discretion must be first exercised and used and if the driver failed to comply then the driver commits an offence as per *regulations 86(6)* and *90(3)* but the offence is not specified. Therefore, TIN has to be issued under *regulation 87*.
11. There was no evidence that the authorised officer in this case did exercise the discretion to inform the driver of the truck to off load the excess load on that day. Accordingly, the issue of the TIN in this case is premature as officers failed to exercise the discretion given to them by the law and there was no non compliance by the driver under *regulations 86(6)* and *90(3)*.
12. The test for no case to answer in the Magistrate Court was discussed in ***Abdul Gani Sahib v The State*** [2005] FJHC 95; HAA 022 of 2005; 28 April 2005, as;-
- "In the Magistrate's Court, both tests apply. So the Magistrate must ask himself firstly whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence, and second whether the Prosecution evidence, taken at its highest, a reasonable tribunal could convict. In considering the prosecution at its highest, a reasonable tribunal could convict. In considering the prosecution case, taken at its highest, there can be no doubt at all that where the evidence*



*is entirely discredited, from no matter which angle one looks at it, a Court can uphold a submission on no case. However, where a possible view of the evidence might lead the court to convict, the case should proceed to the defence case”.*

13. *Regulation 80(9)(d) of the Land Transport (Vehicle Registration and Construction) Regulations, state;-*

*“(9) The maximum permissible aggregate mass, expressed as the GVM or GCM of the vehicle, in respect of all the axles of a motor vehicle, articulated vehicle or combination vehicle is –*

*(d) the manufacturer's gross vehicle mass or gross combination mass as the case may be,*

14. *Regulation 87(1)(a) of the Land Transport (Vehicle Registration and Construction) Regulations, state;-*

*“(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.*

15. *Regulation 122 of the Land Transport (Vehicle Registration and Construction) Regulations, state;-*

*“A person who fails to comply with a provision 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.”*

16. *According to the above regulations, the offence in this case is under regulation 87(1)(a) and the elements of the offence are;-*

*(a) the accused,*

*(b) permit to be driven, or used in a public street,*

*(c) a vehicle having a wheel load in excess of the prescribed limits.*

17. *The first prosecution witness is Mishal Atish Prasad. He is employed by the LTA as enforcement and weigh bridge officer. On 21 June 2017, around 8.27am they stopped and weighed a logging truck registration number IB 635*

at Vunivau, Bua of Nasoqo Investment Limited. They used a certified portable scale to weigh the truck and they weighed excel by excel. The gross weight of the truck is 26,800 as shown on the vehicle extraction from the LTA system (prosecution exhibit 2). The total weight of the truck when weighed by the portable scale is 41,340 kilogram. To determine the excess they deduct the gross weight from the weight given by the portable scale. The excess weight is 14.54 tonnes. Osea Baleyasawa Sokomei was the driver of the truck. The TIN was served to the driver as the agent of the company. He is aware of *section 86(4)(6) of the Land Transport (Vehicle Construction and Registration) Regulation*. He failed to inform the driver of the right to offload. The TIN was not wrongly issued as it was issued under *section 80(9)(d) of Land Transport (Vehicle Construction and Registration) Regulation* for permitting another person to drive motor vehicle with excess permissible gross weight.

18. The second prosecution witness is Vimlesh Chand a weigh officer at LTA. He was present when the vehicle was weighed. When they weighed the vehicle with the loads, the weight is 41.34 tonnes and the permissible gross weight is 26.8 tonnes. The excess weight of the vehicle is 14.54 tonnes.
19. The consideration on the weight of the evidence, the credibility of the witness, and the requirement to prove the case beyond reasonable doubt are immaterial at this stage.
20. It is established by the prosecution evidence, that the truck IB 635 was carrying excessive loads when it was stopped and weighed by the prosecution witnesses on 21 June 2017. The TIN was not issued to the driver, but to the company who owned the truck which is the accused.
21. The prosecution case is that the TIN was issued to the accused for permitting another person to drive the truck with the excess loads. The prosecution is required to prove that NIL gave permission and authority to the driver Osea Sakumeni to drive the truck IB 635 on 21 June 2017, in excess of the gross weight. The prosecution also need to established that the accused is aware of

the excess load and authorise and permit Osea to drive the truck in a public road.

22. The permission to drive the vehicle has to be distinguished and differentiated from the permission to drive the vehicle with excessive loads.
23. In assessing the prosecution evidence, there is no evidence led to show that the accused was aware or has the knowledge on 21 June 2017, that the truck IB 635 was carrying excess loads. There is no evidence that the accused on 21 June 2017, had authorised and permitted Osea Sakumeni to drive the truck in a public road with excessive loads.
24. The Prosecution is unable to implicate the accused on the element of permitting the driver to drive the truck with excessive loads. That justifies the defence application that there is not sufficient evidence to require the accused to put his defence. Even if there is a case, the prosecution case will fail for issued the TIN prematurely as there is no non compliance to the direction to offload the excess loads.
25. In my ruling, I find that the defence application of no case to answer has merit. I granted the application and accordingly, I dismiss the case and acquitted the accused accordingly.

**28 days to appeal**



C. M. Tuberi  
RESIDENT MAGISTRATE