

IN THE MAGISTRATES' COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Miscellaneous Case No. 06 of 2020

LAND TRANSPORT AUTHORITY

Applicant

v.

SIMON KAMAL NARAYAN

Respondent

For the Prosecution: Ms. Nasilasila of the Land Transport Authority

For the Respondent: In Person

**RULING ON AN APPLICATION FOR RE-STATEMENT OF CRIMINAL
PROCEEDINGS PREVIOUSLY DISMISSED PURSUANT TO SECTION 171 (1)(b) of
the CRIMINAL PROCEDURE ACT 2009**

A. BACKGROUND

1. Pursuant to section 92 (1)(a) of the **Land Transport Act 1998** (as amended by section 6 of the **Land Transport (Amendment) Act 2017**), proceedings for the alleged commission of a prescribed offence may be instituted by a police officer or an authorized officer upon service of a traffic infringement notice:

- (a) personally upon the person alleged by him or her to have committed the offence; or
 - (b) by affixing the Traffic Infringement Notice to a conspicuous place on a vehicle where the presence of the vehicle parked in any place is evidence in and of itself of the commission of the prescribed offence; or
 - (c) by any other prescribed means.”
2. Pursuant to section 92 (3) of the **Land Transport Act 1998** (as amended by section 6 of the **Land Transport (Amendment) Act 2017**), the person issued with the Traffic Infringement Notice must, within 90 days, either:
- (a) pay the fixed penalty in a single payment or by installments;
 - (b) make a statutory declaration to the Land Transport Authority under section 85 (3) of the **Land Transport Act 1998**; or
 - (c) elect to dispute the fixed penalty in court.
3. It is clear from a reading of Regulation 7 of the **Land Transport (Traffic Infringement Notice) Regulations 2017** that the Regulation drafters envisaged instances where persons issued with Traffic Infringement Notices might choose to challenge the **Traffic Infringement Notice**. Failure to comply with Regulation 7 of the **Land Transport (Traffic Infringement Notice) Regulations 2017** will result in the Traffic Infringement Notice itself taking effect as a conviction: *see* Regulation 9 of the **Land Transport (Traffic Infringement Notice) Regulations 2017**, *cf* section 92 (1) – (5) of the **Land Transport Act 1998**.
4. The Land Transport Authority issued Traffic Infringement Notice 3769701 on 28 February 2020, Traffic Infringement Notice 3939905 on 19 June 2020 and Traffic Infringement Notice 4103551 on 7 October 2020 and served these Traffic Infringement Notices upon **Simon Kamal Narayan**.
5. **Simon Kamal Narayan** as a person alleged to have committed a prescribed offence upon service of these Traffic Infringement Notices on him by authorized officers, then elected to dispute these fixed penalties in court: *see* section 92 (1) and (3) of the **Land Transport**

Act 1998 and Regulation 6 (c) of the Land Transport (Traffic Infringement Notice) Regulations 2017.

6. **Simon Kamal Narayan** filed his intention to dispute these fixed penalties at the Magistrates' Court of Fiji at Taveuni on 20 October 2020.
7. The Magistrates' Court of Fiji at Taveuni then issued a Notice of Adjourned Hearing for 22 December 2020. The Notice of Adjourned Hearing was served to the Land Transport Authority office at Taveuni and was received by a Mr. Tui Tomasi at 10.57am on 18 November 2020. The Notice had been served upon **Simon Kamal Narayan** at 1.38am on 22 October 2020.
8. Despite being served the Notice of Adjourned Hearing, the Land Transport Authority as complainants on the Traffic Infringement Notices failed to attend court on 22 December 2020. Indeed, no representative of the Land Transport Authority appeared when these proceedings were called on any of the dates subsequently fixed by the court. In contrast, **Simon Kamal Narayan** as the person alleged to have committed these prescribed offences *i.e.* the defendant or the accused, did not miss a court date.
9. Finally, on 14 December 2021, the court exercised its powers pursuant to section 171 (1) (b) of the **Criminal Procedure Act 2009** and dismissed the charges *vis a vis* the Traffic Infringement Notices but without costs.
10. The word charge "means an official notification to a person that a person is accused of committing an offence and that the person is required to appear in the designated court to answer the charge": *see* section 2 of the **Criminal Procedure Act 2009**.
11. A Traffic Infringement Notice is a charge: *see* section 92 (1)(a) of the **Land Transport Act 1998**, section 56 (5) of the **Criminal Procedure Act 2009** and section 71 of the **Criminal Procedure Act 2009**.
12. Coming back to the court's ruling dated 14 December 2021, I then made the following order and observations:

“7. In light of the dismissal of Traffic Infringement Notices number 3769702, 4103551 and 3929905; I order the Land Transport Authority return to the Accused any and all fines paid by him, if any, in respect of these now dismissed Traffic Infringement Notices within 28 days of this ruling.

8. If not time-barred, the Land Transport Authority as complainants are at liberty to re-issue Traffic Infringement Notices for these alleged offences and recommence proceedings if they wish. That is a matter for them.

....

12. 28 days to appeal to the High Court.”

B. THE APPLICATION FOR RE-INSTATEMENT

13. To my surprise, the **Land Transport Authority** then filed an application for re-instatement of proceedings.

14. I use the word “surprise” because neither the **Land Transport Act 1998** nor any subsidiary legislation which came into force of law under it, nor the **Criminal Procedure Act 2009**, the governing legislation under which my order of dismissal of proceedings were made, make provision for “re-instatement” of dismissed charges in the manner sought by the **Land Transport Authority**.

C. ANALYSIS

15. Magistrates’ are creatures of statute and so may exercise only those powers conferred on him or her by statute: **Commissioner of Inland Revenue v. Smith** [1981] FJLawRp 18; [1981] 27 FLR 40 (31 July 1981).

16. Re-instatement of proceedings by way of a court order, as is currently sought by the **Land Transport Authority** are only permissible under O 30, r5 and O30A, r. 3 of the **Magistrates’ Court Rules 1945**.

17. The difficulty attached to an application for reinstatement on these terms, in respect of this instant case, is that the **Magistrates' Court Rules 1945** regulate civil proceedings in the Magistrates' Court; and the jurisdiction of Magistrates' in civil causes is governed by section 16 of the **Magistrates' Court Act 1944**.
18. It is important to bear in mind that **Simon Kamal Narayan** was not suing the Land Transport Authority. He was disputing criminal allegations levelled against him and its attached sanction.
19. The common law in Fiji is that if charges are dismissed pursuant to section 166, section 169, or section 171 of the **Criminal Procedure Act 2009** then the complainants are at liberty to re-institute proceedings by way of fresh charges accompanied by a summons, provided of course, the proceedings are not time barred: *see* **Ministry of Labour, Industrial Relations & Productivity v Merchant Bank of Fiji Limited** [2002] FjLawRp 30; [2002] FLR 205 (26 April 2002);¹ and **State v. Baoy** [2009] FJHC 230; HAM030.2009 (20 October 2009),² and *see also* **Siwan v. State** [2008] FJHC 189; HAA050.2008L (29 August 2008).³
20. As the cases cited in the preceding paragraph illustrate, it is also open to prosecutions and defendants to appeal the order of dismissals and seek alternate orders from the court if they wish.
21. What must not be lost sight off in determining appropriate jurisdiction is that:
- (i) Traffic Infringement Notices allege the commission of a prescribed offence;
 - (ii) prescribed offences of the kind likely to attract a traffic infringement notice, and which did in fact apply here are crimes *albeit mala prohibita* as opposed to crimes *mala in se*; whatever its true nature – they are still crimes, and

¹ Section 198 of the **Criminal Procedure Code, Cap. 21** (now repealed) is mirrored at section 166 of the **Criminal Procedure Act 2009**.

² Section 203 of the **Criminal Procedure Code, Cap. 21** (now repealed) is mirrored at section 171 of the **Criminal Procedure Act 2009**.

³ Section 201 (2)(b)(ii) of the **Criminal Procedure Act, Cap. 21** (now repealed) is mirrored at section 169 (2)(b)(ii) of the **Criminal Procedure Act 2009**.

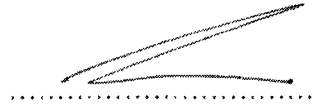
(iii) penalties, whether fixed or otherwise, refer to those penalties which may be imposed as punishment or sanction for the commission of proven or admitted crimes.

22. Ultimately, crime and punishment and questions regarding the alleged commission of a crime and the appropriate punishment in law, *i.e.* findings of guilt or innocence and consequent orders of conviction or acquittal, and the imposition of penalties; are matters to be determined in accordance with criminal law and procedure – not civil law and procedure.

D. FINDING

23. It is for these reasons that I hold the application to be grossly misconceived.

24. There being no power to “re-instate” dismissed criminal proceedings in the terms sought by the **Land Transport Authority** as Applicant, the **Land Transport Authority’s** application for re-instatement in the terms sought by the **Land Transport Authority** is denied.



Seini Puamau
RESIDENT MAGISTRATE

Dated at Taveuni this 14th day of October 2022.