



no doubt was issued by the Licensing Authority. The learned Judge drew attention to the fact that the Fiji registration authorities do not issue road licence although the ordinance provides that they should do so. He also pointed out that the licence stickers issued to motorists do not follow any pattern which has been prescribed by legislation showing the purpose for which they are issued and cannot therefore be accepted as evidence of the existence of a licence.

I would with respect associate myself with these observations and I add some of my own in support,

S.9 of the Ordinance makes it an offence to use as unlicensed motor vehicle on a road.

S.11 deals with application for motor vehicle licences which must be made by the owner to a licensing authority who shall "on payment of the prescribed fee, issue to the applicant a licence in the prescribed form."

The ordinance does not define a vehicle licence; it does not set out any prescribed form which a vehicle licence must take nor do any of the licensing regulations made under the Ordinance give any indication of the shape, size, colour, or information which should appear on such a licence.

S.14 enacts that <sup>a</sup>licence sticker shall be issued along with a motor vehicle licence and that the licence sticker shall be affixed to the windscreen. A licence sticker is not defined by the Ordinance or in any of the regulations and one may well wonder, what a licence sticker is, what information it should contain and for what purpose it is issued. Is it a holder to contain the actual vehicle licence thereby enabling the licence to be stuck on the windscreen? S.14(2) scarcely clarifies things by stating that if a licence sticker became discoloured, defaced or illegible then a duplicate can be obtained. All we can gather is that it is supposed to be something which has colour and which has writing on it. However, the Ordinance does not say what colour it shall be nor what the writing should contain, nor does

it state that the form or contents of a sticker should be such as are prescribed by regulations.

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The Traffic Regulations L.N. 35/74. Part II, deal with "Licensing and Regulation". Regulation 6 states:-

"Every vehicle licence and licence sticker shall be of such size, colour and shape and shall contain such particulars as the Principal Licensing Authority shall direct."

Although the Central Traffic Authority which made the above regulations is empowered to make regulations by virtue of S.83 of the Ordinance there is nothing in the Ordinance to suggest that the Principal Licensing Authority has any power to make regulations, nor has the Central Traffic Authority power to delegate any authority to the Principal Licensing Authority to make regulations. It may well be that the above Regulation 6 is ultra vires the powers of the Central Licensing Authority, and if the latter wish to prescribe the form and contents of a sticker it is probable that they must do so themselves.

As it happens the Principal Licensing Authority have not purported to make any regulations as to the size, colour, shape and contents (or particulars) to be set out in a licence sticker.

A licence to do something/may be granted or issued orally or it may be in writing. It is obvious that the Ordinance contemplates the issue of a written vehicle licence. The fact that written licences are not being issued does not seem that licences do not exist. An owner must still pay the prescribed vehicle licence fee before he is entitled to use his vehicle on a road. On the face of it he simply receives oral permission to use his vehicle and at the same time he is given a piece of paper which he is led to believe is a licence sticker. The fact that the Licensing Authority hands the piece of paper to him in return for a licence fee does not cause it to become a licence sticker. No one knows what licence sticker is because the legislature has omitted to inform us.

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No one knows how a vehicle owner/<sup>can</sup>prove he has paid a licence fee. He may point to a piece of paper stuck to his windscreen and say that that proves he has paid. The piece of paper itself proves nothing. It is not a document which is provided for by the laws of Fiji. It would be necessary to call the officer from the Licensing Authority to prove that he had received the licence fee. He might recognise the sticker as one he issued in return for a fee.

As long ago as 1973, the learned Chief Justice drew attention to the ineffectiveness of these pieces of paper which are stuck on to windscreen. He referred to them as "Licence sticker", but this was really a matter of convenience. There is as yet, no such document, or thing in Fiji as a licence sticker although the Ordinance says they shall be issued. Consequently, although the Ordinance says it is an offence not to display a licence sticker, no person can be convicted as yet of such an offence/<sup>because</sup>prescribed licence stickers do not exist.

In order to bring licence stickers into existence the Ordinance or regulations must set out clearly the purpose of these stickers which we display on our windcreens and what must be written or printed on it. Thus the Ordinance could easily be amended to state that a licence in the form of a licence sticker shall be issued to the owner; and that it shall state the class of vehicle, its registered number, the date of issue and expiry of the licence and the fee paid, that the colour may be varied from year to year and so forth. It would also be useful if the Ordinance enacted that failure to display a current, i.e. unexpired licence sticker is prima facie proof that the vehicle is unlicensed and that the onus would be upon the owner to rebut the presumption and prove that his vehicle is licensed.

Until some such steps are taken by the legislature the police will continue to be unable to prove that

a vehicle is unlicensed without calling the proper officer from the Licensing Department to give evidence. If theonus were placed upon the motorist to prove that he has licensed his motor vehicle he could not point to the sticker on his vehicle as proof that he had paid the prescribed fee because the sticker proves nothing. The motorist would have to summon the person in charge of licensing office or the proper officer therefrom to prove payment of a licence fee. Since the police could do this just as easily as the motorist it is obvious that theonus cannot be cast upon the motorist.

The appeal of the D.P.F. is dismissed. I strongly suspect that he has brought this appeal to draw attention to the very serious defects in the Ordinance which call for instant remedy.

LAUTOKA,  
4th August, 1978.

(sgd.) J.T. Williams,  
JUDGE