IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU 0029 OF 2016
(High Court Civil Appeal No. HBA 8 of 2015)

BETWEEN	:	**ZAKREEN HOLDINGS LIMITED.**
		Appellant
AND	:	**DEE CEES SERVICES LIMITED**
		First Respondent
AND	:	**LAND TRANSPORT AUTHORITY**
		Second Respondent
AND	:	**CENTRAL TRANSPORT CO LTD** **TACIRUA TRANSPORT LIMITED** **ISLAND BUSES LTD** **ESTOL HOLDINGS LIMITED** **TEBARA TRANSPORT LTD** **DAWASAMU TRANSPORT LTD** **FIJI BUS OPERATORS ASSOCIATION**
		Interested Parties/ Objectors
Coram	:	**Calanchini, P** **Lecamwasam, JA** **Prematilaka, JA**
Counsel	:	**Mr. N. Lajendra for the Appellant.** **Mr. F. Vosarogo for the first Respondent** **Ms. T. Colati for the second Respondent** **Mr. V. Kapadia for the 01st to 04th Interested Parties**
Date of Hearing	:	**16 February 2018**
Date of Judgment	:	**08 March 2018**

JUDGMENT

Calanchini P

[1] I have read the draft judgment of Prematilaka JA and agree that the matter should be remitted to the Land Transport Authority to determine the application according to law and that otherwise the appeal should be dismissed. I also agree with the terms of the orders proposed by Prematilaka JA.

Lecamwasam, JA

[2] I agree with the reasoning and the conclusions of Prematilaka JA.

Prematilaka JA

Factual Matrix

[3] The Land Transport Authority (LTA) had by its letter dated 03 May 2011 had communicated the approval to the Appellant of a Road Route Licence (RRL) to operate a public transport service consequent to an application made, presumably under Part 6 of the Land Transport Authority Act (LTA Act) read with Part 2 of the Land Transport (Public Service Vehicle) Regulations 2000 [LT (PSV) Regulations (The Regulations)], by the Appellant dated 10 June 2010. The said letter states that the decisions mentioned therein are based on LTA Resolutions made on 07 December 2010 and 18 April 2011.

[4] Prior to the said RRL being issued, there had been a publication of a notice of the said application in Fiji Sun of 17 September 2010 in terms of Regulation 4(1) *inter alia* calling for written representations for or against the application. The 01st Respondent and the Interested Parties/Objectors had filed written objections and the LTA was then obliged by Regulation 4(5) to give a hearing. Accordingly, the LTA had conducted a hearing into the said objections complying with Regulation 4(6) on 07 December 2010 where all the parties to this appeal had participated. Regulation 4(10) compels the LTA to make a determination under Regulation 5 after the hearing. Regulation 5 deals with

decisions on such applications and matters the LTA must consider including the matters set out under Regulation 5(1) (a) to (h) in considering an application. There is no complaint by any of the parties about the process up to the hearing.

[5] Regulation 6(1) of the LT (PSV) Regulations requires a notice of the issue of a permit to be published in the Gazette and at least in one English newspaper in Fiji. This regulation seems to contemplate the publication of the fact of issuance of the road route licences itself and it does not appear that such notice should necessarily contain reasons for the decision made under Regulation 5.

[6] According to section 40 (1) (b) of the LTA Act, the function of the Land Transport Appals Tribunal (LTAT) is to hear and determine appeals against the decisions of the LTA relating to *inter alia* any matter requiring a decision under Part 6 of the LTA Act which includes the issuance of road route licences.

[7] It is common ground that the LTA had not published a notice of the issue of the road permit regarding road route licences for different routes in the Gazette and at least in one English newspaper in compliance with Regulation 6(1) of the LT (PSV) Regulations consequent to the hearing on 07 December 2010. All the parties to the appeal also admitted at the hearing before this Court that the LTA has so far not communicated its decision on its hearing to any of them except the letter dated 03 May 2011 addressed to the Appellant.

[8] The communication to the Appellant had come by way of the letter dated 03 May 2011 by the LTA stating that the Appellant's application for road route licences have been approved for 04 routes out of 06 applied for, by Board Resolutions dated 07 December 2010 and 18 April 2011(there is no material or proof of the latter among the records made available to the LTAT, the High Court or this Court). It appears that the two routes applied for and objected to, had not been approved. The said letter has given reasons based on Regulation 5(1) (a) and (b) as to why the application for two routes had been refused. This letter admittedly had not been dispatched to any of the other parties.

[9] In any event, even in the letter dated 03 May 2011, the LTA does not state its decision on the hearing upon the objections or reasons for it. The letter only refers to the Appellant's application and its decisions on different routes and not even a reference had been made to the objections and hearing. The LTA had not produced either before the LTAT or the High Court any other decision made consequent to the hearing on the objections on 07 December 2010.

[10] Therefore, in my view the LTA's decision under Regulation 5 contained in the letter dated 03 May 2011 consists only of information as to what extent the Appellant's application had been approved (*i.e.* the approval of 04 routes and refusal of 02 routes). Either the LTA has not made any decision at all on the objections to the Appellant's application dated 10 June 2010 under Regulation 5 or even if it had made a decision on the objections, the same had not been disclosed or communicated to the parties to the hearing.

[11] However, the fact that four road route licences had been approved despite objections could not be ordinarily interpreted in any other way other then amounting to overruling the said objections without the decision being communicated and reasons being disclosed for the rejection of the objections. Thus, the 01st Respondent may have thought that it was entitled to appeal to the LTAT under section 45(1) of the LTA Act against the purported decision to reject their objections and issue of the four road route licences to the Appellant though the objectors should ideally have sought judicial review by way of a writ of mandamus to compel the LTA to make a decision, if not already made and then communicate the same to them prior to taking the step of appealing to the LTAT.

[12] The solicitors for the 01st Respondent had written to the LTA in January 2012 *inter alia* requesting its decision upon the hearing into its objections but the request had been met with complete silence on the part of the LTA. Thereafter, the 01st Respondent had appealed to the LTAT against the issue of the road permit to the Appellant on 17 October 2012. The Petition of Appeal does not indicate how and when the 01st Respondent had come to know of the grant of the road permit to the Appellant but the affidavit of the Managing Director of the 01st Respondent dated 03 October 2012 states that his drivers had informed him of the operation of public service vehicles along the bus routes

objected to by the Appellant. The grounds of appeal urged are all based on factual matters against the Appellant's application. In the appeal, the 01st Respondent had *inter alia* prayed for the cancellation of all road route licences granted to the Appellant.

[13] The 01st Respondent had applied for a stay from the LTAT on the LTA's decision to grant road route licences on 04 routes (two out of six road routes in any event had not been approved by the letter dated 03 May 2011).

[14] At the hearing of the appeal before the LTAT on 13 June 2014, the Appellant had raised a preliminary objection to the maintainability of the appeal on the premise that the appeal had not been filed not later than 14 days after the date of the decision of the LTA as prescribed in section 45(1) of the LTA Act. The date of the decision had been taken as 03 May 2011, being the date of the letter sent to the Appellant by the LTA granting 04 and refusing 02 road route licences.

[15] The position of the LTA as reflected in the affidavit of its General Manager dated 07 November is that the LTA was not obliged under the law to notify the objectors directly of its decision upon a hearing. The LTA does not seem to have changed its position even at the High Court.

[16] The LTAT has dealt with the preliminary objection and stated that by not informing the objectors the LTA had effectively taken away their right of appeal against the decision to the LTAT and the objectors could not be penalised for the error of the decision making body. The LTAT had specifically held that the LTA had violated the rules of natural justice by not conveying its decision to the objecting parties. It had also reasoned that transparency dictates that such a decision is conveyed not only to the applicant but to the objectors as well and the copies of the decision be given to all the parties. The LTAT had further held that the law obliges the LTA to inform the objectors of the hearing and the decision must be passed to the objectors. To me, this is sound reasoning.

[17] Thus, having heard the said preliminary objection, the LTAT had recorded under its Orders dated 16 January 2015 that the 01st Respondent's appeal had been valid and also proceeded to cancel the RRL issued to the Appellant. Therefore, the LTAT decision on

the validity of the appeal could only be understood on the basis that in as much as the decision had not been communicated to the objectors, the 14 days appealable period prescribed under section 45(1) could not be complied with or enforced.

[18] Being aggrieved by the said decision, the Appellant had filed a leave to appeal application in the High Court against the said decision and leave (as well as a stay of the LTAT Ruling) had been granted by the Court on 05 February 2015. Leave was required as the application before LTAT related to an interlocutory order on the preliminary objection on the validity of the appeal though the LTAT had also proceeded to cancel the RRL issued to the Appellant despite not having gone into the merits of the objections, raised before the LTA (though it appears from a perusal of the Ruling that LTAT had got down the records of proceedings before the LTA).

[19] It had been conceded by all parties before the High Court that there had not been a hearing into the merits of the appeal by the LTAT except into the preliminary objection on the validity of the appeal. The notice of appeal proper containing 06 grounds of appeal had been filed on 11 February 2015.

[20] The High Court had delivered the Judgment on 04 March 2016 and quashed the Ruling of the LTAT except the determination on the preliminary objection and remitted the appeal to the LTAT for hearing of the substantive appeal. The impugned judgment at the outset sets out correctly that in terms of section 48 of the LAT Act a decision of the LTAT is subject to an appeal to the High Court only on points of law. The salient points of the judgment could be summarised as follows.

(i) Since there is a right of appeal to the LTAT against a decision of the LTA, there is a duty cast upon the LTA to communicate its decision relating to the hearing to the parties that participate in that process.

(ii) The LTAT was correct when it held that since there was no communication to the parties who participated in the public consultation process regarding the issue of RRL the appeal was not outside the appealable time period.

[21] The Appellant had then filed the present appeal against the said Judgment of the High Court on 13 April 2016. Section 3(4) of the Court of Appeal Act is the enabling legislation that provides for an appeal to the Court of Appeal which states *inter alia* that an appeal shall lie to the Court of Appeal on any ground of appeal that involves a question of law only, from any decision of the High Court in the exercise of its appellate jurisdiction under any enactment which does not prohibit a further appeal to the Court of Appeal.

[22] The first question that needs to be considered in this appeal is whether there is a question of law only involved, for this Court to have jurisdiction to consider the appeal. The Learned High Court Judge had helpfully referred to **Instrumatic Ltd v Supabrase Ltd** [1969] 2 All ER 131 and **Fiji Bus Operators' Association v Land Transport Authority** Civil Appeal No. HBA0001J of 2002S: 21 November 2002 [2002] FJHC 233 as to what may constitute a question of law. The three grounds of appeal urged could be summarised as follows.

(i) Did the High Court Judge err in law in deciding that the 01st Respondent's appeal to the LTAT was valid despite being filed out of time stipulated in section 45(1) of the LTA?

(ii) Would the entertaining an appeal outside the time limits of section 45(1) leave the licensee in a state of uncertainty for an indefinite period of time as there could be a challenge to his licence even after several months of the decision thus defeating the legislative intention?

(iii) Did the High Court Judge err in not directing the LTA to have a practice in place to inform all the parties to a hearing the date of the decision as well and to calculate the appealable period from that date in conformity with section 45(1) of the LTA Act?

[23] Ground two is clearly not a question of law because it presupposes that there is a decision made on 03 May 2011 in terms of Regulation 5 of LT (PSV) Rules (and the appeal had been preferred almost after 01 year and 06 months *i.e.* on 17 May 2011). However, the facts reveal otherwise. His affidavit dated 07 November 2012 the General Manager of the LTA states that the LTA had taken a decision on 07 December 2010 to issue the road route license to the Appellant after the public hearing on the same day. The annexed document (JV-1), however, does not show that this is the case. He does not refer to a decision of any other date either. Yet, the letter dated 03 May 2011 refers to Board Resolutions taken on 07 December 2010 and 18 April 2011. Further, no material is available to substantiate a resolution passed on 18 April 2011. Further, the documents marked B3 attached to the affidavit of the Managing Director of the 02nd Interested Party shows that there had been another resolution dated 06 May 2011. Thus, 03 May 2011 could not be considered as the unequivocal date of the decision. In any event none of these decisions had been published in terms of Regulation 6(1).

[24] On the other hand even the document marked JV-1 annexed to the affidavit the General Manager of the LTA does not show that the LTA had taken any decision at the hearing on the objections on 07 December 2010 though it had recorded the submissions and counter submissions of the parties. These are all matters of equivocal facts. Thus, the assumption that the date of the LTA decision is 03 May 2011 is misplaced. So is the beginning of the appealable period.

[25] Ground three relates to certain directions which the Appellant contends, the High Court should have issued to the LTA. However, it is clear that the High Court was expected to consider the appeal on points of law arising from the LTAT Ruling and could not have given directions to the LAT as to the procedure to be adopted in the communication of its decisions. The matter before the High Court was an appeal and not an application for judicial review, more particularly for a writ of mandamus. Therefore, the third ground of appeal could not be considered as raising a question of law only.

[26] Ground one, as it is couched, presumes that the date of the decision is 03 May 2011 which as pointed above is uncertain and is called into question by the contrasting facts revealed. However, the decision of the High Court raises the important issue whether the

time prescribed for an appeal from the LTA to the LTAT should run from the date of the decision or from the date of communication of the decision. The Learned High Court Judge seems to think that it should begin to run from the date of communication. The submissions of all parties not only in the High Court but also in the LTAT had been largely focussed on this matter of law. The written and oral submissions of all counsel before this Court also had highlighted that that is the main question for determination for the Court of Appeal.

[27] Thus, this question could legitimately be considered a question of law only, as answering it does not involve a decision on the different dates suggested as the date of the decision of the LTA. Regardless of the date of the decision it begs an answer to the question as to when the time runs under section 45(1) of the LTA *i.e.* from the date of the decision or from the date of communication of the decision.

[28] It is common ground that there is no statutory or regulatory provision dealing with the requirement of a decision made under Regulation 5 consequent to a hearing in terms of Regulations 4(5) to (10) to be communicated to the parties. The position of the LTA is that a decision upon the hearing had been made albeit said to be on different dates. Firstly, has the LTA in fact made a decision? I have not been able to trace a decision dealing with the objections raised by the 01st Respondent and Interested Parties. Secondly, has the LTA given reasons for the decision? The letter dated 03 May 2011 certainly does not give reasons for overruling the objections. It does not even refer to such objections. Thirdly, has the LTA sent even the letter dated 03 May 2011 to the other parties to the hearing except the Appellant? Admittedly, the answer is in the negative. Fourthly, could an appeal be lodged under section 45(1) of the LTA Act by an aggrieved party without knowing the decision and even if known, without knowing the reasons for the decision? The answer should again be in the negative.

[29] To me the decision contemplated under Rule 5 should have two main features. When there has been a hearing upon objections as contemplated under Regulations 4(5) to (10) the resulting decision should deal with the objections and consider the application in terms of Rule 5 and arrive at a decision on the application. If no such hearing has to take place for want of objections, the LTA on its own has to arrive at a decision and in that

process also it must consider the matters set out under Rule 5 in addition to any other matters deemed fit and desirable. No application should be approved and licence issued automatically or as a matter of routine. Thus, in either event, the decision so made must reflect on the face of the decision that the LTA had considered objections, if any, and if no objections are before it, then other matters dammed fit and desirable in addition to compulsory matters enumerated under Rule 5(1) prior to the decision to issue a licence. Unfortunately, I cannot find any decision with those characteristics available in this instance.

[30] The second feature is that the decision so made under Rule 5 should demonstrate adequate reasons for accepting or rejecting the objections, if any and if no hearing is required then it should give sufficient reasons for the decision to accept the application for the licence. I do not find any such reasons even in the only communication dated 03 May 2011. The reasons for insisting of these two requirements are discussed below.

Why reasons should be given and communicated.

[31] In my view, an aggrieved party to the hearing would not be able to state specifically and concisely the grounds of appeal in the notice of appeal to be filed in the Land Transport Appeals Tribunal (LTAT) against the decision of the Land Transport Authority under Regulation 5, as required by section 45 (1) of the LAT Act, unless the decision upon the hearing is communicated and reasons for the decision of the LAT are made known to the parties to the hearing. In the absence of communication and reasons it would be impossible for an aggrieved party to comply with section 45(1). The law does not compel the doing of impossibilities; nor does it compel a person to do that which he or she cannot possibly perform (*Lex non cogit ad impossibilia*).

[32] In this case, the LTA has not published the so called decision in the Gazette and at least in one English newspaper. Neither has it disclosed the reasons for such a decision in any other communication. Arguably, Regulation 6(1) does not require the LTA to state such reasons in the notice published in the Gazette and at least in one English newspaper, but I am of the firm view that such reasons must necessarily be communicated to the parties to the hearing individually through appropriate and transparent means, preferably through

the modes of delivery specified in section 33 of the LTA Act. This requirement is quite independent of the notice under Section 6(1).

[33] **Administrative Law (11th Edition) by H. W. R. Wade & C. F. Forsyth** at pages 440-441 and 443 quoting several judicial pronouncements states that

> *"The principles of natural justice do not, as yet, include any general rule that reasons should be given for decisions. Nevertheless there is a strong case to be made for the giving of reasons as an essential element of administrative justice.....Unless the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is reviewable or not, and so may be deprived of the protection of the law. A right to reasons therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice. It is also a healthy discipline for all who exercise power over others."*(emphasis added)

> *" Notwithstanding that there is no general rule requiring the giving of reasons, it is increasingly clear that there are many circumstances in which an administrative authority which fails to give reasons will be found to have acted unlawfully. The House of Lords has recognised 'a perceptible trend towards an insistence on greater openness ... or transparency in the making of administrative decisions' and consequently has held that where, in the context of the case, it is unfair not to give reasons, they must be given."* (emphasis added)

> *" As explained above, an important consideration underlying the extension of the duty to give reasons, referred to in many cases, is that in the absence of reasons the person affected may be unable to judge whether an appeal, if available, should be instituted or an application for judicial review made."* (emphasis added)

[34] In **R v Secretary of State for the Home Department, ex p Fayed** [1998] 1 WLR 763 it was held that an applicant for British citizenship is entitled to be told of Secretary of State's concerns notwithstanding statutory provisions excluding duty to give reasons. It was held in **R v. Parole Board, ex p Wilson** [1992] QB 740 that a prisoner is entitled to be provided with reason, reports and facts adverse to request for parole, so that he could make representations. Failure to make findings of fact and give reasons amounting to a denial of natural justice (vide **R v Burton upon Trent Justices, ex p Hussain** (1997) 9 Admin LR 233, 237G-H)

[35] Licensing by licensing authorities was held to be a judicial function, and therefore subject to natural justice (for e.g. in **R v. Brighton Cpn ex p Thomas Tilling Ltd** (1916) 85 LJKB 1552 and **Frome United Brewaries Co. V Bath Justices** [1926] AC 586) and Lord Denning in **R v. Liverpool Cpn ex p Liverpool Taxi Fleet Operators' Association** [1972] 2QB 299 said that according to the modern judicial vocabulary such persons act administratively but are required to act fairly. Lord Diplock said in **Bushell v Secretary of State for the Environment** [1981] AC 75, 96C-D *"fairness requires that the objectors should .... be given sufficient information about the reason relied on by the department as justifying the draft scheme to enable them to challenge the accuracy of any facts and the validity of any arguments upon which the departmental reasons are based".*

[36] **Judicial Review Handbook (04th Edition) by Michael Fordham** at page 1059 states

> *'a duty to give reasons can arise (1) where expressly required in relevant legislation, rules or policy; (2) where called for in fairness (including via a legitimate expectation); (3) through administrative law's 'rule of reason' (reasonableness) i.e. a response which is un-reasoned may be seen as unreasonable; or (4) under the duty of candour owed by a body under challenge.'*

[37] **Administrative Law (11th Edition) by H. W. R. Wade & C. F. Forsyth** at page 443 states

> *' The time has now surely come for the court to acknowledge that there is a general rule that reasons should be given for decisions, based on the principle of fairness which permeates administrative law, subject only to specific exceptions to be identified as cases arise..... the presumption should be in favour of giving reasons.'*

[38] I am of the view that considering the legislative scheme of the LTA and LT (PSV) Regulations which are clearly designed to ensure reasonableness, fairness, transparency and objectivity in the process of issuing *inter alia* road permits and road route licences concerning the public, the duty to give reasons for its decisions is indispensable to the discharge of duties and in the exercise of authority vested in the LTA. Therefore, though there is no specific statutory duty to do so, the LTA is bound to give reasons for its decisions in the name of fairness, reasonableness and candour of the whole process and natural justice. The LTA in this case has failed to do so.

[39] The Learned High Court Judge's views on the matter of communication of the decision are as follows.

> *'When public consultation was made mandatory as regard to issuance of RRL it would have been illogical to think that the decision making body would conceal its decision from the interested parties who participated in the consultative process.'*
>
> *'..... **A fortiori** when there is imbedded right of appeal to a specialized tribunal within a stipulated time, and also requirement for communication of the said decision..... . The communication of the decision cannot be separated from fairness in consultation under the statutory provisions contained in the LTA 1998, and Regulations made under that statute and the circumstances in this case.'*
>
> *'So, LTAT was correct when it held that since there was no communication to the parties who participated in the public consultation process regarding the issue of RRL hence the appeal was not outside the time period. I affirm that finding by LTAT'*

[40] I do not find anything wrong in his observations on the compulsory requirement of communication of the decision. Interestingly, the very fact that the Appellant considers 03 May 2011 as the date of the decision defeats its own contention that the time should run from the date of the decision as the 03 May 2011 is only the date of the letter and the decisions had been purportedly on 07 December 2010 and 18 April 2011. Thus, unknowingly the Appellant also had taken the date of the communication of the decisions as the starting point of the appealable time period set out in section 45(1) of the LTA Act.

[41] The above discussion brings me back to the specific question of law that involves in this appeal whether the period of 14 days for an appeal to be lodged under section 45(1) of the LTA should run from the date of the decision or from the date of communication of the decision. In the light of above reasoning, I hold that the answer to this question is that the period of 14 days should be counted from the date the LTA decision is communicated to the parties, be it the applicant or objectors and not from the date of the decision.

[42] Therefore, I do not see any merits in the Appellant's argument in favour of a strict interpretation of section 45(1) of the LTA to say that the appealable period begins with the date of the decision irrespective of the date of communication. I do not think that the literal interpretation advanced by the Appellant in his written submissions referring to several judicial pronouncements is appropriate in this instance as such an interpretation

would lead to absurdity, inconsistent with the declared purpose of the statute and manifest injustice (see **Warburton v Loveland** (1929) 1 H & BIR 623, **Grey v Pearson** (1857) 6 HL as 61, **Matteson v Hart** (1854) 23 LJCP 108, **Hill v East and West India Dock Co** (1884) 9 AC 448). It has been observed in **Railton v Wood** (1809) 15 AC 363-67).

> *'If an enactment is such that by reading it in its ordinary sense you produce a palpable injustice, whereas by reading it in a sense which it can bear although not exactly its ordinary sense, it will produce no injuries, then I admit one must always assume that the legislature intended that it should be so read as to produce no injustice.'*

[43] A purposive and contextual interpretation would be the correct approach in the interpretation of section 45(1) of the LTA Act. Adhering to the strict and literal interpretation of section 45(1) would frustrate the legislative intention and ascertained purpose of section 45(1). One cannot reduce section 45(1) to futility. (See **FC of T v Ryan** (2000) 42 ATR 694, 715-716, **Nokes v Doncaster Amalgamated Collieries Ltd** (1940) 3 All ER 549, 553 and **Suva City Council v R B Patel Group Limited** Civil Petition No. CBV 0006 of 2012: 17 April 2014 [2014] FJSC 7). The best interpretation is made from the context (*Ex Anticedentibus Et Consequentibus Fit Optima Interpretatio*) and an interpretation has to be made in consonance with legislative purpose (*Interpretare Et Concordare Leges Legibus*).

[44] I should not be understood as saying that the 14 day time period to lodge an appeal in section 45(1) of the LTA Act *per se* would produce any injustice. My view is that the communication of the decision with reasons to all the parties to the hearing is a condition precedent to the exercise of the right of appeal under section 45(1), for otherwise an aggrieved party would not be able to invoke the jurisdiction of the LTAT by adhering to the time period lodging a notice of appeal by stating 'specifically and concisely' the grounds of appeal. Inclusion of grounds of appeal 'specifically and concisely' in the notice of appeal is also a condition precedent to a valid appeal and invoking the appellate jurisdiction. Therefore, to comply with the specific requirement regarding the grounds of appeal and give meaning to that legislative intention, the time to appeal has to run not from the date of the decision but from the date it is communicated and that too with reasons for the decision.

[45] As pointed out by the Appellant it is certainly desirable and perhaps, high time that the LTA sets out a transparent procedure as to how upon the conclusion of a hearing its decisions are to be communicated to the parties. Section 33 of the LTA Act read with section 2(5) of the Interpretation Act (as interpreted in the case of **Attorney General of Fiji v Kumar** Civil Appeal No. ABU 065 of 2012: 02 October 2015 [2015] FJCA 139) would provide a useful guide in this regard and how the appealable period should be calculated. However, neither the High Court nor this Court could give directions or lay down a general frame work in that regard in the present appellate proceedings as demanded by the Appellant.

[46] The Appellant has also argued that the 01st Respondent and objectors could have sought an extension of time from the LTAT to lodge an appeal outside the time prescribed in section 45(1) of the LAT Act. I cannot agree.

[47] There has never been a communication of the so called decision to the 01st Respondent or the other Objectors and that was admitted by all the parties at the hearing before this Court. Therefore, no question of extension or enlargement of time arises.

[48] On the other hand section 53 of the Interpretation Act states

> *'Where in any written law a time is prescribed for doing any act or taking any proceeding, and power is given to a court or other authority to extend such time, then, unless a contrary intention appears, such power may be exercised by the court or other authority although the application for the same is not made until after the expiration of the time prescribed.'*

[49] In terms of section 53 it is clear that an extension of time could only be granted if the principal legislation provides for such a power to be exercised. LTA Act has no provision permitting the LTAT to extend or enlarge the time allowed to file an appeal. Therefore, the 01st Respondent or the other objectors could not have made an application for extension of time either.

[50] Suffice it to say or to say the least, the LTA has acted very strangely with regard to the whole process involving the Appellant's application and the objections by the 01st Respondent and the other objectors. It looks as if the entire decision making exercise had been shrouded in secrecy. Fundamental norms of transparency had been lacking.

[51] If the Appellant were to incur any financial loss as a result of such omission on the part of the LTA at any stage the licensee's remedy would perhaps lie elsewhere and this Court could not be dealing with it in the appellate proceedings. Nor could this Court take such a future scenario into account in dealing with matters of interpretation of section 45(1) of the LTA Act. In that backdrop, the contention of possible losses to the Appellant arising from the cancellation of the licence after several months or years need not be considered in this appeal and Justice Jiten Singh's observations in **Fiji Bus Operators Association v Land Transport Authority** Civil Appeal No.HBA 01 of 2002:01 November 2002 [2002] FJHC 233 cited by the Appellant are not applicable here and in any event Justice Singh's decision has to be distinguished for the reason that in that case the LTA decision had been communicated but not published in the Gazette and in a local newspaper and the Learned Judge had proceeded on the basis that no prejudice had been caused thereby.

[52] I have already indicated that I am in agreement with the Learned High Court Judge in overruling the Appellant's contention as to when the appealable time under section 45(1) of the LTA Act would start to run. I also concur with the High Court decision to quash that part of the LTAT Ruling in quashing the grant of road route licence to the Appellant. The only question that is left to be considered is whether the decision of the High Court to remit the matter to the LTAT for a hearing of the substantive appeal should remain.

[53] It appears to me that this revolves around the more fundamental question whether, as admitted by all parties, in the absence of any communication whatsoever of the so called decision to the 01st Respondent and the other objectors to date and total lack of reasons, it is possible for the LTAT to entertain the appeal and go into the merits of the said decision. The situation gets complicated by the fact that there does not seem to be any decision made at all in terms of the law by the LTA in this instance and there are no reasons available on record either. Both requirements are indispensable in the face of the

objections and the hearing thereto. What is it that the LTAT is going to consider the merits of in the teeth of a non-existent decision and non-existent reasons? On the other hand the appealable period could not have even begun without the decision being communicated to the parties. Could an aggrieved party have filed an appeal even belatedly in this instance?

[54] Therefore, I have doubts about the decision to simply remit the matter back to the LTAT to hear the substantive appeal. In my view, the LTA should be required to make a decision in terms of the law as expeditiously as possible and to give reasons for that decision upon the hearing already conducted into the application of the Appellant and the objections of the objectors. Thereafter, LTA should communicate the decision and the reasons to all the parties to the hearing. Upon evaluation of the decision and the reasons thereof the parties could decide whether they are aggrieved and if so to appeal to the LTAT or not. Therefore I would set aside the Judgment of the High Court remitting the appeal to the LTAT.

Orders of Court:

1. *The appeal is allowed to the extent that the order of the High Court remitting the matter to the Land Transport Appeals Tribunal is set aside otherwise the appeal is dismissed.*

2. *The Land Transport Authority is directed to make a decision with reasons in terms of Regulation 5 of the Land Transport (Public Service Vehicles) Regulations, 2000 into the Appellant's application and the objections of the 01st Respondent and other objectors.*

3. *The Land Transport Authority is directed to communicate the decision along with reasons to all the parties in terms of section 33 of the Land Transport Act.*

4. *The Appellant is directed to pay $3000 to the 01st Respondent and $1000 each to the 01st to 04th Interested Parties as cost in this appeal.*

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Hon. Justice W. Calanchini
PRESIDENT, COURT OF APPEAL

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Hon. Justice S. Lecamwasam
JUSTICE OF APPEAL

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Hon. Justice C. Prematilaka
JUSTICE OF APPEAL