

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**APPELLATE JURISDICTION**

**Civil Appeal No. HBA 07 of 2017**

**IN THE MATTER** of an application for appeal against the decision of the Land Transport Appeals Tribunal at Lautoka in Appeal Case No. 63 of 2014 and Appeal Case No. 70 of 2014.

**BETWEEN :**            **KHAN BUSES LIMITED**

**APPELLANT**

**A N D :**                **LAND TRANSPORT AUTHORITY**

**1<sup>ST</sup> RESPONDENT**

**A N D :**                **SUNBEAM TRANSPORT LIMITED**

**PACIFIC TRANSPORT LIMITED**

**INTERESTED PARTIES**

**Appearances**                : Mr Aman Ravindra Singh for Appellant  
    Ms T. Colati for 1<sup>st</sup> Respondent  
    Mr V. Kapadia for 1<sup>st</sup> Interested Party  
    Mr R Prakash for 2<sup>nd</sup> Interested Party

**Date of Hearing**                : 18 September 2017  
**Date of Oral Ruling**        : 18 September 2017  
**Date of written reasons:** 29 September 2017

**WRITTEN REASONS**

[For striking-out appeal]

## **Introduction**

- [01] The hearing today (4 August 2017) is a stay application. The appellant appeals the decision of the Land Transport Appeals Tribunal (“LTAT”) delivered on 12 May 2017. The appellant also seeks a stay of the execution of the judgment of the LTAT until the final determination of the appeal in the High Court.
- [02] In the meantime, a striking-out application has been filed by Sunbeam Transport Limited (“STL”), the first interested party. STL seeks a hearing on their application before the hearing of the stay application filed by the appellant.
- [03] The court made an order that the appellant files the copy of the tribunal proceedings in 7 days from 13 July 2017, which has not been complied with. The appellant must furnish a signed copy of any note made by the tribunal of the proceedings (see HCR, O.55, r.7 (4)). Furthermore, not all the interested parties are before the court. The appeal has not been served on the Tribunal as well. In the circumstances, the stay application cannot be considered. It would be prudent to hear the striking-out application before the hearing of the stay application. I accordingly, vacate the hearing on the stay application and proceed to hear the striking-application. Upon hearing the application to striking out the appeal, I orally made an order striking out the appeal. I indicated the parties that I would deliver my written ruling on a later day. These are my written reasons for striking-out the appeal filed by the appellant.

## **The Striking-out Application**

- [04] By a notice of motion filed on 2 August 2017 in conjunction with an affidavit of Abdul Wahab, STL seeks an order striking out the Notice and Grounds of Appeal filed on 9 June 2017 on the following grounds:

- a) *The appeal does not include all interested parties that were before the Land Transport Appeal Tribunal and the Land Transport Authority;*
- b) *The appeal has not been served on the Land Transport Appeal Tribunal;*
- c) *The appeal otherwise is filed in breach of Order 55, Rule (4) of the High Court Rules.*

[05] This application is made pursuant to Order 55, Rules 3 (1) and 4 (1) of the High Court Rules (HCR) and the inherent jurisdiction of this Court.

[06] Appellant did not file any response to the application to strike out filed by STL. By my ruling dated 4 August 2017, I gave certain directions at para 4 of that ruling, which reads:

*"[04] The appellant is to file and serve its response to the striking-out application within 14 days and the STL will have 14 days thereafter to file and serve a reply. Pacific Transport Limited, the second interested party may join in the striking out application. They will have 14 days to file and serve their grounds for striking the appeal out. The matter has been adjourned to 18 September 2017 at 9.30am for hearing."*

[07] There has been non-compliance on the part of the appellant with the directions given by the Court on 4 August 2017.

[08] Pacific Transport Limited ("PTL"), the second interested party has also made a similar application. This application also came up for hearing on 18 September 2017. However, Mr Prakash, counsel appearing for PTL informed the court that he could not serve the application upon the appellant on time. As such, he would not object to the granting of time to the appellant for filing a response to the PTL's application.

### **The Law**

[09] The application is made pursuant to Order 55, Rules 3 (1) and 4 (1), which provide:

**APPEALS TO HIGH COURT FROM COURT, TRIBUNAL OR  
GENERAL PERSON**

**Application** (O.55, r.1)

*1.-(1) subject to paragraphs (2) and (3), this Order shall apply to every appeal which by or under any enactment lies to the High Court from any court, tribunal or person.*

*(2) This Order shall not apply to-*

*(a) any appeal by case stated; or*

*(b) any appeal under any enactment for which rules governing appeals have been made thereunder, save to the extent that such rules do not provide for any matter dealt with by these rules.*

*(3) The following Rules of this Order shall, in relation to appeals to which this Order applies, have effect subject to any provision made specifically in relation to such appeals by these Rules or by or under any enactment.*

*(4) In this Order references to a tribunal shall be construed as references to any tribunal constituted by or under any enactment other than any of the ordinary courts of law.*

**Bringing of appeal** (O.55, r.3)

*3.-(1) An appeal to which this Order applies shall be by way of rehearing and must be brought by originating motion.*

*(2) Every notice of the motion by which such an appeal is brought must state the grounds of the appeal and if the appeal is against a judgment, order or other decision of a court, must state whether the appeal is against the whole or a part of that decision and, if against a part only, must specify the part.*

*(3) The bringing of such an appeal shall not operate as a stay of proceedings on the judgment, determination or other decision against, which the appeal is brought unless the Court by which the appeal is to be heard or the court, tribunal or person by which or by whom the decision was given so orders.*

***Notice of motion and entry of appeal (O.55, r.4)***

4.-(1) **The persons to be served with notice of the motion** by which an appeal to which this Order applies is brought are the following:-

(a) if the appeal is against a judgment, order or other decision of a court, the Registrar or clerk of the court and any party to the proceedings in which the decision was given who is directly affected by the appeal;

(b) **if the appeal is against an order; determination, award or other decision of a tribunal, Minister of the State, government department or other person, the chairman of the tribunal, Minister, government department or person, as the case maybe, and every party to the proceedings (other than the appellant) in which the decision appealed against was given.** (Emphasis provided)

(2) The notice must be served, and the appeal entered, within 28 days after the date of the judgment, order, determination or other decision against which the appeal is brought.

(3) In the case of an appeal against a judgment, order or decision of a court, the period specified in paragraph (2) shall be calculated from the date of the judgment or order or the date on which the decision was given.

(4) In the case of an appeal against an order, determination, award or other decision of a tribunal, Minister, government department or other person, the period specified in paragraph (2) shall be calculated from the date on which notice of the decision, or, in a case where a statement of the reasons for a decision was given later than such notice, on which such a statement was given to the appellant by the person who made the decision or by a person authorised in that behalf to do so.

**Discussion**

[10] By a notice of originating motion filed 9 June 2017, the appellant appeals the decision of the Land Transport Appeals Tribunal delivered on 12 May 2017. The appellant has also, at the same time, filed a summons for a stay of execution of the LTAT's decision pending determination of this appeal.

[11] The hearing into the stay application was taken on 13 July 2017 when counsel appearing for the first respondent (LTA) sought 21 days for LTA to

file a response to the stay application. I granted 14 days to LTA to file and serve a response. In the meantime, the appellant undertook to furnish the signed copy of the proceedings to which the appeal relates. The hearing on the stay application was adjourned to 9.30 am on 4 August 2017. Meanwhile, on 2 August 2017 Sunbeam Transport Limited filed an application to strike out the appeal. In view of the striking-out application, the hearing on 4 August 2017 did not proceed, but Counsel for the appellant informed the court that he will endeavour to serve the appeal to all interested parties and the Tribunal and applied for 14 days to file and serve a response to the striking-out application. The court allowing that application delivered a ruling of 4 August 2017, which vacated the hearing of the stay application listed that day.

*The notice and the appeal not served and entered within the timeframe.*

- [12] STL's first ground for striking-out the appeal is that the appeal was not served and entered within the timeframe.
- [13] HCR, O.55, r.4 mandates that the notice must be served, and the Appeal entered, within 28 days after the date of the judgment, order, determination or other decision against which the appeal is brought.
- [14] The appellant has preferred an appeal against the decision of the Tribunal delivered on 12 May 2017. The notice of originating motion to appeal the decision of the tribunal has been filed on 9 June 2017. 28 days after the date of the Tribunal's decision expired on 8 June 2017. The appellant ought to have filed the notice of motion on or before 8 June 2017. The appellant was late by one day in filing the notice of originating motion to appeal. The appellant did not file the notice of motion until 9 June 2017.
- [15] The appellant has a right of appeal the decision of the tribunal pursuant to section 48 of the Land Transport Act (LAT), which provides:

*“A decision of the Tribunal shall be subject to an appeal, only on points of law, to the High Court.”*

[16] LAT 48 does not offer any procedure on how to appeal and the time limit within which an appeal is to be lodged. Therefore, we must seek recourse to O.55, which prescribes the procedures to be adapted when appealing to the High Court from the Tribunal.

[17] The appeal is brought to this Court from the decision of the Tribunal. O.55, r. 4-(2) requires that such an appeal must be served and, the appeal entered within 28 days after the date of the decision against which the appeal is brought. The appellant has failed to serve and, enter the appeal within 28 days as required by the rule. By that failure, the appellant had broken the rules. Where the rules on lodging an appeal are broken, an appeal may be considered for dismissal.

*Relevant parties not served with the appeal*

[18] The second ground raised by STL for striking out the appeal is that the notice of originating motion and appeal has not been served on all interested parties including the respondent within 28 days after the date of decision in the Tribunal.

[19] O.55, r.4 states the persons to be served with notice of motion by which an appeal brought under this Order (O.55). Rule 4.-(1) (b) specifically states that if the appeal is against a decision of a tribunal, the chairman of the tribunal and every party to the proceedings in which the decision appealed against was given.

[20] The parties to the proceedings before the tribunal include: Pacific Transport Limited (Appellant), Land Transport Authority (Respondent) and as interested parties: Khan Buses Limited, **Taunovo Bus Company Limited, Maharaj Buses Limited, Shankar Singh Transport** and Sunbeam Transport Limited.

- [21] In the current appeal proceedings, the appellant did not serve the notice of originating motion and appeal on the above-highlighted parties even though they were cited as interested parties to the proceedings in the tribunal. The appellant's counsel admits that he did not serve the notice of motion and appeal on every party to the proceedings in the tribunal.
- [22] In *Satish Chand v LTA and Parmod Enterprises Limited* (Civil Appeal No. HBA 01/16), dealing with a similar application, Lyone Seneviratne J struck out the appeal for failing to serve the petition of appeal to the Land Transport Appeals Tribunal as required by O.55, r.4.
- [23] The importance of the protection of the respondents' interests was emphasized by the English Court of Appeal in *Hyams v Plender* [2001]1WLR 32 where the Court said:

*"The Court sees it as its duty to protect the interests of respondents, who already have a decision of a competent authority in their favour, by insisting on all reasonable expedition and strict compliance with the timetable laid down."*

## **Conclusion**

- [24] The appellant had not only failed to serve the originating notice of motion and the appeal on every interested party to the proceedings in the Tribunal including the respondent but also failed to enter the appeal within 28 days from the date of the decision appealed was given, as required by O.55, r. 4.-(1) (b) of the High Court Rules. In addition, the appellant had failed to comply with the two peremptory orders given by the courts. In its first order dated 13 July 2017, the court ordered that the appellant furnish the signed copy of the proceedings in respect of the decision appealed against and in the second order dated 4 August 2017, the Court ordered that appellant serve the notice of motion on every interested party and on the chairman of the tribunal. More importantly, the appellant did not file any



response to the application for striking-out the appeal. Instead, counsel appearing for the appellant admits that there has been non-compliance with order 55 Rule 4 of the High Court Rules and that he does not wish to respond to this application any further. In these circumstances, I would strike out the appeal with summarily assessed costs of \$1,000.00 payable to the first interested party and of \$700.00 payable to the second interested party totalling \$1,700.00.

**The Outcome**

1. Appeal struck out.
2. The appellant will pay costs of \$1000.00 to the first interested party and of \$700.00 to the second interested party totalling \$1,700.

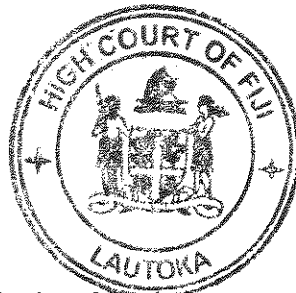
*M.H. Mohamed Ajmeer*  
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**M.H. Mohamed Ajmeer**

**JUDGE**

**At Lautoka**

**29 September 2017**



Solicitors:

For appellant: M/s Aman Ravindra Singh Lawyers, Barristers & Solicitors

For 1<sup>st</sup> respondent: Legal Officer, Land Transport Authority

For 1<sup>st</sup> interested party: Sherani & Co, Solicitors

For 2<sup>nd</sup> interested party: Mishra Prakash & Associates, Barristers & Solicitors