

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No.: HBA 17 of 2017

IN THE MATTER of an application for appeal against the decision of the Land Transport Appeals at Nausori in Appeals Tribunal at Nausori in Appeal Case No. 07 of 2017.

BETWEEN : **ARIANNA USED CARS & SPARE PARTS**

APPELLANT

AND : **LAND TRANSPORT AUTHORITY**

RESPONDENT

Counsel : Mr. S. Fa for the Appellant
Ms. Colati. T for the Respondent

Date of Hearing : 16th November, 2017

Date of Judgment : 22nd November, 2017

JUDGMENT

INTRODUCTION

1. This is the Appellant's application for stay of the execution of the decision of the Land Transport Authority (LTA) on 15th December, 2015 until the final determination of the Appeal filed by the Appellants. The Appellant was a second hand motor vehicle dealer known as Authorized Motor Vehicle Dealer (AMVD), licenced by LTA (Respondent) to conduct its business. The licence was initially for 3 months and according to the Respondent since there were complaints the licence was cancelled. The cancellation of licence of the Appellant was pursuant to investigation as to tampering of odometer

readings of several vehicles. The Appellants were granted an opportunity to present evidence at the said investigation and at the conclusion of the investigation a decision was taken to terminate licence granted to Appellant by LTA. This decision was taken on 15 the December, 2015. This decision was appealed to the Tribunal and a stay order was initially granted, but it was dissolved later. At the time of the hearing of the Appeal, there was no stay order operational and the Land Transport Appeals Tribunal dismissed the Appeal and costs were ordered against the Appellants. Now the Appellants had appealed the said decision delivered on 12th May, 2017 by Land Transport Appeals Tribunal (the Tribunal) and also seeks a stay of the execution of decision of LTA 15th December, 2015. It should be noted that stay is not regarding decision of the Tribunal.

ANALYSIS

2. In a recent Court of Appeal decision in *New World Ltd v Vanua Levu Hardware [Fiji] Ltd* [2016] FJSC 29; CBV0004.2016 (4 August 2016) Chandra JA held,

[18] In arriving at a decision as to whether the Petitioner's circumstances are sufficiently exceptional for the grant of stay relief pending appeal, it is necessary to consider the relevant principles set out in the Court of Appeal in Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji) Ltd Civil Appeal ABU 0011 04S. 18th March 2005. They were:

- "(a) Whether, if no stay is granted, the applicant's right of appeal will be rendered nugatory (this is not determinative). See Philip Morris (NZ) Ltd v Liggett & Myers Tobacco Co. (NZ) Ltd [1972] 2 NZLR 41 (CA) I*
- (b) Whether the successful party will be injuriously affected by the stay.*
- (c) The bona fides of the applicants as to the prosecution of the appeal.*
- (d) The effect on third parties.*
- (e) The novelty and importance of questions involved.*
- (f) The public interest in the proceeding.*
- (g) The overall balance of convenience and the status quo."*

3. At the moment Appellant's licence to sell motor vehicles had been cancelled for over 1 one year ago and it remained so even prior to the decision of the Land Transport Appeals Tribunal. So the Appellant had remained so from the time the Tribunal set aside stay order.

4. If a stay order is not granted at this juncture the appeal will not be rendered nugatory as the Appellant was without a licence to operate its business as AMVD business for nearly one year. He stated that he had to incur some costs while the business is closed, but if this cancellation of licence is upheld this position would not change. The status quo of the Appellant remained so at the time of the hearing of the Land Transport Appeal Tribunal. So the position of Appellant remained same even prior to decision of the Tribunal.
5. Though at the time of the present application no records of the Tribunal were available in order to fix the Appeal for hearing, now it is available. So at the moment there is no delay in regard to the Appeal and it can be fixed for hearing without delay.
6. The grounds of appeal are as follows (amended summons filed on 13th October, 2017)
 1. The Tribunal erred in law in not applying Section 46(1) of the Land Transport Act when hearing Appeal No 7 of 2017.
 2. The Tribunal erred in law in not applying section 46(1) of the Land Transport Act when hearing Appeal No 07 of 2017 when the evidence submitted before it suggested need for clarification from all parties.
 3. The Tribunal erred in law in not applying section 16(1) (a) of the Constitution of Fiji 2013.
7. Section 46(1) of LTA deals with Power of the Tribunal and this appeal ground is vague and not clear as Section 46(1) contains (a)-(c) and they are diverse. So which provision of Section 46(1) is relied for the Appeal is not clear hence novelty and merits of the Appeal cannot be considered.
8. Section 16(1)(a) of the Constitution also deals with right to fair hearing and the Appellant had not indicated in what manner he was deprived of that provision.
9. The successful party, being LTA, will not be injuriously affected by granting a stay, but there are third parties whose rights are protected through a regulatory body like LTA which would get affected. There was no dispute as to the odometer tampering of certain vehicles

imported by Appellant. This was confirmed by two government bodies namely FRCA and LTA.

10. In this instance the concern is not directly LTA, as they are a regulatory body. The impact from granting a stay on the general public needs to be considered.
11. The public would not only include consumers/customers who buy used cars, but also other entities that are engaged in similar business. If there is no level playing field and if some businesses resort to unhealthy practice, it would also effect the industry as a whole. Public trust may also get damaged irrecoverably. It is also important not to allow odometer tampering, or other deceptive or unconscionable means by stringent deterrents and allowing the Appellant to conduct the business before hearing of Appeal will not support such deterrence.
12. As stated earlier novelty of the arguments in Appeal cannot be determined as the Grounds of Appeal are not clear.
13. There is an impact on public if stay order is granted as stated earlier. There is an impact on the players of the industry who are also part of public due to deterrent effect etc. For that reason there is a public interest in not granting stay, at this moment.
14. It should be noted that the allegation against the Appellant is a very serious matter as to tampering of odometer, which is one of the main matters for determination of the quality and price of a used vehicle. Even a single tampering of odometer affects an unknown purchaser of a vehicle.
15. The balance of convenience also favours not granting stay order at this juncture. If a stay order is granted hindering, a decision of LTA taken over one year ago it will not be in the best interest of the public which needs to be protected by regulatory bodies such as LTA. LTA's decision to terminate the licence of Appellant is in operation for one year. Any deterrent punishment will have financial implications and that should not be the sole reason to stay such orders to mitigate any financial implications.

CONCLUSION


16. Considering the factors and balance of convenience I will refuse the application for stay using the discretion of the court. I will not award any cost considering the circumstances of the case.

FINAL ORDERS

- a. The application for stay of the decision of the Respondent is refused.
- b. No cost awarded.
- c. The Appeal is fixed for hearing.

Dated at Suva this 23rd day of November, 2017.




Justice Deepthi Amaratunga
High Court, Suva