

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

Civil Appeal No. HBA 01 of 2016

[On an Appeal from the Land
Transport Appeals Tribunal
sitting at Lautoka in Appeal No.
61 and 68 of 2014 and 9 of 2015]

BETWEEN : LAND TRANSPORT AUTHORITY
Appellant/Original Respondent

AND : SUNBEAM TRANSPORT LIMITED
First Respondent

AND : PACIFIC TRANSPORT LIMITED
Second Respondent

AND : PARADISE TRANSPORT LIMITED
Third Respondent

Appearances : Mr D. Sharma for the appellant
Mr V. Kapadia for the first respondent
Mr R. Prakash for the second respondent
Mr R. Singh for the third respondent

Date of Hearing : 13 November 2017

Date of Ruling : 29 March 2018

R U L I N G

Introduction

[01] I have before me four applications:

- i. Notice of Appeal filed by Land Transport Authority on 13 January 2016.
- ii. Application filed by first Respondent on 25 April 2016, which seeks to strike out the Notice of Appeal on the grounds that:
 - (a) *Appellant is not a proper party.*
 - (b) *Appeal does not include Interested Parties who were before the LTAT in the matter.*
 - (c) *LTA cannot appeal the LTAT's decision.*
 - (d) *Appeal is filed in breach of Order 55 of the High Court Rules 1988 (HCR).*
- iii. Application filed by second Respondent on 10 May 2016, which seeks to strike out the Notice of Appeal on the grounds that:
 - (a) *Appellant is not a proper party.*
 - (b) *LTA cannot properly appeal the decision of the LTAT constituted under Land Transport Act 1998.*
 - (c) *Appeal cannot be heard without or serving the proceedings on all those Interested Parties who were before the LTAT in the matter.*
- iv. Application filed by Appellant on 30 May 2016 seeking to:
 - (a) *To amend name of Appellant.*
 - (b) *To join other parties.*

[02] I have heard all interlocutory applications together.

[03] The parties have filed their respective submissions. I have also had the benefit of hearing oral argument from Counsel on all sides on their respective applications.

Discussion

Issue: Name of appellant is incorrect

- [04] The appellant concedes that the name of the appellant is incorrect and it ought to have been the *“Land Transport Authority”* not the *“Land Transport Authority Fiji Limited”*.
- [05] The first and second respondents have raised issue that the appellant is not a proper party. Further, the first respondent submits that the appeal is filed in breach of Order 55 of the HCR. The second respondent submits that the appellant is not a proper party or entity which can file this appeal and accordingly the appeal ought to be struck out.
- [06] The appellant has also filed an application to amend its name to Land Transport Authority. The HCR allows a party to correct its name if the court is satisfied that the error was a genuine mistake and was not misleading. An amendment to correct the name of a party may be allowed notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading (see HCR O.20, r. 5 (3)).
- [07] I am satisfied that amendment sought by the appellant seeks to correct a genuine mistake and that it is not misleading. The amendment sought is to correct the name of the appellant as *“Land Transport Authority”* instead of *“Land Transport Authority Fiji Limited”*. I would allow the appellant’s application to amend the name of the appellant.

Can the Authority File an Appeal?

- [08] Both the first and second respondents have raised issue that the appellant/Land Transport Authority cannot properly and lawfully appeal the decision of the Land Transport Appeals Tribunal constituted under the Land Transport Act 1998 (*the Act*). They submit that the Authority cannot appeal any order of the Tribunal. They rely on section 26 (2) of the Act, which provides:

“On an appeal under this Part the Tribunal may dismiss the appeal or make such order as it think just and reasonable in the circumstances directing the Authority to issue, transfer, or cancel any licence, certificate or permit, or to impose, vary, or remove any condition or restriction in respect of a licence, certificate or permit, and the Authority shall comply with that order.” [Emphasis is provided]

- [09] Conversely, the appellant contends that: it is not correct to say that the Tribunal is the Authority’s own body. The Tribunal is a separate independent body created under the Land Transport Act. It does not report to the Authority and neither is it under the jurisdiction of the Authority. The jurisdiction of the Authority is created by the Land Transport, an Act of Parliament.

Right of Appeal

- [10] The right of appeal is provided under section 48 of the Act, which states:

“48. A decision of the Tribunal shall be subject to an appeal, only on points of law, to the High Court.” [Emphasis provided]

- [11] The Authority was a party in the Appeal before the Tribunal. It participated in the Tribunal appeal proceedings.

- [12] The first and second respondents’ argument that the Authority has no right of appeal as the Authority has to comply with the order of the Tribunal.

[13] In my judgment, the first and second respondents' construction of section 48 is clearly wrong for the following reasons:

- 1) Firstly, it is contrary to the express language of section 48. That section does not prohibit the Authority from appealing the Tribunal's decision.
- 2) Secondly, it is contrary to the architecture of the legislation.
- 3) Thirdly, the Authority has to comply with the order or direction of the Tribunal does not mean the Authority cannot appeal the Tribunal's decision. Any party against whom an order is made by the court/tribunal has to comply with that order. That does not mean the party against whom an order has been made has no right of appeal as that party has to comply with that order.

[14] The Authority was a party in the appeal before the Tribunal and it contested the appeal. As an aggrieved party, the Tribunal may appeal the decision of the Tribunal on points of law pursuant to section 48 of the Act. I reject the argument advanced by the first and second respondents that the Authority has no right of appeal as it has to comply with the Tribunal's orders.

All parties not before the court

[15] The first and second respondents submit that the appellant failed to serve on all parties as required by Order 55, rule 5 of the High Court Rules 1988 (*the HCR*). That rule provides:

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

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 chairperson 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.

(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.”

[16] The appellant argues that: O.55 may not apply to an appeal from the Tribunal because rules governing how an appeal is to be dealt with are expressly provided under s.45 of the Land Transport Act and those rules should also be applied for an appeal to the High Court. Alternatively, the appellant argues that: even if the first respondent is correct in what it is saying, noncompliance with High Court Rules is not fatal in the sense that it is deemed to be an irregularity. The appellant relies on Order 2 of the High Court Rules.

[17] O.2 of the HCR states:

EFFECT OF NON-COMPLIANCE

Non-Compliance with rules (O.2, r.1)

1.-(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

(2) Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one employed.

Application to set aside for irregularity (O.2, r.2)

2.-(1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

(2) An application under this rule may be made by summons or motion and the grounds of objection must be stated in the summons or notice of motion.

[18] Section 45 of the Act, dealing with appeals procedure, states:

“Appeals procedure

45 (1) An appeal under this section shall be commenced by notice of appeal, in writing, which shall state specifically and concisely the grounds of appeal, and shall be lodged with, or forwarded to, the Secretary to the Tribunal not later than 14 days after the date of the decision in respect of which the appeal is brought or within such other period as may be provided in the regulations.

(2) *At the time of lodging or forwarding of the notice of appeal, the appellant shall cause to be deposited with the Secretary to the Tribunal the application fee for this purpose and such fee shall be forfeited in the event the appeal is dismissed.*

(3) *As soon as practicable after the receipt by the Secretary of a notice of appeal under this section, the Tribunal shall –*

(a) *fix a time and place for the hearing of the appeal; and*

(b) *cause notice of the time and place of the hearing of the appeal to be given to the appellant, to the Authority, and to any other persons involved as applicants or objectors to the original application the decision on which gave rise to the appeal.*

(4) *The time and place for the hearing of an appeal under this section shall be fixed and notified to the appellant and any other interested party within 28 days after the date on which the notice of appeal is lodged with or forwarded to the Secretary to the Tribunal in accordance with this section.”*

[19] The appeal has been brought to this court by way of notice of appeal.

[20] First respondent submits that: the High Court Rules establish the procedure for filing appeals against a Tribunal’s decision. There are no Regulations or Rules under the Act for filing appeals from the Tribunal to the High Court and therefore Order 55 of the High Court Rules applies.

[21] Order 55, rule 3 (1) of the HCR states:

“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.”

[22] In my judgment, section 45 of the Act applies to an appeal from the Authority to the Tribunal and not to an appeal from the Tribunal to the High Court. Order 55

of the HCR applies to an appeal from the Tribunal to the High Court as there is no specific provision in the Act as to how an appeal is to be brought from the Tribunal to the High Court. It is abundantly clear that O.55 applies to every appeal which by or under any enactment lies to the High Court from any court, tribunal or person (see O. 55, r.1).

- [23] O.55, r.3 says an appeal under this Order must be brought by originating motion.
- [24] In *Khan Buses Limited v Land Transport Authority & Others* (Lautoka High Court Civil Appeal No. HBA 07 of 2017, I dismissed the appeal for non-compliance with Order 55 in similar circumstances to the present case. In doing so, I followed a decision of Seneviratne J in *Satish Chand v Land Transport Authority & Another* [2016] Labasa High Court Civil Action No. HBA 01 of 2016, where he struck out the appeal on the ground that the appellant failed to comply with Order 55, rule 4.
- [25] In *KBL*, I was not referred to O. 2, r. 2 of the HCR. In the current appeal, the appellant submits that: O.2, r. 1 (3) specifically prevents setting aside any proceedings on the ground that it was not begun by originating proceedings allowed by the Rules. Normally appeals to the High Court are brought by filing a notice of appeal. The appellant further submits that: the court can easily cure any alleged defect by just ordering that the Authority filing a notice of motion relating to appeal and serving the same on all parties as is required under O.55, r. 4 HCR.
- [26] In *Zakreen Holdings Limited v Dee Cee Bus Services Limited & Ors* (Civil Appeal No. HBA 8 of 2015) a Notice of Appeal was filed and the Court still proceeded to deal with the Appeal.

[27] Technicalities should not stand in the way of justice. By filing a notice of appeal, instead of filing the appeal by way of originating motion as required by O.55, the respondents would not be prejudiced. I, therefore, allow the appeal to proceed.

[28] The appeal is against a decision of the Tribunal made in consolidated proceedings. Not all the parties involved in the consolidated proceedings will be directly affected by this appeal. The parties that will be affected by this appeal have been made respondents.

Conclusion

[29] For the foregoing reasons, I would grant leave to the appellant to amend its name to Land Transport Authority. I would disallow and reject the objection raised by the first and second respondents and dismiss their striking-out applications filed on 26 April 2016 and 10 May 2016 respectively. The appellant must file a motion setting out directions for the appeal within 28 days of this ruling. The first and second respondents will pay summarily assessed costs of \$600.00 each, totalling \$1,200.00.

Final Orders

1. Leave is granted to the appellant to amend its name to Land Transport Authority.
2. The striking-out applications filed by the first and second respondents be dismissed and struck out.
3. The appellant will file a motion setting out directions for the appeal within 28 days of the date of this ruling.

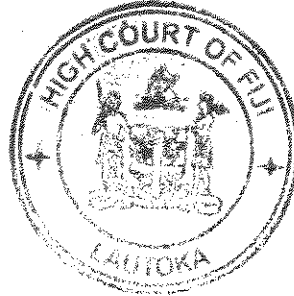
4. The first and second respondents will pay summarily assessed costs of \$600.00 each, totalling \$1,200.00 to the appellant.

M.H. Mohamed Ajmeer
29/3/18

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M.H. Mohamed Ajmeer

JUDGE



At Lautoka

29 March 2018

Solicitors:

For the appellant: Messrs R Patel Lawyers, Solicitors

For the first respondent: Messrs Sherani & Co, Solicitors

For the second respondent: Messrs Mishra Prakash & Associates, Barristers & Solicitors

For the third respondent: Messrs Patel & Sharma Lawyers, Barristers & Solicitors