

IN THE HIGH COURT OF FIJI  
AT SUVA  
APPELLATE JURISDICTION

HBA Action No. 15 of 2018

LTA Appeal Action No. 125 of 2017

BETWEEN : AVIN AMAL SINGH T/A WANANAVU RENTALS

APPELLANT/INTERESTED PARTY

AND : KOROMAKAWA RENTALS AND TOURS

1<sup>ST</sup> RESPONDENT

AND : LAND TRANSPORT AUTHORITY

2<sup>ND</sup> RESPONDENT

CORAM : The Hon. Mr. Justice David Alfred

COUNSEL : Mr M. Nand for the Appellant

: Mr F. Vosarogo for the First Respondent

: Ms E. Dauvere for the Second Respondent

Date of Hearing : 14 March 2019

Date of Judgment : 01 May 2019

## JUDGMENT

1. This is the Appellant's Originating Notice of Motion (OM) seeking the following orders:
  - (1) *That the execution and enforcement of the decision of the LTA Tribunal in LTA Appeal No. 127 of 2017 be stayed until determination of the appeal.*
  - (2) *That the decision of the Second Respondent (LTA) dated 13 October 2017 conveyed by letter dated 8 November 2017 be upheld.*
  - (3) *The grounds of appeal are as follows:*
    - (i) *The Tribunal erred in Law:*
      - (a) *By failing to determine the preliminary objection of the LTA at the hearing on 15 June 2018*
      - (b) *By wrongly applying LTA Regulation 5(a)(h) and determining that Hire Permits require a base contrary to section (sic) 44 of the Public Service Vehicles Regulations (Regulations)*
      - (c) *By failing to weigh in the interest of justice and fairness for the Appellant*
      - (d) *By being prejudicial to the Applicant (sic) that copy records had no contracts of Design Contractors and Galoa and Dranikula Village Communities*
      - (e) *By exercising its powers excessively as the circumstances did not warrant cancellation of the Permits.*
    - (ii) *The Tribunal exceeded its jurisdiction when it is only limited to hear whether the process was duly followed thus going beyond the jurisdiction.*
  - (4) *Wherefore the Appellant prays the decision of the Land Transport Appeals Tribunal dated 17 August 2018 be set aside and quashed and the decision of the LTA be upheld.*
2. On 2 October 2018 Mr Kumar for the Appellant informed the Court that he was not pursuing the stay application but only the points of law. Mr Vosarogo agreed that this is the proper procedure. Counsel were to obtain the record of the Tribunal proceedings.
3. The hearing commenced with Mr Nand submitting. He said under section 48 of the LTA Act 1998 an appeal could only be on points of law to the High Court. He is only proceedings on ground 2 of the appeal. He submitted a base is different from a place of business and there was no need to confirm on a base. This is the issue.
4. Mr Vosarogo then submitted. He said there was no wrong inference by the Tribunal regarding a base. The Tribunal corrected what the LTA found wrong.

5. Ms Dauvere then submitted. She said the Tribunal is wrong and the requirement for a base is not necessary at all, and the Tribunal should not have looked to the base at all. The Tribunal only needed to consider the decision of the Board based on Regulation 5.
6. Mr Nand did not reply.
7. At the conclusion of the arguments, I informed I would take time for consideration. Having done so I shall now deliver my decision.
8. The Court has to consider the sole ground of appeal canvassed by the Appellant i.e the determination of the issue relating to the requirement for a base.
9. I start by perusing the Land Transport Act 1998. Section 6(1) establishes the Land Transport Authority (LTA) whose functions are laid out in section 8. Section 40(1) establishes the Land Transport Appeals Tribunal (Tribunal) whose function is to hear and determine appeals against decisions of the LTA relating, inter-alia, to public service vehicles (PSV). Section 48 provides "*A decision of the Tribunal shall be subject to an appeal, only on points of law, to the High Court.*"
10. I now turn to the Land Transport (Public Service Vehicles) Regulations 2000. Regulation 5(1) reads:

*"In considering an application to issue, renew or change any condition of a permit, the Authority must take into account any matter it thinks fit or desirable to give effect to the provisions of the Act and in particular must have regard to-*

  - (a) the needs of the public and the desirability of ensuring that services to passengers are maintained or enhanced;*
  - (b) the effect of the proposed service on other public service vehicle operators;*
  - (c) the suitability of the routes on which a service would be provided under the permit;*
  - (d) the suitability and fitness of the applicant to hold a permit;*
  - (e) the financial standing of the applicant;*
  - (f) any evidence presented at a hearing conducted under regulation 4;*
  - (g) the type of vehicle which the applicant proposes to use on the service; and*
  - (h) the immigration status of the applicant."*

11. From the minutes of the Board's Eastern PSV hearing on 13 October 2017, the Board considered the opposed Application by the Appellant for 5 new hire permits, noted the objections, and approved the application as the Appellant had "met all the requirements pursuant to Regulation 5(1) a-h and subject to confirmation from FRA and Town and Country Planning regarding the viability of the proposed base at Arts Village".
12. The LTA by its letter dated 8 November 2017, informed the Appellant:

*"a. The Board have approved the applications for 5 new hire permits as the applicant have met all the requirements pursuant to Regulation 5(1) a-h and subject to confirmation from FRA and Town and Country Planning regarding the viability of the proposed base".*
13. Thus I finally need to peruse Regulation 44(1) which reads:

*"The holder of a hire permit must-*  
*(a) have a place of business approved by the Authority; and*  
*(b) provide and maintain the necessary facilities at the place to allow the public to make arrangements to hire a hire vehicle either immediately or at a specific time and place".*
14. I note Regulation 5(1) says nothing about a base. Neither does Regulation 44(1) which only talks about a place of business approved by the LTA.
15. I further note that section 47 provides "For the purposes of the hearing and determination of any appeal the Tribunal shall have regard to those matters which the Authority is required to have regard to in considering an application under this Act." The matters the LTA is required to have regard to are those set out in Regulation 5(1) all of which the Board stated the Appellant has met. This is repeated in the LTA's letter of 8 November 2017.
16. Since the Act obliges the LTA (Board) - and for that matter the Tribunal - to have regard to the abovementioned matters, and the Board has, I fail to see how the Board's decision can be considered as "irrational" by the Tribunal.
17. Consequently it falls to me to decide whether the judgment of the Tribunal contains a point of law on which the appeal to this Court can be mounted and if so, may succeed.

18. I shall therefore turn to the decision of the English Court of Appeal in: *Instrumatic, Ltd. v. Supabrase, Ltd* [1969] 2 All E.R 132 where Lord Denning M.R said:

*“There are many tribunals from which an appeal lies only on a “point of law”; and we always interpret the provision widely and liberally. In most of the cases the tribunal finds the primary facts (which cannot be challenged on appeal); and the question at issue is what is the proper inference from those facts. In such cases, if a tribunal draws an inference which cannot reasonably be drawn, it errs in point of law, and its decision can be reviewed by the courts. That was settled, once and for all, in *Edwards (Inspector of Taxes) v. Bairstow (1)*. In other cases the question is whether, given the primary facts, the tribunal rightly exercised its discretion. In such cases, if the tribunal exercises its discretion in a way which is plainly wrong, it errs in point of law, and its decision can be reviewed by the courts. The courts can review the discretion of a tribunal, just as they can review the discretion of a judge in chambers, and on like grounds”.*


19. In my view the Tribunal has focused its attention on the claimed investigation finding that the Appellant intended to use hire permits to operate from a base and made that a basis for drawing, what I consider to be, a wrong inference. The wrong inference of the Tribunal was that the Appellant would operate from Arts Village. It is this wrongful exercise of its discretion that is an error on a point of law which this Court can review.

20. In the result the Tribunal’s judgment is hereby reversed and I make the following orders:

- (1) The decision of the LTA to grant 5 hire permits to the Appellant is affirmed.
- (2) The cancellation of the 5 Hire Permits is hereby set aside and the 5 permits are reinstated with immediate effect.
- (3) The order for the Second Respondent to pay costs of \$1000 to the First Respondent is set aside and if these costs have been paid, the First Respondent is hereby ordered to refund the said costs of \$1,000 to the Second Respondent within 14 days of this judgment.
- (4) The First Respondent is to pay the costs of this Appeal summarily assessed at \$1,000 to the Appellant.
- (5) There shall be no order as to costs as regards the Second Respondent.

21. Before I rise from the bench for the final time I wish to make a comment. This Court does not countenance the awarding of costs against a body created by statute whose decision is arrived at in the course of carrying out its bounden duty without straying beyond the jurisdiction conferred by Parliament on it.

Delivered at Suva this 01<sup>st</sup> day of May, 2019.



David Alfred  
**JUDGE**  
High Court of Fiji