

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

Civil Appeal No. HBA 31 of 2020

**IN THE MATTER** of Section 48 of the Land Transport Act of 1998 and Order 55 of the High Court Rules of 1988.

**AND**

**IN THE MATTER** of Land Transport Appeal No. 12 of 2018 I the Land Transport Appeals Tribunals.

**AND**

**IN THE MATTER** of an Appeal against the Ruling of His Worship Magistrate Chaitanya Lakshman in striking out Land Transport Appeal No. 12 of 2018.

**BETWEEN: ISLAND BUSES LIMITED**

**APPELLANT**

**AND : LAND TRANSPORT AUTHORITY**

**RESPONDENT**

**AND : ZAKREEN HOLDINGS LIMITED  
TACIRUA TRANSPORT COMPANY LIMITED  
DEE CEE'S BUS SERVICES LIMITED  
TEBARA TRANSPORT LIMITED**

**INTERESTED PARTIES**

**Counsel : Appellant: Mr Haniff.F  
: Respondent: No Appearance  
: First Interested Party: Mr Lajendra. N  
: Second Interested Party: Mr Kapadia. V**

**Date of Hearing** : 8.3.2021

**Date of Judgment** : 15.3.2021

## JUDGMENT

### *Catch Words*

*Notice of Appeal- Office for lodgment closed- informed the inability to lodge and emailed – concurrence of officials- Sections 2, 5, 6,7(1), &(2) of Electronic Transaction Act 2008, hard copy filed and fees paid when informed by email to do so- Section 45(1) &(2) of Land Transport Act 1988.*

## INTRODUCTION

1. This is an appeal from the decision of Land Transport Appeal Tribunal (the Tribunal) striking out the Appeal of the Appellant filed in the Tribunal, on the basis that it was filed outside the time period stipulated in law. Appellant had forwarded Notice of Appeal via an email to the Secretary of Tribunal within time period since the office was closed, on a working day and subsequently filed hard copy and paid fees when informed about availability in office. Relevant date of communication of the decision of Appeals Board of Land Transport Authority, which they appealed to the Tribunal was 8.6.2018 and time for appeal in terms of Section 45(1) of Land Transport Act 1998 (LTA 1988) expired on 22.6.2018. According to Appellant they had attempted to lodge an appeal against the decision of 8.6.2018 on 21.6.2018 as the office of the Secretary to the Tribunal was closed and was informed that office of secretary of the Tribunal would not be opened till 25.6.2018, hence the Notice of Appeal was forwarded through an email on the same day. Section 45(1) of LTA 1998 allows filing appeals through an emails in the light of Objectives contained in Section 2 of Electronic Transaction Act 2008<sup>1</sup> (ETA) and Amendment introduced to said Act in 2017, which removed the exemption of ‘court proceedings’ on applicability of the said Act. There was no dispute as to the receipt of email and attached Notice of Appeal on 21.6.2018 and the said email was replied by an email on 25.6.2018 informing availability in the office to file hard copy. Appellant had filed the hard copy of Notice of Appeal on 25.6.2018 upon receipt of the said reply, in terms of Section 45(1) of LTA 1988. From the undisputed facts, officials of Respondent concurred with emailing Notice of Appeal on a day office was closed for filing of Notice of Appeal, hence estopped from denying access to justice. Respondent did not dispute these facts in the Tribunal. Appellant could not perform a legal act on a working day and with the concurrence of the official had emailed the document and subsequently filed it with other necessary requirements when informed by the official, availability in office to do so. The objectives of ETA is ‘to remove uncertainty about using electronic methods to satisfy various legal requirements about documents and record-keeping’ and to ‘recognise the validity of and promote the development of electronic communications in commercial and non-commercial dealings and in dealings with governmental entities’<sup>2</sup>. An Act to Amend the Electronic Transactions Act 2008 (Act No 8 2017) Section 15, had deleted paragraph 3

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<sup>1</sup> Date of operation of ETA was 17.2.2017 according to official web site for Fiji Legislation <https://www.laws.gov.fj/Acts/DisplayAct/1036#> (15.2.2020 at 13.30hrs)

<sup>2</sup> See Section 2(a),(b) of Electronic Transaction Act 2008.

of the Schedule of Electronic Transaction Act 2008, which means all judicial proceedings are not exempted as it was prior to the said Amendment<sup>3</sup>. Section 5 of ETA is conclusive on the issue of the issue of 'forwarding' a Notice of Appeal to the Tribunal in terms of Section 45(1) of LTA 1998, and there was necessary legal teeth to accept Notice of Appeal on 21.6.2018 and Secretary of the Tribunal had accepted Notice of Appeal in terms of law.

## FACTS

2. The following facts are not in dispute. The decision of the Land Transport Appeal Board was conveyed to the Appellant, Island Buses Limited on 8.6. 2018.
3. Appellant was required to file the appeal in this matter by 22.6.2018.
4. On 21 .6. 2018, an employee of Appellant's law firm, made attempts to file a Notice of Appeal to the Tribunal's office, but this was not possible as the officials had left for official work in different location.
5. The employee of law firm returned to the office unable to file the Notice of Appeal and this fact was informed to an administrative personnel of law firm who phoned Secretary to the Tribunal.
6. The Secretary of the Tribunal, informed that he was travelling to Lautoka for the LTA Appeals Tribunal matters in Lautoka and will not be available until 25.6. 2018.
7. 21.6. 2018, sent an email attaching the Notice of Appeal to Secretary to the Tribunal.
8. Email of 21.6.2018 stated:

"Hi ..

We spoke (Marie/Eroni) this afternoon.

Find attached is the Notice of Appeal we wanted to file this afternoon.

You advised me that you won't be in your office today as you are traveling to Lautoka.

Please advise when we will be able to file our Notice of Appeal."
9. On 21 .6. 2018, counsel for appellant had informed the client, about the email communication and Notice of Appeal forwarded through an email.
10. 25.6.2018, the Secretary to the Tribunal, replied to email of 21.6.2018 stating

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<sup>3</sup> Schedule to Electronic Transactions Act 2008 in Laws of Fiji indicate 'Judicial Proceedings' as an exempted item and this is not correct after implementation of Electronic Transaction( Amendment ) Act 2017(Act No 8 of 2017)

“Please be advised that I am available in the office this week.” On the same day hard copy of Notice of Appeal was filed along with other legal requirements such as payment of fees.

11. After speaking to secretary to the Tribunal an email was sent him attaching Notice of Appeal on 21.6.2018. The email stated,

"Hi Eroni

We spoke (Marie/Eroni) this afternoon.

Find attached is the Notice of Appeal we wanted to file this afternoon.

You advised me that you won't be in your office today as you are traveling to Lautoka.

Please advise when we will be able to file our Notice of Appeal."

12. On 25.6.2018, the addressee of said email, responded the above email of 21.6.2018 saying "Please be advised that I am available in the office this week'.
13. The Notice of Appeal was lodged on 25.6.2018 and other relevant requirements were fulfilled such as payment of fees.
14. Appellant was granted time to file written submissions after hearing and first interested party filed written submission at hearing.
15. Appellant grounds of appeal:
  1. The Tribunal erred in law and in fact by failing to find that the Notice of Appeal was filed on 21 June 2018. Further and/or alternatively;
  2. The Tribunal erred in law and in fact by failing to find that the Notice of Appeal was forwarded to the Secretary of the Land Transport Appeals Tribunal on 21 June 2018 by electronic mail within the requirement(s) of Section 45(1) of the Land Transport Act, 1998.
  3. The Tribunal erred in law by considering Section 45(2) of the Land Transport Act, 1998 when the application to strike out the Notice of Appeal was only brought under Section 45(1) of the Land Transport Act, 1998.

## ANALYSIS

16. This is an appeal against decision of the Tribunal striking out the Notice of Appeal which was forwarded to the Secretary to the Tribunal on 21.6.2018 by way of electronic mail (email) and a hard copy was filed subsequently on 25.6.2018, when informed.
17. Both hearings before this court and in Tribunal, undisputed facts were that last date for appealing against decision was 22.6.2018 and an email was forwarded on 21.6.2018 and a hard copy of Notice of Appeal was filed on 25.6.2018, with other necessary requirements such as filing fees.
18. In the 'Introduction' of the Tribunal's decision it was stated  

'The Parties are not in dispute that the Appeal was to have been filed by 22<sup>nd</sup> June 2018. The Notice of Appeal is marked as filed on 25<sup>th</sup> June 2018. This is 3 days out of time'
19. Appellant's position before this court and before the Tribunal was that a day prior to last day of an appeal, Appellant attempted to file an appeal in the office of the secretary of the Tribunal without success. This was on 21.6.2018 and on the same day Appellant had emailed a scanned purported appeal to the secretary of the Tribunal.
20. Section 45(1) of the Land Transport Act 1998 states  

"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". (emphasis added)
21. One of the main objectives stated in Section 2 of ETA  

"to recognise the validity of and promote the development of electronic communications in commercial and non-commercial dealings **and in dealings with governmental entities;**"
22. Hence government entities are obliged to recognize validity of 'electronic communications'. Respondent being a statutory body of the government and office of Secretary to the Tribunal is an entity that is covered by ETA.
23. ETA had commenced on 17.2.2017 with the coming in to operation of Electronic Transaction (Amendment) Act 2017(Act No 8 of 2017)<sup>4</sup>.
24. In terms of Section 3 of ETA 'electronic communication' is defined as

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<sup>4</sup> Laws of Fiji Vol 6 and also official website <https://www.laws.gov.fj/Acts/DisplayAct/1036#> (15.2.2020 at 13.30hrs)

'electronic communication' means any communication that the parties make by means of **data messages;**"(emphasis added)

Data Message is defined in the same section of ETA as

"data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, **electronic mail**, telegram, telex or telecopy;

25. ETA enabled the legal recognition of electronic mail in legal proceedings through Electronic Transaction (Amendment) Act 2017(Act No 8 of 2017). This Amendment that commenced on 17.2.2017 through a Gazette Notification deleted Paragraph 3 of Schedule to ETA. Schedule to ETA excluded application Part 2 and Part 3 of ETA, in certain instances stated therein.
26. Prior to introduction of Electronic Transaction (Amendment) Act 2017(Act No 8 of 2017) Schedule 3 of ETA excluded "Any matter relating to the practice and procedure of a court or tribunal, and, for this purpose, practice and procedure includes all matters in relation to which rules of court or of a tribunal may be made.", but this Schedule 3 *in toto*, was **deleted** by Electronic Transaction (Amendment) Act 2017(Act No 8 of 2017). Hence, there is no exclusion of 'Court Proceedings' from Part 2 and 3 of ETA. So matters relating to the procedure in the Tribunal is subjected to ETA.
27. Neither in the Tribunal nor at this hearing applicability of ETA was argued by Appellant hence this legal provision was not brought to the attention of Learned President of the Tribunal.
28. At the hearing I inquired the applicability of ETA on this Appeal and counsel who appeared on behalf of Appellant and Interested parties, said there is no applicability of ETA. This is not correct legal position, on ETA applies to appeal process of the Tribunal.
29. Section 5 of ETA grants validity to 'electronic transactions',  
Section 5 of ETA states  
*"Validity of electronic transactions*  
**5. A data message, electronic document, electronic record or other communication must not be denied legal recognition, effect, validity, or enforceability on the ground that it is in electronic form."**
30. There was no dispute as to receipt of the email which attached Notice of Appeal on 21.6.2018. This email was sent as per teleconference between Secretary to the Tribunal and employee of solicitor for Appellant. It also made a query as to when Appellant would be able

to file a hard copy in office. This may be due to fulfill other requirements such as payment of fees etc.

31. There is no issue that there was no online payment for fees for appeal , but this will not invalidate legal recognition given under Section 5 of ETA to Notice of Appeal. Transformation from document base system to fully electronic, 'paper less' record keeping may not be achieved once. It is an incremental process and ETA is the core legislation for providing legal validity for electronic communications in all government entities and judicial proceedings. One need not wait till establishment of all the requirements such as electronic payments to recognize electronic communications, in government entities.
32. The email of 21.6.2018, was replied on 25.6.2018 by the recipient of said email. So Respondent is estopped from recognition of Notice of Appeal emailed on 21.6.2018 as it was emailed pursuant to teleconference between the parties to email.
33. Section 45(1) of LTA 1998 allows a party to 'forward' a Notice of Appeal within stipulated time. There was no dispute that email that attached Notice of Appeal was dispatched on 21.6.2018 and it was within time period in terms of Law.
34. If there was no admission as to the receipt date of electronic communication, then Section 6 and 7 of ETA applies, completeness these provisions are dealt.
35. Section 6 of ETA states the time of dispatch of electronic communication.  
"Time of dispatch  
6.—(1) If an electronic communication leaves an information system under the control of the originator or of the party who sent it on behalf of the originator, the dispatch of the electronic communication is taken to occur when it leaves that information system.  
(2) If an electronic communication has not left an information system under the control of the originator or of the party who sent it on behalf of the originator, the dispatch of the electronic communication is taken to occur when it is received."
36. The word 'originator' is defined in Section 3 of ETA as " a party by whom, or on whose behalf, the electronic communication has been sent or generated prior to storage, if any, but it does not include a party acting as an intermediary with respect to that electronic communication"
37. The time for forwarding of Notice of Appeal was accordingly the time of dispatch. Section 45(1) allows "forwarding of a Notice of Appeal as opposed to actual filing within time period." Even if word 'forwarding' was not there section 5 of ETA gives validity to said 'electronic communication' dated 21.6.2018.

38. There was undisputed evidence that Secretary to the Tribunal had concurred with the receipt of the Notice of Appeal, by way of an email on 21.6.2018. Though it was a working day office was closed for lodgment of Notice of Appeal on that day.
39. The date of receipt of an ‘electronic message’ in terms of Section 7(1) of ETA at the time it became capable of being retrieved if the addressee had ‘designated’ an email and if not Section 7(2) of ETA applies. The difference between the two instances was that if the email was not designated there is additional burden on the person who send the electronic message to inform the recipient of the email that an email was sent. Section 7 of ETA states,
- "Time of receipt
- 7.—(1) If the **addressee of an electronic communication has designated an electronic address** for the purpose of receiving electronic communications, the time of receipt of the electronic communication is taken to be the time when the electronic communication becomes capable of being retrieved by the addressee at that electronic address.
- (2) If an electronic communication has been sent to **another electronic address** of the addressee, the time of receipt of the electronic communication is taken to be the time when it becomes **capable of being retrieved by the addressee** at that electronic address **and** it has **come to the attention of the addressee** that the electronic communication has been sent to that address.
- (3) An electronic communication is presumed to be capable of being retrieved by the addressee **when it reaches the addressee’s electronic address.**"(emphasis added)
40. According to the undisputed facts, email attached with Notice of Appeal was sent to an email of the recipient who had replied to the query ‘Please advise when we will be able to file out Notice of Appeal’.
41. The word "addressee" is defined in ETA in Section 3, in relation to “an electronic communication means a party who is intended by the originator to receive the electronic communication, but does not include a party acting as an intermediary with respect to that electronic communication”. Accordingly, Secretary to the Tribunal was the addressee of electronic mail of 21.6.2018.
42. It is an admitted fact email that it had reached the recipient on 21.6.2018. If not sender is required to provide additional evidence that either Section 7(1) of ETA. Sender of email may provide evidence as to how email address of the recipient was obtained for this purpose. If email address was not provided by addressee (eg. Through prior communication between the parties and consented to communication through such medium or through advertising to public in official website) the sender is required to use another form of communication to inform that an electronic communication was ‘dispatched’ to a particular electronic address. So the sender in such a situation required to inform not only an email was dispatched but also to which email address, the communication was dispatched.



## CONCLUSION

43. Section 45(1) of LTA 1998 allows forwarding of Notice of Appeal in writing within stipulated time period under said provision. Section 5 of ETA and deletion of Schedule 3 of ETA provided necessary legality to Notice of Appeal communicated through 'electronic communication' to the Secretary to the Tribunal on 21.6.2018. Hence decision of the Tribunal handed down on 22.7.2020 is quashed. Considering the circumstances of the case no cost awarded. Appeal is allowed.

## FINAL ORDERS

- a. Appeal Allowed.
- b. Decision of Land Transport Tribunal dated 22.7.2020 is quashed.
- c. Appellant's Appeal filed in Land Transport Tribunal reinstated.

**Dated at Suva this 15<sup>th</sup> day of March, 2021.**



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**Justice Deepthi Amaratunga**  
**High Court, Suva**