

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Judicial Review No. 37 of 2023

IN THE MATTER OF the Land Transport Act 1988.

AND

IN THE MATTER OF a decision dated 22 August 2023 by the Lands Transport Authority wherein it issued a 'First Warning Letter' to Mohammed Sareem citing purported breaches of the Land Transport Act 1988.

STATE -v- **THE ACTING BRANCH MANAGER CENTRAL EASTERN** Land Transport Authority, Lot1 Daniva Road, Valelevu, Nasinu

1st RESPONDENT

THE CHIEF EXECUTIVE OFFICER Land Transport Authority, Lot 1 Daniva Road, Valelevu, Nasinu

2nd RESPONDENT

LAND TRANSPORT AUTHORITY a statutory body established under the Land Transport Act, having its registered office at Lot 1 Daniva Road, Valelevu, Nasinu

3rd RESPONDENT

EX-PARTE: **MOHAMMED SAREEM** of 77 Fulaga Street, Samabula, Suva,
Businessman

APPLICANT

For the Applicant: Mr. M. Saneem
For the Respondent: Ms. N. Prasad

Date of Hearing: 4th June 2025
Date of Ruling: 30th July 2025

RULING ON JUDICIAL REVIEW

1. This is the ruling on the Applicant's application pursuant to Order 53 Rule 3 of the High Court Rules 1988, seeking a review of the decision made by the Respondents. The impugned decision was a purported "First Warning" letter issued by the 1st Respondent to the Applicant citing beaches of the Land Transport Authority Act, 1998.
2. Leave was granted to the Applicant on the 28th of August 2024 and thereafter he filed the required documents for the judicial review.

Brief background

3. The Applicant is a certified driving instructor holding Driving Instructor's Permit No. 215.
4. On or about 7 September 2023 the Applicant received a letter dated 22 August 2023 from the 1st Respondent, signed by the 2nd Respondent, purporting to have been issued under the authority of the 3rd Respondent titled **"First warning – Driver License No. 456421 – DIP#215"**
5. In the said letter, the Respondents made reference to unidentified Facebook posts purportedly on the page of Suva Forklift Hires Pte Limited, a company that operates its business of hiring out forklifts from its principal place of business at 83 Moala Street, Samabula, claiming that the Applicant had "congratulated one of your learners and offered to train the learners of Class 9 license at a cost of \$470."
6. The Respondents thereafter highlighted various sections of the Act that they claimed were breached by the Applicant.
7. The Respondents further stated "Additionally, under delegated powers vested on the Chief Executive of the Land Transport Authority, you are hereby issued with a 1st warning letter for contradicting the above mentioned laws when posting a sponsored promotional advertising article and video on social media namely Facebook under Suva Forklift Hire Pte Limited."

8. The Respondents failed and/or neglected to:
 - a) Inform the applicant of any investigation or complaint that it may have commenced or received;
 - b) Provide the Applicant with exact particulars of the purported Facebook postings that supposedly defied the Act;
 - c) Require the Applicant to provide any response, particulars or explanations before the Respondents proceeded to make any final decision on the allegations it had;
 - d) Comprehend that the Applicant is separate and distinct from Suva Forklift Hire Pte Limited which is a registered company in its entirety;
 - e) Separate their allegations on the company and the individual and prejudiced the Applicant in mixing the same;
 - f) Act in a manner that would be fair to the Applicant.

9. In the event the Respondents had collected the evidence or gathered statements from individuals, the same was never put before the Applicant for his response.

10. The Respondents further threatened that “The Authority wishes to remind you that if you continue to disregard the Law, the Authority shall take all the precautionary measures to ensure that compliance level is adhered too as it could affect your Driving Instructor’s Permit.”

11. The above warning by the Respondent indicates that the Applicant stands to be prejudiced in the future on the basis of this purported “First Warning” as his driving instructor Permit was nearing the expiry date – 31 December 2023.

12. The Applicant was not accorded any opportunity to respond to any allegations that the Respondent may have had against him, nor was he asked by the Respondents to answer to any queries they may have in relation to the purported Facebook posts.

13. The Respondents acted outside their jurisdiction in purporting to have the delegated powers under the Act to issue the Applicant with the First Warning dated 22 August 2023.
14. The Respondent also appears to have conjured up delegation of powers without specifically referring to the section of the Act and purported to issue the Applicant with the 1st warning dated 22 August 2023.
15. The Respondent in failing to distinguish between the Applicant and Suva Forklift Hire Services Pte Limited as 2 separate legal entities have incorrectly cited the Applicant and penalised him for purported breaches of the Act that the Respondents claim appeared on the Facebook page of Suva Forklifts Hire Pte Limited.
16. That Suva Forklift Hire Pte Limited is in the business of hiring out forklifts to individuals and businesses on dry hire (hire without a driver) at rates agreed between the hirer and the company.
17. The 3rd Respondent does not have any powers nor the authority to issue the said warning.
18. On or about the 10 November 2023, the Applicant through its counsel wrote to the Respondents advising the Respondents that the warning letter was ultra vires the Act and as such ought to be withdrawn. The Respondents failed and/or refused to do so.
19. This application for judicial review is made pursuant to Order 53 Rule 3 (2) – (6), which provides as follows: -
 - “(2) An application for leave must be commenced by originating motion and must be supported by affidavit stating the facts relied on.
 - (3) Order 8 rules 2, 3 and 5 shall apply to applications under this Order.
 - (4) Without prejudice to its powers under Order 20, rule 8, the Court hearing an application for leave may allow the relief sought and the grounds thereof to be amended, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit.

(5) The Court shall not grant leave unless it considers that the applicant has a sufficient Interest in the matter to which the application relates.

(6) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

20. The Applicant submits the following case authorities: -

- State vs Connors, Ex Parte Shah [2008] FJHC 65
- Council of Civil Service Unions vs Minister for the Civil Service [1984] 3 All ER 935

21. The Applicant provides the following grounds for judicial review: -

- (a) The said warning letter was ultra vires from the Land Transport Act (“the Act”) in that the Respondents have failed and exceeded their jurisdiction and/or powers conferred upon them by the Land Transport Act, more particularly section 113 of the Act.
- (b) The Respondent failed to provide reasons for their decision of issuing the Warning Letter in particular, but not limited to – not showing cause or providing evidence that the Applicant had acted in breach of the Land Transport Act.
- (c) The Respondents erred in their interpretation of sections 60 (3) (b), (d) of the Act and Regulations 42 (1), 42 (2) and 42 (5) of the Land Transport (Driver) Regulations 2000 to the detriment of the Applicant.
- (d) The Applicant has not been accorded natural justice in the manner in which the Respondents carried out their investigations and the decisions that was subsequently made.
- (e) The Applicant, being the holder of Driving Instructors Permit Number 215, which is due to expire on 31 December 2023, risks the severe prejudice by the Respondents in his application for renewal should this unlawful and invalid “First Warning.”

22. The Applicant submits that there are sufficient grounds for judicial review and to consider the decision of the Respondents to issue the First Warning on the basis of: -

- (a) Illegality

- (b) Irrationality
- (c) Procedural Impropriety

Illegality

23. The Applicant submits that when any authority exceeds the use of their powers when making certain decisions, this is also known as an error of law. The Applicant submits that the following are examples of illegal decisions: -

- (a) Giving a person inadequate notice under a statute.
- (b) Failing to exercise decisions in good faith.
- (c) Failing to give our reasons for certain decisions.
- (d) Failing to consult with the appropriate person whom the decision is made for.
- (e) Delegation of power to in appropriate third party.

24. The Applicant submits that the Respondents have failed and exceeded their jurisdictions and/or powers conferred upon them by the Land Transport Act by issuing the purported First Warning letter which clearly portrays that they have acted ultra vires whereby they have grafted some onerous rules and conferred powers upon them to issue “warning letters” when in fact and in law they do not have any such powers granted to them.

25. That due to the actions of the Respondents, the Applicant has not been accorded natural justice in the manner in which they carried out their investigations and the decisions that was subsequently made.

26. The Applicant cites the case of State vs Land Transport Authority, Ex Parte Fiji Taxi Union [2024] FJHC 279; HBJ 1 of 2004 (17 February 2004) where Justice Jiten Singh stated as follows: -

“The LTA is established under section 6 of the Land Transport Act. Section 8 outlines the functions of the Authority. Its functions are to devise and carry out measures for improvement of passenger transport, to ensure provision for adequate passenger transport, to ensure road safety and to do anything incidental to those functions. Section 9 deals with powers of the Authority. It reads:

“9. – (1) The Authority may, subject to this Act and to any directions given to it by the Minister under section 10 –

- (a) regulate and control all or any means of land transport;

(b) take such steps and to do all such acts, matters, and things as it may think necessary or desirable for effecting the co-ordination of road transport services, and the improvement of the means of, and facilities for, road transport;

(c) appoint in writing authorised officers for all or particular purposes of this Act;

(d) do all things necessary or convenient to be done for or in connection with, or incidental to, the exercise of its powers or the performance of its functions under this Act or any other Act.”

This section does not give the authority power to make regulations or anything that has the substantive effect of regulations. The key words are subject to this Act and any directions given by the Minister.

The power to make regulations is vested in the Minister by virtue of section 113 of the Act. It gives the wide spectrum of areas in respect of which “the Minister, after consultation with the authority, may make regulations necessary to give effect to the provisions of this Act, and in particular to prescribe ...” It goes on to describe what those various areas are. The Minister has in the past made regulations and in particular Land Transport (Vehicles Registration and Construction) regulations 2000 – Legal Notice 59 of 2000 and Land Transport (Public Service Vehicles) regulations 2000 – Legal Notice 61 of 2000.

It is the Minister who has powers to make regulations “to prohibit or restrict the use of vehicles the construction or use of which is unsafe or annoying to other road users”. Section 113(2) (p) and “prescribe requirements affecting the safety, serviceability and comfort of public service vehicles, including requirements relating to vehicle age, engine size ...” Section 113(4) (f). Under the Act these are matters that are within the powers of the Minister to regulate upon. Only the Minister can make regulations regarding these matters.”

27. The Applicant submits that the Respondent in this instance have acted ultra vires the Act, in that they have grafted onto the regulation some more onerous requirements when the same had not been gazette by the Hon. Minister, to which he has powers to and not the Respondents themselves.

Irrationality

28. Irrationality was discussed in the case of State vs Public Service Appeal Board, Ex Parte Nair [2006] FJHC 148; HBJ 21 of 2005 (13 July 2006) as follows: -

"**Irrationality**" describes a decision "which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it' (*CCS Unions* (supra) at 951).

29. The Applicant submits that that the decision of the Respondents is irrational in that they have failed to provide reasons for their decision is issuing the First Warning letter to the Applicant without first affording him an opportunity to show cause (in the event they had the powers to do so.)

30. Irrationality was also discussed in *State vs Land Transport Authority Ex Parte Fiji Taxi Union* (supra) as follows: -

“In judicial review proceedings the standard of unreasonableness which will justify a court quashing a decision reached is very high” – Justice Scott in *The State v. Public Service Appeal Board and Ministry of Education Ex-parte: Sharda Lal*.

A decision is unreasonable in the *Wednesbury* sense if it is “so wrong that no reasonable person could sensibly take that view”. Simply because someone differs from the view taken by the Authority does not render Authority’s decision unreasonable as “two reasonable [persons] can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their right to be reasonable” – *In re: W. (on Infant) 1971 A.C. 682* at 700D.”

Procedural Impropriety

31. In *State vs Public Service Appeal Board Ex Parte Nair* (supra), procedural impropriety was defined as follows: -

“The head of 'procedural impropriety' includes 'failure to observe basic rules of natural justice and failure to act with procedural fairness. The requirements of natural justice go to the procedure adopted by the decision taken and the need to allow each party an opportunity to put his case'. (*Immigration Law & Practice* by Jackson at 19.13).”

32. The Applicant submits that the Respondents breached the Applicant’s natural justice. As the Applicant was prejudiced of his basic rights whereby the purported first Warning letter was issued to him without consulting the Applicant or giving him an opportunity to respond.

33. The Applicant therefore submits that the decision made by the Respondents was of procedural impropriety.

Adequate Remedy

34. The Applicant submits that the most appropriate remedy available to him is certiorari to quash the decision of the Respondents. The Applicant submits that the Respondents' decision should be quashed as there was an error of law, failure to provide natural justice, unreasonableness as well as the presence of bias when making the decision.

35. The Applicant relies on Justice Jiten Singh's pronouncement in State vs Land Transport Authority Ex Parte Fiji Taxi Union (supra): -

“I am of the view that the Minister through the regulations laid the criteria the various public service vehicles must meet before they are granted a licence. The applicants have complied with them and have been issued licences or permits. If the Minister feels that for reasons of safety or comfort of travelling public more stringent requirements are necessary, it is for him to make the necessary amendments. The LTA must try to convince the Minister as to the wisdom of the proposals. The LTA cannot by itself graft onto regulations some more onerous requirements. It does not have the powers to do. It can only do what the legislation has enabled it to do. The age and construction requirements as imposed are therefore ultra vires of LTA.”

36. The Applicant submits that the Respondents have abused the discretionary powers vested with it and failed to provide reasons as to why the purported warning letter has been issued and the procedures followed has affected the tenets of natural justice.

37. The Respondents submit that the application ought to be struck out as the Attorney General has not been added as a party. The Applicant submits that this view is erroneous and cites the case of Land Transport Authority vs Pasifika Enterprise Civil Appeal No. ABU 57 of 2020

38. In conclusion the Applicant prays for the following Orders from the Court: -

(a) An order for certiorari to remove into this Court and quash the said Warning Letter dated 22 August 2023;

(b) A declaration that the said Warning Letter is null and void and of no effect;

- (c) A declaration that the Respondents acted ultra vires the LTA Act in issuing the said warning letter dated 22 August 2023.
- (d) The Respondents be restrained from relying on or applying the findings and the contents of the said warning letter dated 22 August 2023 in any transactions or applications made by the applicants at the 1st Respondent.
- (e) Costs of this application.

39. Those were the submissions of the Respondents.

Submissions of the Respondents

40. The Respondents filed their Notice of Opposition on 25 January 2024 and filed the affidavit in opposition on the 22 May 2024.

41. The Respondent submits that the mandatory requirements for judicial review are set out at Order 53 Rule 5 of the High Court Rules 1988 which provides: -

“Mode of applying for judicial review (O.53, r.5)

5.–(1) When leave has been granted to make an application for judicial review, the application shall be made either by originating motion or by originating summons.

(2) The notice of motion or summons must be served on all persons directly affected and where it relates to any proceedings in or before a court and the object of the application is either to compel the court or an officer of the court to do any act in relation to the proceedings or to quash them or any order made therein, the notice or summons must also be served on the court officer or registrar of the court and, where any objection to the conduct of the judge is to be made, on the judge.

(3) Unless the judge granting leave has otherwise directed, there must be at least [10] days between the service of the notice of motion or summons and the day named therein for the hearing.

(4) A motion must be entered for hearing within 14 days after the grant of leave.

(5) An affidavit giving the names and addresses of, and the places, and dates of service on, all persons who have been served with the notice of motion or summons must be filed before the motion or summons is entered for hearing and, if any person who ought to be served under this rule⁸²³ has not been served, the affidavit must state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of the motion or summons.

(6) If on the hearing of the motion or summons the Court is of opinion that any person who ought, whether under this rule⁸²⁴ or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice or summons may be served on that person.”

42. The Respondents cite the authority of Council of Civil Service Unions and Ors. –v- Minister for the Civil Service [1983] UKHL 6; [1984] 3 All ER 935; [1985] AC 374 where the Honourable Court laid out the test for judicial review which are:

- “3.11 Illegality – the decision maker must understand correctly the law that regulates his decision making power and must give effect to it.
- 3.12 Irrationality (Wednesbury Unreasonableness) a decision so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it – exercise a power in an unreasonable manner than that exercise becomes open to review.
- 3.13 Procedural Impropriety – failure to observe basic rules of natural justice; or failure to act with procedural fairness towards the person who will be affected by the decision or failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred even where such a failure does not involve any denial of natural justice or deprives a person of legitimate expectations (with exceptions).

43. The Respondents submit that in addition to the three established grounds for judicial review as outlined in Council of Service Unions and Others vs Minister for the Civil Service (supra) a fourth and fifth essential requirement is that of locus standi or sufficient interest and alternative remedies. That is, an applicant must demonstrate that they are directly and adversely affected by the decision in question in order to have standing to bring a judicial review application and they have exhausted all alternative remedies before seeking for judicial review.

Locus Standi

44. The Respondents submits the case authority of State vs Civil Aviation Authority of Fiji Ex Parte Joyce [2018] FJHC 1055; HBJ 5 of 2018 (26 October 2018) where the Court stated: -

“[26] At the leave stage, I found that the applicant has sufficient interest in the matter to which the application relates.

[27] In *R v Inland Revenue Commissioners, ex parte National Federation of Self-Employed and Small Business Ltd* [1981] UKHL 2; [1982] AC 617, Lord Diplock expressed the view:

“That not only was standing a ground in itself upon which permission could be granted, it should also be considered at the substantive hearing after the relevant law and facts were examined in full.” [Emphasis supplied]

45. Further in the same ruling, the High Court made the following observations with relation to standing: -

“[30] After the House of Lords’ decision in *Inland Revenue Commissioners*, the testing of an applicant’s standing is thus made a two-stage process. On the application for permission [leave] (stage one) the test is designed to turn away hopeless or meddlesome applications only. But the matter comes to be argued (stage two), the test is whether the applicant can show a strong enough case on the merits, judged in relation to his own concern with it. As Lord Scarman put it (at 654H; likewise at 644D (Lord Diplock)): *“The federation, having failed to show any grounds for believing that the revenue has failed to do its statutory duty, have not, in my view, shown an interest sufficient in law to justify any further proceedings by the court on its application.”*

46. The test for sufficient interest is laid out in the case of *Proline Boating Company Ltd vs Director of Lands* [2014] FJCA 159; ABU 20 of 2013 (25 September 2014), where the Court of Appeal used the direct consequences test, as follows: -

“The Direct Consequences Test

[29] The English decisions reveal a vast range of situations in which an applicant has been held to have a sufficient interest in applying for leave to seek judicial review. Of these it is what I would like to call the direct consequences test that would be applicable in the instant case, for example, if the decision sought to be reviewed interferes directly with the applicant's personal rights then the applicant would have "sufficient interest".

47. The Respondent submits that the Applicant has failed to establish that the 1st warning letter has directly or personally affected him. Rather the application is premised on the Applicant’s belief or assumption that the letter may be prejudicial to him, which is speculative and not supported by any substantive evidence.

48. The Respondents submits that the 1st Warning letter is not a conviction that would affect the Applicant’s application for a driving school as per regulation 34 of the Land

Transport (Driver) Regulations 2000. For the Applicant to believe or assume it will be misconceived.

49. The Respondents further submit the authority of Vakalalabure vs State [2006] FJSC 3; CAV 3 of 2004S (I May 2006), where the Supreme Court had this to say on standing:

“[74] Mason J said, at 547:

“...apart from cases of constitutional validity which I shall mention later, a person, whether a private citizen or a corporation, who has no special interest in the subject matter of the action over and above that enjoyed by the public generally, has no locus standi to seek a declaration or injunction to prevent the violation of a public right or to enforce the performance of a public duty.

Depending on the nature of the relief which he seeks, a plaintiff will in general have a locus standi when he can show actual or apprehended injury or damage to his property or proprietary rights, to his business or economic interest...and perhaps to his social or political interests.”

[75] His Honour went on to say, at 548:

“...that a mere belief or concern, however genuine, does not in itself constitute a sufficient locus standi...”

50. Applicant’s reliance on speculative beliefs and assumptions regarding alleged prejudice is insufficient to satisfy the threshold of “sufficient interest.” His own affidavits do not establish any actual or immediate adverse consequences to his personal legal rights. The documentation relied upon confirms that the application for a driving school was submitted by a separate legal entity, Suva Forklift Hire Pte Limited and not by the Applicant in his personal capacity.

51. The Applicant has failed to demonstrate a direct or a personal legal interest adversely affected by the Respondent’s actions, and the judicial review proceedings should not be sustained.

Illegality

52. The Respondents submit that there is no illegality or error of law, and in fact, the Respondents had acted well within their own powers when issuing the “First Warning

letter” as section 8 of the Land Transport Act 1998 (LTA Act) has entrusted the Respondents to: -

“...(n) consider and /or implement any other aspect of road safety as may be referred to it from time to time; and

...(q) to do anything incidental or conducive to the performance of any of the preceding functions.”

53. Section 9 of the Act, has also empowered the Respondents to: -

“...(d) do all things necessary or convenient to be done for or in connection with, or incidental to, the exercise of its powers or the performance of its functions under this Act or any other Act.”

54. The Respondents submit that sections 8 and 9 provide ample statutory authority for the Respondents to take administrative action deemed necessary, convenient or incidental to maintaining road safety. The issuance of the “First Warning letter” falls precisely within the scope of such action – it was not a regulation, decision or order but an administrative warning based on compliance concerns.

55. The Respondents submit that the “First Warning letter” was issued pursuant to the delegated powers conferred pursuant to section 12 (6) of the Act, which provides: -

“(6) An instrument purporting to be signed by a delegate of the Authority in his capacity as such a delegate shall in all courts or tribunals be received in evidence as if it were an instrument executed by the Authority and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Authority under this section.”

56. It is trite law that where an application for judicial review challenges a decision on the basis of ultra vires, the threshold question is whether the decision maker acted within the scope of his authority conferred by law (Council of Civil Service Unions vs Minister for the Civil Service [1985] AC 374). The Respondents submit that they have acted entirely within the statutory limits established by sections 8, 9 and 12 of the Act.

57. It is not disputed that the Applicant was not the holder of a Class 9 Driving Instructor’s permit and neither was Suva Forklift Hire in possession of a valid Driving School Certificate. Due to this, the Applicant and his company, Suva Forklift Hire were in

breach of the LTA Act (section 60 (3) (b) and (d)); and Regulation 42 of the Land Transport (Driver) Regulations 2000 (Regulation 42 (2) and (5) as well as Regulation 46.

58. Sections 8 and 9 of the Act confer broad administrative discretion on the Respondents to act in a manner that ensures the effective regulation, control and safety of land transport in Fiji. These provisions are intentionally framed in general terms to empower the Authority to respond flexibly to a wide range of operational and compliance issues that may not be exhaustively covered by Regulations. The legislation in enacting these provisions clearly intended to give the Authority the necessary tools to fill operational and enforcement gaps, adapt to evolving road safety concerns, and take timely administrative measures in the public interest.

59. The warning letter did not impose new legal requirements or alter the regulatory framework but merely reminded the Applicant of existing obligations under the law. Therefore there was no contravention of section 113, and the Respondents did not act ultra vires the Act in issuing the letter.

Irrationality

60. The Respondents submit that the Applicant has not demonstrated that the Respondents acted irrationally or unreasonably in issuing the First Warning letter.

61. The Respondents acted in good faith, explaining that the letter was intended as a reminder, not a punitive step and represented a less severe alternative aimed at promoting voluntary compliance.

Procedural Impropriety

62. The First warning letter issued by the Respondent did not constitute a final or punitive decision but was a non-binding administrative communication. It did not revoke any license, impose any penalty or determine any legal right.

63. The Respondents acted with transparency and procedural fairness throughout. The warning letter followed earlier correspondences from the Respondents, including a formal letter dated 6 April 2023, outlining their concerns regarding the Applicant's conduct, including that he had been conducting Group 9 driver training without the necessary permits; included his Facebook advertisements and invited the Applicant to cease such activities immediately.
64. This correspondence was emailed directly to the Applicant. There is no evidence that he did not received it nor has he denied receiving it. The rules of natural justice require an opportunity to be heard and not that the decision maker must chase the individual for a response.
65. The issuance of the First Warning letter was therefore procedurally fair, lawful and reasonable in all the circumstances.

Alternative Remedies

66. The Respondents submit that the Applicant has an adequate and alternative remedy available, which he has failed to pursue. Under section 12 (8) of the Land Transport Act, which provides as follows: -

“(8) If a person is aggrieved by a decision made by a person to whom a power has been delegated under subsection (1), the aggrieved person may, by notice in writing addressed to the Authority, require the Authority to reconsider the decision of its delegate and the Authority may either confirm or reverse the decision of its delegate.”

67. The Land Transport (Driver) Regulations 2000, provides a similar appeal avenue by virtue of Regulation 45. The Applicant has not exercise any of these appeal procedures or invoked any of the review mechanisms under Regulation 45 of section 12 (8) of the Act.

Adequate Remedy

68. The Respondent submit that certiorari is not an appropriate and unwarranted remedy in the present circumstances.
69. Certiorari is a public law remedy that lies only against a decision that has legal effect, typically one that determines rights, imposes obligations or results in final consequences for the applicant.
70. The Respondents did not revoke the Applicant's driving instructor permit or impose any penalty in him.
71. In conclusion, the Respondents submit that the application for judicial review is without merit and ought to be dismissed in its entirety.
72. The Applicant has failed to establish a sufficient legal interest or locus standi as his assertions are based on speculation rather than on demonstrable consequences.
73. The Applicant has not shown that the issuance of the Warning letter was illegal, irrational or procedurally improper.
74. The Respondents therefore submit that this application be dismissed with costs.

Analysis

The Statutory Infrastructure relating to this dispute

75. The Land Transport Authority Act 1988 in its long title sets out the following: -

“This Act establishes the Land Transport Authority, to regulate the use and registration of vehicles, the licensing of drivers of vehicles and the enforcement of traffic laws and to provide for the repeal of the Traffic Act and other related matters.”

76. The dispute at the heart of this application for review relates to driving instructor's permits and associated regulations. Section 60 of the Act gives the Authority the power to issue a Certificate for a Driving School and to issue permits for Driving Instructors (section 60 (1) (a) and (b)).

77. Section 60 (2) and (3) of the Act then provides as follows: -

“(2) A person may apply to the Authority in the prescribed form for a driving school certificate or a driving instructor permit.

(3) No person shall—

- (a) operate a driving school business without being the holder of a driving school certificate;
- (b) instruct, for profit, another person to drive a motor vehicle without being the holder of a driving instructor permit;
- (c) not being the holder of a driving school certificate or driving instructor permit, take or use any name, title, additions or description implying that the person is the holder of a certificate or permit; or
- (d) being the holder of a driving instructor's permit, undertake the instruction for profit of persons to drive motor vehicles unless he or she is employed by a person or business who or which is the holder of a driving school certificate.”

78. Section 113 of the Act gives the Minister, after consultation with the Authority, the power to make Regulations. With respect to driving instructors and certificates for Driving Schools, the relevant section provides as follows: -

“113 (3) In relation to Part 5, regulations may—

- (a) provide for the issue of drivers' licences for particular classes of vehicles with appropriate conditions and restrictions, including being subject to the payment of any outstanding fees or penalties payable under this Act;
- (b) prescribe qualifications as to the age at which a licence may be obtained, ability and physical fitness to drive and experience in one class before a licence may be issued for another class;
- (c) regulate the issue, variation, duration, renewal, suspension, cancellation and return of drivers' licences;
- (d) prescribe the requirements for drivers of vehicles carrying hazardous materials;
- (e) prescribe the centres at which certain persons may be tested on their ability to drive, the driving standards to be met and the fees which may be charged;
- (f) provide for the issue of driving instructors' permits and the registration of driving schools, and prescribe the fees to be paid;

- (g) prescribe qualifications and standards to be met by driving instructors, driving schools and the vehicles used for tuition;
- (h) authorise persons licensed to drive in other countries to drive in Fiji subject to such conditions as may be prescribed;
- (i) prescribe the fees to be paid for the issue of drivers' licences, renewals of licences, and the issue of duplicate licences;
- (j) regulate the issue of learners' permits or provisional licences including specifying of conditions;
- (k) prescribe any class of driver's licence."

79. The Land Transport (Driver) Regulations 2000, at Division 2 provides for driving instructors. Regulation 40 provides that applications for a driving instructor's permit shall be made in the prescribed form with the prescribed fees.

80. Regulation 41 sets out the factors that the Authority will take into account when considering such applications: -

"Consideration of an application

41 (1) The Authority must, before issuing or renewing a driving instructor's permit, be satisfied that the applicant—

- (a) is a fit and proper person to hold such a permit and in particular;
- (b) has held a driver's licence, other than a provisional licence or learner's permit, for the class of vehicle to which the instructor's permit will apply for a total of not less than 3 years during the 4 years immediately before the date of the application;
- (c) has not in the last 5 years been convicted at an offence, the penalty for which is imprisonment for 3 months or disqualification from driving for any period;
- (d) has adequate knowledge—
 - (i) of the mechanical aspects of the motor vehicle;
 - (ii) of the laws governing the use of vehicles and public streets and the Road Code;
- (e) is employing or will be employing an appropriate method and practice of driving tuition;
- (f) in the case of an application for a new permit, is likely to undertake gainful employment as a driving instructor;
- (g) in the case of an application for the renewal of a permit, has undertaken gainful employment as a driving instructor during the period of the expiring or expired permit, as evidenced by driving school records for the period the Authority requires.

(2) The Authority may issue a code of practice containing the criteria for determining applications for a driving instructor's permit."

81. In terms of cancelling the registration, Regulation 44 provides as follows: -

“Cancellation of registration or permit

- (1) The Authority may, by written notice, require—
 - (a) a person operating a registered driving school; or
 - (b) a holder of a driving instructor’s permit, who is or has become, whether by reason of physical incapacity or for any other reason, unfit to operate a registered driving school or to be the holder of a driving instructor’s permit to show cause why the registration or permit should not be cancelled.
- (2) A notice required under sub regulation (1) must—
 - (a) state the grounds for cancellation; and
 - (b) state the date, time and place for showing cause under sub regulation (1).
- (3) A notice required under sub regulation (1) must be served personally on the operator of the driving school or holder of the permit or sent by registered post to his or her last known or usual place of residence, work or business.
- (4) The Authority must when considering a matter under this regulation take into consideration the matter stated in the notice and any evidence tendered by the holder of the licence and may, if it thinks fit, revoke or suspend the certificate of registration or driving instructor’s permit.”

82. In this instance, the Respondent submits that the Applicant at no time ever, possessed a Driving Instructor’s Permit for Class 9, for forklifts, instead he only possessed permit for Class 2 (paragraph 5 of Mosese Foalo’s affidavit deposed on 21 March 2024).

83. The Applicant’s business, Suva Forklift Hire, also did not possess a valid Certificate for a Driving School at any time.

84. The Respondents were made aware of this and notified the Applicant accordingly by email dated 6 April 2023. The Respondent were well within their rights to have issued a TIN or proceeded under Regulation 44 as cited above.

85. Instead they exercised their discretion and issued the warning to the Respondent.

86. I find that the Respondents were within their rights, under the Act as well as the Regulation, to issue the said warning to a defaulting driving instructor. This less severe sanction was allowed by virtue of section 12 of the Act, as relied on by the Respondents

87. The first warning letter did not revoke his license nor did it expose him to prosecution in Court. I find that the repercussions that the Applicant feared were at best speculative.

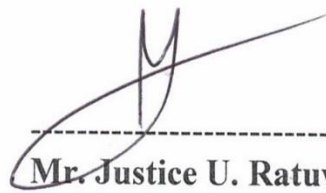
88. I find that there was no error in law, the Applicant was accorded natural justice in that he was made aware of his default and breach of the terms of his driving instructor's permit.

89. The Applicant has therefore failed to establish that the Respondents erred in law or acted irrationally; or that they failed to accord him procedural propriety.

This is the Ruling of the Court: -

- 1. The application for judicial review against the issuance of the First Warning letter to the Applicant on the 22 August 2023 is refused.**
- 2. The other remedies sought in the Statement for Judicial Review are refused.**
- 3. The Applicant shall pay the costs of the Respondents, summarily assessed at \$1,000 (one thousand dollars) – one month to pay.**





Mr. Justice U. Ratuveli
Puisne Judge

cc: Saneem Lawyers
Land Transport Authority of Fiji