

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 362 of 2015

BETWEEN: **ASIA PACIFIC LOGISTICS (PTY) LTD & ANTHONY'S LOGGING** a
limited liability Company and a firm respectively, whose registered office is
at 68 Dilkusha Road, Nausori.

PLAINTIFF

AND: **LAND TRANSPORT AUTHORITY** a body corporate established under the
Land Transport Authority Act 1998, with its headquarters located at Lot 1,
Daniva Road, Valelevu, Nasinu.

DEFENDANT

BEFORE **:** **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Ms. Nayacalevu S.** for the Plaintiff/Applicant

Mr. Chand V. with Ms Prasad N. for the Defendant/Respondent

DATE OF DECISION: 25th March, 2026

DECISION

[Further and Better Particulars]

Introduction

1. The Plaintiff filed an Amended Summons coupled with an Affidavit in Support and sought for further and better Discovery.
2. The Defendant's Affidavit Verifying List of Documents [AVLOD] listed a total of Ten(10) documents, none of which addresses their Statements pleaded in paragraph 10, 12 and 13 of the Statement of Defence [SOD].
3. The Defendant had sworn in their Affidavit Verifying List of Documents that paragraph 6 of the accompanying list was true. The paragraph stated:

'That the Defendant have or had in their possession, custody or power the documents relating to the matter in question in this action enumerated in schedule 1 - Part 1 hereto.'
4. On the first day of trial, on 11th June 2024, the Defendant and/or counsel representing had come to court with Eighteen (18) additional documents pertinent to the matter(s) in question in the current action, which Documents were not previously disclosed to the Plaintiffs or their Solicitors. These eighteen (18) documents as mentioned hereunder were only encountered by chance by the Plaintiff's Solicitors, and raised the issue with the Court:

DATE	DOCUMENT
24 September 2014	Copy of letter to the PS for Ministry of Works, Transport and Public Utilities with subject <i>Request for increase in GVM (Gross Vehicle Mass) - Asia Pacific Logistics</i> from the CEO of LTA
12 May 2014	Copy of LTA Standards & Compliance Report regarding the <i>Verification of application for gross weight excess</i> in respect of HK477 and FX477. Report authored by Acting Technical officer Lorima Tuivaga.
29 April 2014	Copy of LTA Technical Section Central Eastern Report regarding <i>renewal of exemption</i> in respect of HK477. Report authored by Team Leader Vehicle Inspection Taniela Tora.
09 April 2014	Copy of letter from Asia Pacific Logistics to LTA CEO regarding <i>weight overall approval for HK477</i> . Details of FX477 enclosed with letter.
01 March 2014	Copy of letter from Fiji Hardwood Corporation to the GM of Asia Pacific Logistics.
9 July 2014	Copy of letter from PS for Ministry of Finance to FRCS CEO regarding the <i>request for issuance of import license on imported two second hand 6x6 Logging truck - Asia Pacific Logistics Pty Ltd</i>
21 November 2011	Copy of letter from PS for Ministry of Finance to Andrew Anthony

	regarding the <i>exemption on duty on a brand new logging truck imported from China.</i>
07 May 2014	Copy of a Memorandum from the Conservator of Forests to FRCA CEO regarding <i>duty concession applications application for Asia Pacific Logistics Ltd - support letter</i> , and attachments of all relevant documentations.
08 September 2014 to 16 September 2014	Copy email correspondence between Acting Manager Compliance for the Standards & Compliance department of LTA and Dale Nicholls of Fiji Roads Authority regarding <i>Load limits on Fiji Roads</i>
10 September 2014	Copy of email correspondence between PS for the office of the PM and PS for Ministry of Works, Transport & Public Utilities regarding request for increased gross vehicle mass Asia-Pacific logistics
14 July 2014	Copy of letter from Asia Pacific Logistics to the Honourable PM regarding <i>logging truck load limit</i>
Undated	Copy of briefing paper on Legal Road Limits, overweight loads and pavements and bridges in Washington State
Undated	Copy of letter from Taniela Tora to Asia Pacific Logistics regarding <i>off road logging trucks</i>
11 December 2015	Copy of letter from Shekinah Law to LTA Senior Legal Officer regarding <i>Asia Pacific logistics (Pty) Ltd & Anthony logging v LTA (HBC 362 of 2015)</i>
23 June 2016	Copy of letter from Shekinah Law to LTA Board Chairman regarding <i>Asia Pacific Logistics (Pty) Ltd & Anthony's Logging: Exemption on Vehicle Weights</i>
9 October 2015	Copy of letter from Shekinah Law to LTA Board Chairman regarding <i>reconsideration of delegates decision on withdrawal of exemption on vehicle weights from Asia Pacific Logistics (Pty) Ltd & Anthony's Logging</i>
24 December 2015	Copy of letter from Shekinah Law to LTA Senior Legal Officer regarding <i>Asia Pacific Logistics (Pty) Ltd & Anthony Logging v LTA (HBC 362 of 2015)</i>
Undated	Copy of Supplementary Affidavit (not filed) of Sikeli Kama (intended to be filed for LTA) in Civil Action 362 of 2015.

5. The Defendants were then ordered to make a discovery of the additional documents and the trial which had been impending hearing and determination since 2015 had to be Vacated and Rescheduled in order to allow time to peruse the documents and prepare for trial.
6. On 16 July 2024, the Plaintiff's Solicitors requested the Defendant to disclose or discover further documents that are material to the matters in question in this action, however, the

Defendant failed to respond and hence prompted the current Summons for further and better discovery.

7. The Defendant's Contention is that-

- The Plaintiff had filed the current application after the matter had proceeded for trial. The Plaintiff's Counsel observed a bundle of documents on the Defendant's bar table during the Hearing on 11th June 2024.
- It appears that from this singular observation, the Plaintiffs have a misconception of suppression and conspiracy, alleging that the Defendant is withholding information and 'smoking gun' that would prove their claim of unequal treatment.
- Vigorously opposing the application.
- That both parties have discovered the documents and the necessary discovery process has been discharged with diligence and Candor.
- The Plaintiff's application constitutes an impermissible 'fishing expedition' designed to delay proceedings. The Plaintiff is hiding the Plaintiffs own fraudulent conduct regarding vehicle specification and distract the Court from the fundamental weakness of the substantive claim which is that the Plaintiffs Voluntarily chose to let their vehicles 'ROT' rather than operate them within the prescribed Legal Limits.

Determination

8. The Plaintiffs were in business of harvesting and transporting mahogany and other timbers and used trucks to cart these logs to fulfill their contractual obligations with Fiji Hardwood Corporation.
9. To better and effectively fulfill their Contractual Obligation, the Plaintiff's purchased two (2) trucks with a manufacturer's gross vehicle weight of 46,000 kg. These trucks are registered with Number plates FX477 and HK477.
10. The Defendant authority granted the Plaintiff's trucks with Exemption permits:
 - (a) in 2012 and 2013 to FX477
 - (b) in 2013 to HK477.to carry weight up to 32,000 kg, where such permit and/or Exemption was renewal annually.
11. In the later part of 2014 the Defendant refused to grant Exemptions for the trucks and reduced the maximum Legal Weight to 26,400kg, but continued to grant exemptions to other trucks (and/or its owners) to carry weight in excess of 32,000 kg.

12. Save for their response of correcting anomalies, the Defendant did not provide the Plaintiff's with any proper reasoning for their necessity.
13. According, to the Defendant, the Plaintiff's assert that the Defendants refusal caused their trucks to lie idle. This claim is contradicted by the economic and regulatory facts as the vehicle were at all times legally permitted to operate at a GVM of approximately 26,400kg. While the Plaintiff's desired an Exemption of 32,000kg to maximum profit margins, the vehicles were not legally barred from the road.
14. The Plaintiff's chose to park their vehicles rather than operate them at the legal limit. This was a strategic litigation tactic, not a commercial necessity.
15. The Plaintiff's now seek discovery to quantify a loss that was self-inflicted
16. By letting the vehicles lie idle, the Plaintiff's failed to mitigate their losses. The documents sought regarding the profitability of other operators are irrelevant because the Plaintiffs loss of profit was caused by their refusal to operate at the legal weight, not by the LTA's refusal to grant an illegal Excess.
17. The Defendant's further add that the Defendant's internal emails or the details of other vehicle registered with LTA cannot prove the Plaintiff's loss. A loss of profit is an internal metric of the Plaintiff, not an External metric held by the LTA. Therefore, the request for LTA documents to assess the Plaintiff's own loss is legally incoherent it serves only to confirm that the \$55 million claim is currently baseless.
18. Order for Discovery [O.24, r.7]

7.-(1) Subject to rule 8, the Court may at anytime, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then in his possession, custody or power, when he parted with it and what has become of it.

(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 2 or rule 3.

(3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his

possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter. subject to rule 8 the court an order an application for and **that it relates to one or more of the matters in question in case of matter.**

19. In Halsbury Laws of England, 4th Edition at page 78 the authors aptly described the documents which are capable of being discovered as follows:-

'8. Documents required to be disclosed.

The objection of a party to make discovery necessarily involves that he must make a full and frank disclosure of all relevant documents which are or have been in his possession, custody or power. Apart from any order limiting the Scope of Discovery or to particular documents or class of documents or to particular issues, there are two general and essential conditions as to what documents are required to be disclosed namely:-

- (i) they must be relevant; that is there must relate to some matter in question in the action or other proceedings; and*
- (ii) they must be or have been in possession, custody or power of the party required to make discovery.'* (Atkins Volume 15, (2nd) Edition page 78-80).

20. Courts have a wide jurisdiction to order discovery and inspection.

In **Ram Kumar Singh v Minjesk Investment Corporation Ltd**, Civil Action No. 148/2006, (05-05-2008) Master J Udit canvassed the applicable principles and case law authorities in some detail. From his analysis, **what emerges clearly is that the onus initially is on the Applicant to establish the following by way of affidavit evidence:**

- (v) Identify clearly the particular Document or Documents or Class of Documents that he seeks from to be discovered by the opposing party (see order 24 rule 7).*
- (vi) Show a prima facie case that the Specific Documents or Class of Documents do in fact exist or have existed (see order 24 rule 7).*
- (vii) Establish that these Documents are relevant in the sense that they relate to the matter in question in the action. In other words, the information in the Document must either directly or indirectly enable the applicant either to advance his own case or to damage the case of his or her adversary. Alternatively, it is sufficient if the information in the Document is such that it may fairly head to a train or enquiry which may have either of these consequences. **The relevance of the Document is to be tested against the Issues and/or questions raised by the pleadings (see A.B Anand***

(Christchurch) Ltd v ANZ Banking Group Limited (1997) 43 FLR 22 30
January 1997).

21. It is important to note that whether or not any particular document is admissible or inadmissible is immaterial to its discoverability. It is enough if the document is likely to throw some light on the case (**See Volume 13 paragraph 38 of Halsbury's Laws of England - 4th Edition**) page 34 cited in **Singh vs Minjesk**.

22. Therefore, the threshold criteria in relation to 'specific discovery' is this.

'In order that any Document may be discoverable it must **firstly be shown to relate to (some) matter in question in the cause...**" In other words, the Document must be relevant to a question or issue in the proceedings in so far as the same may be deduced from the pleadings in the action. **Secondly, the document(s), must be shown to exist and' ...are or have been in (the) possession, custody or power....'** of the party against whom discovery is being sought.'

23. An Applicant will need to be heedful of accumulated Case Law Material that Courts will not allow the **discovery process to be used towards assisting a party upon a fishing expedition such as to fish for witness or a new case (Martin and Miles Martin Pen Co. Ltd v Scrib Ltd (1950) 67 RPC -1-7** as cited in **Singh vs Minjesk, Calvet vs Tomkies [1963] 3 All ER 610** nor will discovery be in respect of Documents which are not related to or **may not affect the actual outcome** of the action. Furthermore, Discovery will also be prohibited if it is for a general purpose of enabling a party.

24. The essence of the Plaintiff's Substantive Claim is that the Defendant (LTA) refused this GVM Exemption while granting them to others, specifically citing entities such as Metromix Concrete Company Limited, Go Forward Investments (Fiji) Limited; and Narhari Electrical Co. Ltd. The Plaintiff's characterize this difference as unconstitutional unequal treatment.

25. The Defendant (LTA) admits in its submissions that there had been discrepancies in the manufacturer's specifications submitted by the Plaintiffs for vehicles registration nos. HK477; the LTA has discovered two separate documents submitted by the Plaintiffs:

Document A: purports to show GVM of 46,000kg.

Document B: purports to show GVM of 460,000kg.

26. It can be ascertained from the Plaintiff's application that the Plaintiff's are asking this Court to order the Defendant to explain why the permit was refused and therefore to produce internal assessments of their application.

27. According to the Defendant (LTA), the objective reality is that the true GVM of the vehicle is unknown because the Plaintiff's obscured it with false data.
28. The Plaintiff's on the first day of the trial of this case on 11th June 2024, raised the issue with the Court that the Defendants or their Solicitors had come to Court with eighteen (18) additional Documents, pertinent to the matter(s) in question in this action, which were not previously discovered to the Plaintiff's or their Solicitors. This additional eighteen (18) documents were only encountered by chance by the Plaintiff's Solicitors. The Documents have been itemized at paragraph 16 page 5 of the Plaintiff's Submissions.
29. The Defendant was ordered by the Court to make discovery of the additional documents and the trial was vacated. Upon perusal of the additional Documents, it was revealed according to the Plaintiff that there were still more Documents. That should have been discovered or disclosed by the Defendant.
30. It can be ascertained from the affidavit in opposition of Irimaia Rokosawa, that 'he was advised and verily believe that the bundle of Documents in question was not disclosed to the Plaintiffs prior to the hearing as it was only located by the Authority's in-house Counsel on the day immediately preceding the hearing during the final preparations.' "Due to the late discovery, there was insufficient time to formally notify and serve the Bundle. The Documents were however disclosed to the Plaintiff's Counsel in Court on 11th June 2024. These documents are itemized at paragraph 15 of Irimaia Rokosawa's Affidavit in Opposition.
31. According to Irimaia Rokosawa at paragraph 19 of his Affidavit in Opposition, he states 'that the Plaintiff's were provided full and proper disclosures with all requested information in so far as they were in the possession of the Defendant as per the Defendant's letter of 13th August 2024. He further states that there were 'No Exemption issued for GCM or GVM. He added that 'all pertinent and further general documents have been provided to the Plaintiff's'.
32. The Plaintiff in its submissions at paragraph 27 deposes that following the filing of the application and grant of interim orders, the Defendant made discovery in three (3) phases:
 - (a) phase 1 consisted of five (5) bundles containing the list of all 12 wheelers registered with the Defendant between 2016 to 2018,
 - (b) phase 2 consisting of five (5) bundles containing a further list of all 12 wheelers registered with the Defendant between 2016 to 2018; and
 - (c) phase 3 consisting of forty-four (44) bundles containing all exemptions issued by the Defendant between 2012 to 2015.
33. The Plaintiff submitted that the discoveries made by the Defendant in phase 1 and 2 also contained data and information pertinent to the issuance of exemptions by the Defendant for the period 2016 to 2018.

34. To determine an application for specific discovery, disclosure is to firstly, identify the factual issues that would arise for decision at trial, disclosure must be limited to documents relevant to those issues which may be identified by analyzing the pleadings. This purpose of the pleadings is to identify these factual issues which are in dispute and in relation to which evidence can properly be adduced. The agreed issues has been formulated within the pre-trial conference minutes filed.
35. Hence, in determining whether or not to grant an application, the Court must satisfy itself that the documents are relevant to the trial and that the documents are in the possession power and control of the Defendant.
36. Upon the perusal of the '**Agreed Issues**' items 5 to 18 inclusive within the Pre-Trial Conference Minutes, it can be ascertained that the specific documents sought for by the Plaintiff for further and better discovery are in fact relevant to prove the '**Agreed issues**' at trial. In the Plaintiff's application the Plaintiff's are asking this Court to order the Defendant to explain as to why the permit was refused and therefore to produce the internal Assessment of their application. Further, I reiterate that the essence of the Plaintiff's Substantive Claim is that the Defendant (LTA) refused their GVM Exemption while granting them to others.
37. Reference is made to the case of **A.B. Anand (Christchurch) Limited v ANZ Banking Group** (1997) 43 FLR 22, Justice Fatiaki stated that the public interest that in the Civil Action, the Court should be **possessed of all relevant information to enable to reach a Decision.**

In **Narendra Nand v Judicial Service Commission & Ors** (2008) HBC 578/075 Justice Hickie ruled the discovery of documents be allowed as it is important for the determination of pleaded issues in mitigating the loss.

38. In summary an order for discovery of particular Document(s) can only be made if the Court is satisfied that the Document(s) are necessary for the determination of the issues in the matter.
39. In determining whether the discovery is necessary, the Court would look at the matters considered and the loss referred to including the applicable principles in case authorities in some detail as was analyzed in the case of **Ram Kumar Singh v Minjesk Investment Corporation Ltd**, Civil Action No. 148/2006 (05- 05- 2008) as hereinabove.

In Conclusion

40. This is an action filed in 2016 and has been impending hearing and determination for some 16 - 17 years now.

41. I have taken note of Section 15(3) of the Fiji Constitution 2013 whereby it states that:

"Every party to a civil dispute has the right to have the case determined within a reasonable time."

42. The substantive trial had to be vacated and adjourned to the reason that the Defendant (LTA) had in their possession on the trial date of 11th June 2024, some Eighteen (18) additional Documents pertinent to the matter(s) in question in this action, which were not previously discovered to the Plaintiff's or their Solicitors. The issue was raised with the Court and the Court had given a directive for the Defendant to comply with the Discovery which to date they have failed.

43. Therefore, I have no alternative but proceed to grant the orders:

1. For further and better list of Documents which are or have been in the Defendants (LTA's) possession, custody or power relating to any matter in question in this action.
2. An Affidavit -
 - (a) Verifying the said list;
 - (b) Stating whether they have or have at any time had in their possession, custody and power any document specified in the Schedule hereto, and
 - (c) If the said documents or any of them (whether on the list or specified in the Schedule hereto) has or have been but are now not in their possession, custody or power stating when they parted with the same, what has become of the same, and in whose possession they now are accordingly.

Costs

44. The Amended Application for further and better discovery proceeded to full hearing in parties filing and furnishing Court with affidavits and written submissions and orally argued the application at length.

45. It is only just and fair that I order the Defendant (LTA) to pay a summarily assessed costs of \$2,500 to the Plaintiff within 14 days timeframe.

Orders

- (1) the orders for further and better list of documents which are or have been in the Defendants (LTA's) possession, custody or power relating to any matter in question in this

action are accordingly granted. Compliance to be effected immediately and/or within 14 days timeframe.

(2) An Order is granted for an Affidavit to be filed -

- a. Verifying the said list;
- b. Stating whether they have or have at any time had in their possession, custody and power any document specified in the Schedule hereto, and
- c. If the said documents or any of them (whether on the list or specified in the Schedule hereto) has or have been but are now not in their possession, custody or power stating when they parted with the same, what has become of the same, and in whose possession they now are accordingly.

Dated at Suva this 25th day of March , 2026.




VISHWA D'ATT SHARMA
PUISNE JUDGE

cc: Shekinah Law, Suva
Land Transport Authority, Nasinu.