

IN THE COURT OF APPEAL, FIJI ISLANDS  
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO.AAU0050 OF 2002S  
(High Court Criminal Action No. HAA059 of 2001L)  
(High Court Criminal Action No. HAA0049 of 2002L)

BETWEEN:

LAND TRANSPORT AUTHORITY

Appellant

AND:

AJAY SINGH

Respondent

Coram:

Reddy, P  
Ward, JA  
Davies, JA

Hearing:

Thursday 6<sup>th</sup> February, 2003, Suva

Counsel:

Mr. G.P. Shankar for the Appellant  
Mr. S.K. Ram for the Respondent

Date of Judgment: Friday 14<sup>th</sup> February 2003

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JUDGMENT OF THE COURT

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This is an appeal from the decision of the High Court on an appeal from the Ba Magistrates Court.

The respondent appeared before the Ba Magistrates' Court on 2 October 2000 charged with driving with non-conforming lamps – an offence under the

Land Transport Authority (Vehicles Registration and Construction) Regulations 2000. On that day, an authorised officer of the Land Transport Authority was to conduct the prosecution but the respondent objected on the basis that neither the officer nor, indeed, the Authority itself had the power to conduct the prosecution in the Magistrates' Court.

On 17 August 2001 the magistrate ruled in favour of the respondent and the Authority appealed to the High Court. There was a subsequent cross-appeal on the same points but both appeals were consolidated with the Authority as the appellant. It is not apparent from the record when the appeal was heard but judgment was given on 21 November 2002 dismissing the appeal and upholding the magistrate's ruling. Having reached that conclusion, the learned judge referred to the "inordinate" length of time the case had taken and to possible inequality of treatment of the respondent because similar charges against others had been withdrawn by the DPP. He then discharged the respondent "in the interests of Justice".

The Authority appeals to this court on five grounds. They are lengthy and may be summarised as raising two points for determination. First that the learned appeal judge was wrong in holding that authorised officers of the Authority could not appear and conduct prosecutions instituted by the Authority and, second, that the learned judge was wrong to discharge the accused without trial.

On the first ground the actual point of law seems to us to be short but, notwithstanding, the appeal record includes no less than 129 typescript pages of

submissions placed before the High Court and an additional 37 pages for this hearing. The submissions are repetitive and, having read them all, the Court is impressed more with the stamina of counsel than the strength or relevance of the arguments. Counsel would assist this Court and themselves far more if they devoted the same amount of energy to ensuring their submissions are concise and relevant.

The learned judge pointed to the provisions of the Act allowing the authority to institute proceedings under the Act but based his conclusion on the absence of any clear, express provisions that it may then conduct proceedings in court. He concluded that if Parliament "did wish the LTA to conduct prosecutions via its authorised officers not legally qualified it should have said so."

It is clear that the Act empowers the Authority to "appoint in writing authorised officers for all or particular purposes of this Act"; section 9(1)(c), and that such an authorised officer may institute proceedings for prescribed offences by means of a Traffic Infringement Notice; section 92(1). If the fixed penalty is not paid within 21 days of service, the Notice "shall be regarded for all purpose as a summons issued under the provisions of the Criminal Procedure Code"; section 93(4).

Nowhere does the Act state by whom the prosecution shall be conducted thereafter; a function which Mr Ram, for the respondent, suggests can only be granted by a specific provision. The failure of the Act to include such a

provision demonstrates, he contends, that the intention of the Act was to have such cases prosecuted in court by the police.

We cannot agree. Once the time for payment has expired without payment being made, the Notice is to be treated as a summons issued under the Criminal Procedure Code and Section 77 of the Code provides:

“77. Any person conducting the prosecution may do so personally or by a barrister or solicitor.”

Mr Ram’s contention that the police are the appropriate prosecutors cannot be correct. Section 75 allows a police officer to appear and conduct the prosecution of a complaint or charge notwithstanding the fact that he is not the officer who made the complaint or charge but that is limited to cases where the “proceedings have been instituted by a police officer” and clearly does not cover proceedings instituted by authorised officers of the Authority.

It is perfectly clear that any person has the right to bring and to prosecute a case in court. When a police officer brings a case and prosecutes it, he does not do so by virtue of his position as a police officer but because he is exercising the right of any member of the public to lay an information and prosecute an offence; *Lund v Thompson* [1959] 1QB 283. The Authority is a body corporate; section 6, and, as such, has the same rights as an individual.

The Act gives it the right to institute proceedings by a particular procedure, namely by a Traffic Infringement Notice. Once such proceedings reach the court, the Authority is entitled to conduct the prosecution. It cannot,

of course, do so itself and so the Act allows it to be conducted by an officer authorised by it so to do.

The second ground of appeal relates to the discharge of the respondent by the judge. That it has taken a very long time from the date of the Notice to the conclusion of the appeal in the High Court is all too clear. However those delays were the result of the initial objection by the respondent and the extra hearings which resulted. It is very unfortunate that such a minor matter should have taken so long but that is not in itself a ground for discharging the accused person. If that were the case, it could encourage the endless pursuit of hopeless objections and numerous adjournments – problems faced by the courts in Fiji too much already.

Similarly, the fact, accepted by the learned judge, that the DPP had withdrawn similar charges against other people does not, on the face of it, have any bearing on this case. No reason was given for the withdrawals and there is nothing, with respect to the learned judge, to support a finding of inequality as a consequence.

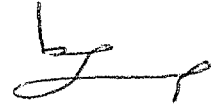
Finally, Mr Ram points to clause 29(3) of the Constitution:

***“Every person charged with an offence.... has the right to have the case determined within a reasonable time.”***

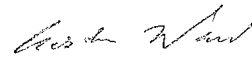
We would question whether that provision gives a judge the discretion simply to strike out an action in the absence of specific application to the High Court under clause 41 but, in any event, we do not accept it would be a proper

order in a case such as this where the delays have been largely the result of the manner in which that person conducted his case.

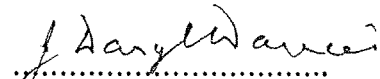
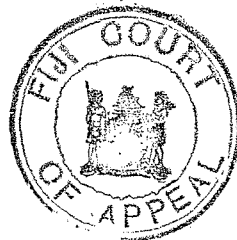
The appeal is allowed with costs in this Court and the High Court to be taxed if not agreed. The order of the learned judge is quashed and the case is remitted to the Magistrates' Court with a direction that it be heard.



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Reddy P



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Ward, JA



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Davies, JA

Solicitors:

Messrs. G.P. Shankar and Company, Ba for the Appellant  
Samuel K. Ram Esquire, Ba for the Respondent