

**IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
APPELLATE JURISDICTION**

CIVIL APPEAL NO. HBA 11 OF 2020

(On Appeal from LTA Tribunal No. 07 of 2018)

IN THE MATTER of the Land Transport Act 1998

AND

IN THE MATTER of an Appeal by **RAJESH THAKUR** against the decision of the **LAND TRANSPORT APPEALS TRIBUNAL** delivered on 21 June 2019, for LTA to reissue and transfer the Taxi Permit No. LT 490 to **RAJESH THAKUR**

BETWEEN

LAND TRANSPORT AUTHORITY a statutory body established under the Land Transport Act 1998, having its registered office at Lot 1 Daniva Road, Valelevu, Nasinu.

APPELLANT

AND

RAJESH THAKUR of Cuvu, Sigatoka, as Administrator of the Estate of Ram Dulari Thakur of Sigatoka.

RESPONDENT

Appearances : Ms E. Dauvere for the appellant
Mr S. Nand for the respondent
Date of Hearing : 13 November 2020
Date of Judgment : 24 December 2020

J U D G M E N T

Introduction

- [01] This is an appeal, with leave being granted by me to appeal out of time, from the decision of the Land Transport Appeals Tribunal (the "*tribunal*") dated 21 June 2019 in the LTA Tribunal Appeal No. 07 of 2018 where the tribunal allowed the respondent's appeal and directing the appellant to reissue and transfer the Taxi Permit No. LT 490 to the respondent to be valid for 10 years (the "*decision*").
- [02] At the hearing, both parties tendered their respective written submissions and informed the court that they would confine their submissions to that of their written submissions and that there would be no oral arguments. I am grateful to both counsel for their hard work.

Background

- [03] A Mr Ram Dulari Thakur, a taxi permit holder ("*the deceased*"), passed away on 25 April 1996, and the Taxi Permit issued to him expired on 24 August 2006.
- [04] Rajesh Prasad Thakur, as the administrator of the Estate of Ram Dulari Thakur (the "*respondent*"), by his letter dated 30 September 2008, advised the Land Transport Authority, (the "*LTA*" or the "*appellant*") that he needed to regularize the permit following the death of the deceased.
- [05] Thereafter, the respondent applied for a probate for the estate of the deceased permit holder and obtained the same on 14 July 2010.
- [06] On 4 August 2016, approximately 7 years after the probate was granted, the respondent lodged an application for reissue and transfer of the Taxi Permit No. LT 490. The Taxi Permit was, according to the LTA, void for 11 years and the respondent had applied for reissue and transfer of the permit 7 years after he obtained the probate.
- [07] In the meantime, the respondent had lodged another application for reissue and transfer on 8 September 2017. This was before the LTA had dealt with the first

application lodged on 4 August 2016. This is, the LTA says, a duplication of application for reissue and transfer and it is an abuse of process.

[08] On or about 4 January 2017, the appellant issued a “*Probate Checklist Directive*” and it states that “*if the probate holder lodges an application after 6 months from the date of the granting of the probate, Management will process but the Board will make a decision*”.

[09] Therefore, on 25 January 2018, the LTA Board (“*the Board*”) made a decision on respondent’s application dated 4 August 2016, and it refused the Taxi Permit to be reissued and transferred on the basis that it took for the respondent more than 7 years after the probate was obtained to apply for renewal and transfer of the permit. The Board meeting minutes of 25 January 2018, reads:

“Unopposed Application for Reissue and Transfer of 1 expired T490 Ram Dulari [Background], PH passed away on 25/04/96, permit expired on 24/8/06, probate granted on 14/7/10 and application lodged 8/8/17 [Deliberation], Refused as the probate holder took more than 7 years to apply for renewal and transfer after the probate was issued [Decision]”

[10] On or about 27 February 2018, the LTA wrote to the respondent that the Board has resolved to refuse the application for transfer of the permit to the respondent on the ground that the probate holder took more than 7 years to apply for renewal and transfer after the probate was received, and that the probate holder failed to adhere to Regulation 3(6) of the Land Transport (Public Service Vehicle) Regulations 2000.

Appeal to the Land Transport Appeals Tribunal

[11] The respondent appealed the decision of the Board to the Land Transport Appeals Tribunal (the “*Tribunal*”) and on 21 June 2019, the Tribunal allowing the appeal delivered its judgment as follows:

- a) *The LTA is directed to reissue and transfer the Taxi Permit in the name of Rajesh Prasad Thakur;*
- b) *The LTA is further directed to issue the permit for the period of 10 years, pursuant to the Regulations and*
- c) *The LTA is to pay the appellant \$1,000.00 costs which is summarily assessed.*

[12] The LTA appeals that decision to this court.

Grounds of appeal

[13] The grounds of appeal advanced on behalf of LTA are as follows:

1. *The Tribunal erred in law in holding that the “Amnesty Period” under Regulation 18A of the Land Transport (Public Service Vehicle) (Amendment) Regulations 2017, Legal Notice No. 68 is relevant and applicable to the respondent’s application for reissue and transfer dated 8 September 2017, when the said Regulation is only applicable to those permits that was not renewed by the Appellant due to the sole reason that the permit holder fails to renew their permits within the 28 days before the expiry date of the permit as stipulated under Regulation 3(6) of the Land Transport (Public Service Vehicle) Regulations 2000 which mandates all permit holders to comply with prior to any transaction with the permit.*
2. *That the Tribunal erred in law when reissuing the Taxi Permit to the Respondent, when the permit holder namely Ram Dulari Thakur had passed away in 1996 and the Taxi Permit no. LT 490 was void from 24 August 2006, thus the Taxi Permit is no longer under the Ram Dulari Thakur’s estate.*
3. *That the Tribunal erred in law in consideration the Respondent’s application for reissue and transfer dated 8 September 2017, when this is not the basis of the Appellant’s deliberation on 25 January 2018, at the Appellant’s Board meeting and decision of the Appellant dated 27 February 2018. The Tribunal had breached its own jurisdiction stipulated under section 40 (2) of the Land Transport Act 1998.*

Legal framework

[14] Land Transport (Public Service Vehicles) (Amendment) Regulations 2017 (“Reg. 2017”), 11A (2) provides (so far as relevant):

“Transfer of permits

11A (1) ...

(2) *The Authority may transfer a permit under the following circumstances-*

- (a) ...;
- (b) ...;
- (c) ...;
- (d) *to the personal representative of the permit holder appointed in accordance with the Succession, Probate and Administration Act 1970 in the case of the death of the permit holder; or*
- (e) ...
- (3) ...
- (4) ...
- (5) *For the avoidance of doubt-*
 - (a) ***the transfer of a permit is the transfer of the unexpired term of the permit;***
 - (b) *if a permit is transferred, the transferee of the permit is subject to any conditions of the permit.” (Emphasis provided)*

[15] Reg. 2017, 18A states:

“Part 2 transitional

18A. — (1) *In this regulation —*

priority applications means *pending applications for taxi permits lodged on or before 31 December 2017; and*

resident means *an individual who is a Fijian citizen who ordinarily resides in Fiji or a company registered under the Companies Act 2015, the controlling interest of which is held by a person or persons who are Fijian citizens who ordinarily reside in Fiji.*

(2) *Subject to subregulations (3) and (4), the Authority must, in accordance with **section 64(2) of the Act**, renew a permit issued under the Act if an application for the renewal of the permit was lodged by **the permit holder on or after 10 July 2000** and **was not renewed by the Authority solely on the ground that the application for renewal was lodged after the prescribed time period at the time it was lodged.***

(3) *For the purposes of subregulation (2), a permit may only be renewed if—*

(a) *a new application for renewal is lodged by the permit holder on or before 30 September 2017;*

(b) *the permit holder is a resident;*

(c) the Authority is satisfied that the permit holder is not in breach of the Act, any subsidiary laws made under the Act or any condition attached to the permit; and

*(d) the Authority is satisfied from its own records or, where the Authority has no records relating to the permit holder's former application for renewal, by such particulars as the permit holder may produce, **that the permit holder was a permit holder and had applied for the renewal of the permit.***

(4) If a permit holder qualifies for the renewal of a permit under subregulations (2) and (3) but does not lodge a new application for renewal of the permit on or before 30 September 2017, the permit holder's permit is cancelled and such cancellation is effective from 1 October 2017.

(5) Notwithstanding anything contained in these Regulations, on 1 October 2017 the term of any permit issued before 1 October 2017 is extended—

(a) for road route licences issued in respect of road permits, for a further 15 years expiring on 30 September 2032;

(b) for road contract licences issued in respect of road permits, for up to 10 years; and

(c) for all other permits, for a further 10 years expiring on 30 September 2027,

and the Authority must reissue all such permits on or before 31 October 2017 in the prescribed form reflecting the extended terms.

(6) Notwithstanding anything contained in these Regulations, the following transitional provisions apply from 1 January 2018—

(a) a priority application must be considered for taxi permits available in a transport zone as identified under regulation 5B(1) and if a taxi permit remains after all priority applications have been considered, such taxi permit may be advertised in accordance with regulation 5B(3);

(b) if the committee finds that an applicant that submitted a priority application does not meet the eligibility criteria provided in regulation 5E(2), the committee must direct the applicant to the Authority and the Authority must reimburse the application fee to the applicant provided the applicant proves, by submitting a receipt, that the applicant had previously submitted the priority application;

(c) a person who claims to have lodged a priority application may be allowed to resubmit an application and the newly submitted application may be deemed to be a priority application if the person proves, by submitting a receipt or by way of statutory declaration, that the person had previously submitted a priority application;

(d) a rural service licence issued before 1 January 2018 is deemed to be either –

(i) a minibus permit, if the rural service licence was issued in respect of a vehicle that is similar in construction to a minibus; or

(ii) a road permit in respect of a carrier licence, if a rural service licence was issued in respect of a vehicle that is not similar in construction to a minibus; and

(e) any permit held by a person that is not a resident is cancelled and such cancellation is effective from 1 February 2018, unless the permit is otherwise sold to a resident and the transfer is notified to the Authority on or before 31 January 2018.”.

[16] Section 64 (2) of the Land Transport Act 1998 (the “Act”) states:

“Authority of public service permits

64 (1) ...

(2) The holder of a public service permit is, upon application in accordance with regulations, and upon payment of the prescribed fee, entitled to the renewal of the permit unless the Authority is satisfied that the holder is in breach of this Act or the regulations in respect of a public service licence or of any condition attached to the permit.”

[17] Regulation 3 (6) of the Land Transport (Public Service Vehicle) Regulations 2000 provides:

“Part 2-Public Service Vehicle Permits

Applications

3 (6) An application to re-issue a permit must be made at least 28 days before the permit expires.”

The issue

[18] The principal issue on appeal was whether the tribunal had erred in law when ordering to reissue the Taxi Permit No. LT 490 to the respondent, being the personal representative of the permit holder, to be valid for 10 years when the permit holder namely Ram Dulari Thakur had passed away in 1996 and the Taxi permit was void from 24 August 2006, thus the Taxi permit was no longer under the Ram Dulari's Estate.

Discussion

[19] I would consider the three grounds of appeal collectively in order to answer the principal issue raised on the appeal. The issue raises an important question of law whether the Estates of the deceased permit holder could claim any right or interest or could apply for renewal arising out of the expired and/or void permit of the deceased.

[20] The permit in question was issued to Ram Dulari Thakur (the '*deceased*') who passed away on 25 April 1996, and the permit that was issued to him expired on 24 August 2006.

[21] The respondent is the personal representative of the permit holder appointed in accordance with the Succession, Probate and Administration Act 1970 in the case of the death of the permit holder. On 14 July 2010, he (respondent) obtained a probate to administer the Estate of the deceased permit holder.

[22] The Authority may transfer a permit to the personal representative of the permit holder appointed in accordance with the Succession, Probate and Administration Act 1970 in the case of the death of the permit holder (see *Reg. 2017, 11 A (2) (d)*). In that case, the transfer of a permit is the transfer of the unexpired term of the permit (see *Reg. 2017, 11 A (5) (a)*).

[23] As a personal representative of the deceased permit holder, on 4 August 2016, which some 11 years after the permit was void and/or invalid by reasons of expiration, the respondent lodged an application for reissue and transfer of the deceased's permit No. LT 490 to him. It is to be noted that the respondent had

lodged this application (application dated 4 August 2016) some 7 years after obtaining the probate on 14 July 2010.

- [24] Admittedly, the deceased permit holder or the respondent as the personal representative of the deceased permit holder did not lodge an application for re-issue to the Taxi Permit No. LT 490 before the expiration of the permit on 24 August 2016.
- [25] The holder of a public service permit is, upon application at least 28 days before the expiry of the permit, and upon payment of the prescribed fee, entitled to the renewal of the permit unless the Authority is satisfied that the holder is in breach of this Act or the regulations in respect of a public service licence or of any condition attached to the permit (see *the Act*, s. 64 (2)). Further, Reg 3 (6) of the Land Transport (Public Service Vehicle) Regulations 2000 states that an application to re-issue a permit must be made at least 28 days before the permit expires.
- [26] There was no evidence to suggest that either the deceased permit holder or the respondent as representative of the deceased permit holder had made an application to re-issue the permit 28 days before the permit had expired, as required by section 64 (2) of the Act and Regulations 2000, Reg. 3 (6).
- [27] Surprisingly, apart from his application dated 4 August 2016 to re-issue the permit, the respondent made another application to re-issued on 8 September 2017. The second application was before he received any outcome on his previous application. There was no explanation as to why he made two applications in respect of the same matter while the first application was still under process.
- [28] The question arises whether the applications lodged by the respondent could have considered as a priority application under Reg. 2017, Reg 18A. The tribunal held that the respondent's application should be considered as priority application under Regulation 18A.
- [29] An application to fall under Regulation 18A (1), two elements must be met namely:

(a) priority application for taxi permit lodged on or before 31st December 2017;

(b) resident - individual who is a Fijian Citizen who ordinarily resides in Fiji.

[30] It is to be noted that indeed the respondent had lodged his application before 31 December 2017. However, he was not a Fijian Citizen who ordinarily resided in Fiji at the time of the application. He resided in New Zealand. Therefore, the respondent's application could not have fall under Regulation 18A (1). This means that his application could not have been considered as a priority application under Regulation 18A (1).

[31] An application to renew a permit issued under the Act to be considered under Regulation 18A (2), it must be:

(a) Lodged by the permit holder on or after 10 July 2000; and

(b) was not renewed by the Authority solely on the ground that the application for renewal was lodged after the prescribed time period at the time it was lodged.

[32] The respondent's application to renew the permit could not have been considered an application lodged by the permit holder given the fact that he applied as a personal representative of the deceased permit holder. Therefore, the respondent's application fails to meet the first requirement that it was lodged by the permit holder on or after 10 July 2000. Further, there was no evidence that an application for renewal was lodged by the deceased permit holder or the respondent for renewal of the Taxi Permit No. LT 490 and that it was not renewed by the Authority solely on the ground that the application for renewal was not lodged within the prescribed period stipulated under section 64 (2) and Regulations 2000, Reg 3 (6).

[33] In my opinion, the applications to renew the taxi permit lodged by the respondent either on 4 August 2016 or on 8 September 2017 did not fall under Regulation 18A. Thus, it could not have been considered as a priority application under Regulation 18A.

[34] I now turn to the issue whether the Ram Dulari Thakur's Estate can claim any right or interest in the void and/or expired permit.

[35] The permit holder (Ram Dulari Thakur) passed away in 1996. The taxi permit that was issued to him (LT 490) was void from 24 August 2006.

[36] Regulations 2000 (as amended), Regulation 10 (5) states:

“Duration of a permit

*10 (5) A public service vehicle licence **is void if-***

- (a) the vehicle to which the licence applies remains in the ownership of a permit holder but is not used for the appropriate use or service for a continued period of 3 months, unless the Authority otherwise determines;*
- (b) **the permit** is cancelled, suspended, revoked or **has expired**; or*
- (c) ownership of the vehicle is transferred to a person who is not the holder of a public service permit.” (Emphasis supplied)*

[37] A permit becomes void if it has expired (see Reg 10 (5) (b)).

[38] It is common ground that the deceased permit holder or the respondent as personal representative of the deceased permit holder did not lodge an application to re-issue of the permit before its expiration on 24 August 2006. This follows that the permit had become void by operation of Reg 10 (5) (b).

[39] Since the taxi permit that was issued to the deceased permit holder was void by law, the Estate of the deceased permit holder does not have any rights and interest to it.

[40] The respondent as the personal representative of the deceased permit holder had applied for reissue and transfer of the taxi permit some 10 years after the expiry of the permit in 2006. It was some 4 years after the permit was expired the respondent obtained the probate to administer the Estate of the deceased permit holder. Since the permit had already become void, it could not have been included in the Estate of the deceased permit holder.

[41] The respondent had made two applications to reissue the permit. The first one was dated 4 August 2016, and the second one dated 8 September 2017. The tribunal had made its decision of 21 June 2019 on the basis the appellant’s board had arrived at a determination of the respondent’s application dated 8 September 2017 when it was in fact not.

[42] As I said, the permit had expired in 2006. The appellant then by its letter dated 30 September 2008 advised that since the permit itself had expired on 24 August 2006, it must not be left in its expired status for too long. The appellant further advised the respondent that the taxi permit can be renewed under the Estate of the permit holder. On 16 October 2009, a year after the appellant's letter to the respondent, the respondent's solicitor wrote to the appellant that they are commencing preparation of the probate documents to appoint the respondent as the administrator of the Estate of Ram Dulari Thakur, the deceased permit holder.

[43] Although the respondent obtained the probate on 14 June 2010, he took some 7 years to lodge the application for re-issue and transfer of the taxi permit under death. At the time when he made this application the permit was left unused for about 11 years.

[44] Regulation 11 (1) (a) of Land Transport (Public Service Vehicle) Regulations 2000 provides:

“Transfer of permits

11 (1) Subject to sub-regulation (2), the Authority may, upon application being made, transfer a permit for any unexpired term of the permit if-

(a) the holder of the permit has died or become bankrupt, insane, permanently incapacitated or terminally ill.

[45] The respondent appears to have made his two applications dated 4 August 2016 and 8 September 2017 under Reg 11 (1) (a). Under that Regulation, the Authority may, upon application being made, transfer a permit for any unexpired term of the permit if the holder of the permit has died. In the present case, there was no unexpired term of the permit because the permit was void long before the application under Reg 11 (1) (a) was made. Therefore, Reg 11 (1) (a) has no application to the respondent's application.

Conclusion

[46] For the reasons given, I would conclude that the Estate of the deceased permit holder, the Ram Dulari's Estate was not entitled to claim any right or interest in the void permit. I accordingly allow the appeal and set aside the decision of the tribunal dated 21 June 2019 with summarily assessed costs \$2,000.00 payable to the appellant by the respondent.

Result:

1. Appeal allowed.
2. Tribunal's order dated 21 June 2019 set aside.
3. Respondent shall pay summarily assessed costs of \$2,000.00 to the appellant.

.....
M.H. Mohamed Ajmeer
JUDGE

At Lautoka
24 December 2020

Solicitors:

Legal Department, LTA for the appellant

Nands Law, Barristers & Solicitors for the respondent