

IN THE HIGH COURT OF FIJI AT SUVA
APPELLATE JURISDICTION

Miscellaneous Action No. 32 of 2015

LTA Tribunal Appeals No. 18, 19, 20,
21, 22, 23, 24, 25, 29, 30 of 2005 and
22 and 23 of 2006

BETWEEN: RAJENDRA DEO PRASAD

APPLICANT

A N D: LAND TRNSPORT AUTHORITY

1ST RESPONDENT

A N D: PARMOD ENTERPRISES LIMITED

2ND RESPONDENT

Counsel : Applicant: Mr. Pal. A
: 1st Respondent: Mr. Stephens. G
: 2nd Respondent: Mr. Kapadia. V
Date of Hearing : 29.05.2015
Date of Judgment : 26.06.2020

JUDGMENT

INTRODUCTION

1. This is an application by the Applicant for leave to appeal the decision of the Land Transport Appeals Tribunal (LTAT) dated 6.3.2015. This application sought leave to appeal against the award of costs by LTAT regarding appeals filed by Applicant in 2005 and 2006 and voluntarily discontinued them on 22.4.2009 and 24.4.2009, by Applicant. Respondent had sought costs. No order was made by LTAT at that time by LTAT till 6.3.2015. After hearing all the parties LTAT allowed discontinuance of number of appeals filed by the Applicant and also ordered a cost of \$250 for each party for each appeal. Being aggrieved, leave is sought against order of the costs by LTAT. A party cannot file applications in court or tribunal and withdraw the same without after incurring costs to others. So cost follow the event. An award of cost of \$250 for each

party for each appeal cannot be considered excessive, and this application lacks merits to grant leave. There are no errors of law in proposed grounds of appeal.

FACTS

2. LTAT made following orders on 6.3.2015:
 - a) the Appeal Nos. 18 of 2005, 19 of 2005, 20 of 2005, 21 of 2005, 22 of 2005, 23 of 2005, 24 of 2005, 25 of 2005, 29 of 2005, 30 of 2005, 22 of 2006, 23 of 2006 are discontinued;
 - b) the Appellant to pay the First Respondent \$250 for each appeal which is a total of \$3,000 for all the 12 appeals discontinued as costs within 30 days;
 - c) the Appellant to pay the Second Respondent \$250 for each appeal which is a total of \$3,000 for all the 12 appeals discontinued as costs within 30 days.
3. Applicant filed originating summons seeking leave to appeal against said orders and also stay of execution, but at the hearing Applicant abandoned the order seeking stay as, he had paid the costs.
4. The Applicant filed number of Appeals in LTAT, and voluntarily sought to withdraw the same. According to affidavit in opposition by first Respondent, Applicant's said appeals were frivolous and vexatious, as they were not geographically related to the Applicant's licence to operate buses.
5. Applicant sought to withdraw and discontinued Tribunal Appeal Nos. 18, 19, 20, 21, 22, 23, 24, 25, 29 and 30 of 2005 and 22 and 23 of 2006 on or about 22.4.2006 and 24.4.2009.
6. The Respondents sought costs and this was not determined till 6.3.2015. LTAT allowed both parties to make submissions on the issue of costs and made the order.
7. Applicant had filed proposed grounds of appeal in the affidavit in support and they are as follows;
 - a. LTAT erred in law considering and relying on records of LTAT for the period between 10.4.2009 taken by Mr. Amani Bale after his appointment was revoked by the Revocation of Judicial Appointments Decree 2009 and the appointment of a new Tribunal pursuant to the Administration of Justice Decree 2009.

- b. LTAT erred in law on giving a determination on a hearing conducted by LTAT after the appointment of the presiding officer had been revoked by the Revocation of Judicial Appointments Decree 2009.
- c. LTAT erred in law in accepting extra judicial notes maintained by the former tribunal, Mr Amani Bale, that were kept outside of LTAT files and or registry for the relevant appeals and such notes were not subject to any judicial oversight, custody or security;
- d. LTAT erred in law in failing to disclose to the parties the contents of the notes received by LTAT from Mr. Amani Bale and or to make available the said notes to the parties for inspection and subsequent objections.
- e. LTAT erred in law making determination of a hearing not presided by determining officer.

ANALYSIS

- 8. All parties agree that the orders sought in the originating summons were against an interlocutory orders of LTAT hence needed leave of the court to appeal, in terms of Court of Appeal decision of Goundar v Minister for Health [2008] FJCA 40; ABU0075.2006S (9 July 2008)

- 9. In relation to leave to appeal the Federal Court of Australia in Re Decor Corporation Pty Limited & Anor v Dart Industries Incorporation 1991 FCA 655 stated:

"In sharp v Deputy Federal Commissioner of Taxation (1988) 88 ATC 4184 at 4186 (and see also Merman Pty Ltd v Cockburn Cement Limited (1989) ATPR 49951 at 44954; Tetijo Holdings Pty Ltd v Keeprite Australia Pty Ltd (French J., unreported, 15 January 1991) Burchett J. stated the "major consideration(s)", to be applied by the court upon an application for leave, for which Niemann is authority. The first test, which relates to the prospects of the proposed appeal, is "whether, in all the circumstances, the decision is attended with sufficient doubt to warrant its being reconsidered by the Full Court.

The second is whether substantial injustice would result if leave were refused, supposing the decision to be wrong. In my opinion, the sufficiency of the doubt in respect of the decision and the question of substantial injustice should not be isolated in separate compartments. They bear upon each other, so that the degree, of doubt which is sufficient in one case may be different from that required in another. Ultimately, discretion must be exercised on what may be a fine balancing of considerations." (emphasis mine)

10. Applicant had filed numerous appeals to LTAT and subsequently sought to withdraw the appeals in issue to this application. Respondents had sought costs but, this was not dealt by person who presided LTAT at that time or subsequent appointee. So when this issue of costs was dealt a fresh hearing was conducted by LTAT and a written ruling was delivered with reasons. The cost awarded was \$250 for an appeal for a party.
11. Applicant is appealing this award having complied said order. What is the cost that Applicant want to pay for binging parties before LTAT represented by legal counsel not clear.
12. In *Edmund March v Bank of Hawaii & Ors* [2000]1 FLR 230 the Fiji Court of Appeal stated as follows: (Pathik . J)

"Whilst I am inclined to agree that Air Canada's case appears to be distinguishable, I must bear in mind that I am dealing with an application/or leave to appeal and not with the merits of an appeal. It will therefore not be appropriate for me to delve into the merits of the case by looking into the correctness or otherwise of the Order intended to be appealed against. However, if prima facie the intended appeal is patently unmeritorious or there are clearly no arguable points requiring decision then it would be proper for me to take these matters into consideration before deciding whether to grant leave or not."

13. The application seeking leave is unmeritorious. Applicant is stating irrelevant facts which contained in the proposed grounds of appeal. What I needed to consider is the written ruling of LTAT dated 6.3.2015, and any error of law therein.
14. In Fiji Court of Appeal decision of *Proline Boating Company Ltd v Director of Lands* [2013] FJCA 39; Misc. Action 39A.2011 decided on (17 May 2013)(unreported) Calanchini AP (as his lordship then was) held,

*'[14]. The Appellant relies on 25 grounds of appeal. To a large extent they are repetitive and overlapping. It is certainly not necessary to delve into the grounds of appeal in considering whether leave to appeal should be granted. This is even more so the case when the appeal procedure has been commenced within the time prescribed by the Rules. Leave to appeal is required because the decision refusing to grant leave to apply for judicial review is an interlocutory decision. Generally the Courts are reluctant to interfere with interlocutory decisions. **However leave will be more readily granted when legal rights as distinct from matters of practice and procedure are involved and some injustice may be caused:** See *In re the Will of F B Gilbert (deceased)* (1946) 46 S R NSW 318 at 323 and *Kelton Investments Limited and Tappoo Limited –v- Civil Aviation Authority of Fiji and Another* (unreported ABU 34 of 1995 delivered 18 July 1995). The question to be resolved in this application is should the Applicant be given leave to appeal' (emphasis added)*

Native Land Trust Board v Narawa [2004] FJSC 7; CBV0007.2002S (decided on 21 May 2004)(unreported), the Supreme Court of Fiji held,(at paragraph 32)

'.....The interlocutory orders to which it applies may cover a range of cases from those only concerned with matters of procedure and pre-trial management to those which may have a significant impact on the scope and outcome of the proceedings. Some decisions, while technically interlocutory, may be to all intents and purposes final. In such cases "a prima facie case exists for granting leave to appeal" – *Ex parte Bucknell* [1936] HCA 67; (1936) 56 CLR 221 at 275; *Décor Corporation Pty Ltd v Dart Industries Inc* [1991] FCA 655; (1991) 33 FCR 397 at 400. When a proceeding is dismissed for want of a reasonable cause of action the decision may be treated as interlocutory – *Hunt v Allied Bakeries* [1956] 1 WLR 1326; cf *Mickelberg v 6PR Southern Cross Radio Pty Ltd* [2001] WASC 267; *Florida Investments Pty Ltd v Milstern (Holdings) Pty Ltd* [1972] WAR 148. **But leave will usually be granted in such a case where there is any doubt about the decision at first instance** – *Little v Victoria* [1998] 4 VR 596 at 598-601. See generally the discussion in *Johnson Tiles Pty Ltd v Esso Australia Pty Ltd* [2000] FCA 1572; (2000) 104 FCR 564 at 583-584.(emphasis added)

15. I cannot see any merits in all the appeal grounds stated in the proposed grounds of appeal. They are not only vague but also misleading and not supported by facts stated in the affidavits. Leave to appeal is against the ruling delivered on 6.3.2015 and there is no error of law in the said ruling.
16. Applicant is alleging facts that are not only irrelevant but also embarrassing and or frivolous, to LTAT.
17. Applicant had not denied any of the facts stated in the affidavit in reply to the affidavits in objection filed by the Respondents.
18. LTAT had not relied on any of extra judicial matters or facts as alleged by Applicant, but had heard parties afresh and delivered a decision. It is commendable that LTAT had taken this issue of costs, after lapse of nearly five years without putting it in backburner. There is no error of law in rehearing the issue of costs afresh.
19. Applicant had admitted that he filed the said appeals in LTAT. These appeals were not heard as Applicant had voluntarily sought to withdraw.
20. So Respondents had the option of consenting to withdrawal with or without costs. They had sought costs but LTAT did not make an order regarding costs from 2009 to 20015 till this matter was brought to the attention of LTAT again.

21. Irrespective of person who presided LTAT in 2009 it can be dealt by subsequent appointee. The failure to consider this issue by subsequent appointee till 2015 was not a fault that can be attributed to appointee who decided to deal with it in 2015.
22. All the appeal grounds stated in proposed appeal are without any merits and irrelevant to the issue dealt by LTAT on 6.3.2015. It was an issue of considering grant of costs when number of appeals were withdrawn and this can be done by any presiding officer of LTAT after hearing the parties.
23. In *Nasese Bus Company Ltd v Chand* [2013] FJCA 9; ABU40.2011 (8 February 2013) Calanchini AP (as his lordship then was) dealt with the requirements of Rule 15 of Court of Appeal Rules and the issue of clear and precise grounds of appeal. Applicant had included proposed grounds of appeal which are irrelevant and embarrassing to LTAT and not addressing errors of law.
24. Section 48 of Land Transport Act 1998 require that all appeals are allowed on a point of law only. This should be applied to interlocutory decisions as well as final decisions. This is not to encourage appeals from any finding of fact from LTAT. Applicant is attempting to do what is expressly prohibited in Land Transport Act 1998 and or against the intention of legislation, stated in Section 48 of the Land Transport Act 1998.
25. Ground one of the proposed ground is irrelevant and ground two to five are factually incorrect and misleading and embarrassing. The decision of LTAT delivered on 6.3.2015 had not dealt with any proceeding or notes but had dealt with the issue of costs upon withdrawal of appeals.

CONCLUSION

26. Leave to appeal is refused. Cost of this application is summarily assessed at \$1,500 to each of the Respondents (total of \$3,000) to be paid within 21 days. Delay is regretted.

FINAL ORDERS

- a. Leave to appeal refused.
- b. The cost of this application is summarily assessed at \$1,500 for each of the Respondent to be paid within 21 days.

Dated at Suva this 26th day of June, 2020.



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Justice Deepthi Amaratunga
High Court, Suva