

In the High Court of Fiji
At Labasa
Civil Jurisdiction

Civil Action No. HBC 68 of 2020

Lekutu Trading Company PTE Limited

Plaintiff

v

Land Transport Authority

Defendant

Counsel: Mr H. Robinson for the plaintiff

Mr V. Chand for the defendant

Date of hearing: 13th April, 2021

Date of Judgment: 1st December, 2021

Judgment

1. The plaintiff, in its originating summons seeks the following Orders:

- a. *that the Traffic Infringement Notices(TIN) Nos: 3614507 and 3615567 issued on the 1st February 2019 and 7th March 2019 respectively are in breach of Section 14(2) and Section 15 of the Constitution and therefore are null and void.*
- b. *The Defendant be ordered to register and issue the licence for the applicant's truck registration No:JM 451 another vehicle being a landcruiser registration No. JM 614 and a Hitachi digger registration No.: JD 636.*

2. The affidavit in support filed on behalf of the plaintiff states that:
 - a. On 29th January, 2019, the officers of the defendant booked the driver of his truck no JM 451(truck) for carrying pine logs of 40.82 tonnes, when the permissible weight was 26.40 tonnes. On 1st February,2019, the defendant issued TIN no 3614507 to the plaintiff.
 - b. On 26th March 2019, the driver of the truck was booked for carrying 36.60 tones, when the permissible weight was 26.4 tones. On 23rd March, 2019, the defendant issued TIN No.3615567 to the plaintiff.
 - c. TIN nos. 3614507 and 3615567 were issued contrary to sections 14(2) and 15 of the Constitution. The deeming provision in clause 8 of the TIN violates the right to a fair trial and the presumption of innocence guaranteed under section 14(2).
 - d. The defendant refuses to register the plaintiff's truck, digger No: JB 636 and vehicle No: JM 614, due to the conviction. The plaintiff is unable to operate is business and has suffered great hardship and inconvenience. It is unable to repay moneys to the Fiji Development Bank and BSP Bank and could face legal proceedings.
3. The Manager, Enforcement of the LTA, in his affidavit in reply states that the TINs were issued correctly in terms of section 92 of the Land Transport Act, 1998, Regulations 5 and 6 of the Land Transport (Traffic Infringement Notice) Regulation, 2017, Regulations 80(9)(d),87(1)(a) of the Land Transport(Vehicle Registration and Construction) Regulation, 2000 and the Land Transport (Fees and Penalties) Regulations, 2000. The plaintiff is challenging the legality of the Regulations made by the Minister It is an abuse of process of Court to commence a private law action by way of writ or originating summons.
4. The defendant has filed an application to strike out the summons together with an affidavit in support on the ground that it does not disclose a reasonable cause of action, is an abuse of process of Court and the Orders sought are tainted with illegality. The plaintiff filed its affidavit in reply
5. I heard the application to strike out and the summons together.

The determination

6. The plaintiff claims that TIN nos 3614507 and 3615567 issued by the defendant are in breach of sections 14(2) and 15 of the Constitution and are null and void.
7. I would at the outset note that neither of the TINs challenged are attached to the plaintiff's application.
8. The plaintiff is in effect challenging the validity of TINs issued in terms of the Land Transport (Traffic Infringement Notice) Regulation, 2017, made under section 92 of the Land Transport Act.
9. Mr Chand, counsel for the defendant quite correctly pointed out that a party who alleges breach of any right enshrined in the Constitution must seek redress under section 44 thereof. Further, and importantly the State has not been made a party to this action.
10. The plaintiff also seeks that the defendant be ordered to register and issue licences for its vehicles.
11. As Mr Chand submitted it is an abuse of process of Court to seek an order of mandamus against a statutory authority by originating summons instead of applying for judicial review.
12. In ***O'Reilly v Mackman*** (1983) 2 A.C. 237 Lord Diplock at page 285 paragraph(D) stated:

Now that those disadvantages to applicants have been removed and all the remedies for the infringement of rights protected by public law can be obtained upon an application for judicial review, as can also remedies for infringements of rights under private law if such infringements should also be involved, it would in my view as a general rule to be contrary to public policy and as such an abuse of the process of the court, to permit a person seeking to establish that a decision of a public authority infringed rights to which he was entitled to protection under public law to proceed by way of an ordinary action and by this means to evade the provisions of Order 53 for the protection of such authorities.

13. In *Digicel Fiji Ltd v Pacific Connex Investments Ltd*, [2009] FJCA 64; ABU0049.2008S (8 April, 2009) the Court of Appeal at paragraph 41 stated:

*In our view, if one asks the question how these proceedings would have measured up to their requirements for judicial review one clear point stands out. **These were public law issues. It may be the claim for damages is based on tort (as originally contended by Pacific Connex) or to equity as contended for in this Court.** However, on any view the root of the claim is in public law. The consequence of this, on the authorities is that the **proceedings should have been brought by judicial review.** To bring them via Originating Summons was an abuse of the process of the court. We have not lost sight of the fact that this may lead to the Plaintiff being deprived of its remedy simply because it chose the wrong procedural route. It is not open to amend the proceedings to convert such proceedings to a judicial review. The only real course open to the Plaintiff would appear to be to now apply for judicial review out of time and pray in aid the wrong choice of proceedings as a possible basis for motivating the High Court to permit the proceedings to proceed notwithstanding the time issue.(emphasis added)*

14. In my judgment, this summons is an abuse of process of Court for the reasons stated above.
15. The defendant's application to strike out succeeds.
16. For completeness. I would note that the plaintiff failed to take any action to dispute the TINs within the time prescribed in the Land Transport (Traffic Infringement Notice) Regulation which brought into operation Regulation 9 thereof. Regulation 9 states that if a person to whom a TIN is issued does not undertake any of the actions provided in Regulation 7 within 12 months, the TIN takes effect as a conviction. Regulation 8(1)(f) of the Land Transport (Vehicle Registration and Construction) Regulation 2000 imposes a mandatory duty on the defendant not to register or renew the registration of a vehicle, unless outstanding fees or penalties under the Act or regulations have been paid in full.

17. The written submissions filed on behalf of the plaintiff relied on the case of *Pasifika Enterprise v LTA*, [2020] FJHC 517; HBC 262.2019(6 July, 2020) where Ajmeer J declared that TINs issued were in breach of sections 14(2) and 15 of the Constitution and are null and void. The Court of Appeal has stayed that judgment.

18. *Orders*

- a. The plaintiff's summons is struck out.
- b. The plaintiff shall pay the defendant costs summarily assessed in a sum of \$ 1500.



A.L.B. Brito-Mutunayagam
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JUDGE
1st December, 2021