

IN THE HIGH COURT OF FIJI AT SUVA

APPELLATE JURISDICTION

Civil Appeal No. HBA 20 of 2020

[On an appeal from the Land Transport Appeal Tribunal at Suva, Action No. 01 of 2019]

BETWEEN

ISIKELI CAWANIKAWAI MATAITINI of Lot 120 Sauniwaqa Sub-Division,
Nakasi, Unemployed.

APPELLANT

AND

LAND TRANSPORT AUTHORITY a statutory authority established under the
Land Transport Act 1988 having its registered office at
Lot 1 Daniva Road, Valelevu, Nasinu.

RESPONDENT

Counsel : Ms. Ali N. for the Appellant
Mr. Chand V. with Ms. Lal A for the Respondent

Date of Hearing : 08th April 2022

Date of Judgment : 25th April 2022

JUDGMENT

[1] This is an appeal from the ruling of the Land Transport Appeals Tribunal (the Tribunal) dated 21st August 2020 refusing leave to appeal out of time.

[2] On 17th September 2020 the appellant filed this Notice of Originating Motion seeking the following orders:

1. That orders of the Land Transport Appeal Tribunal in Land Transport Appeal No. 1 of 2019 refusing the Appellant's motion seeking leave to appeal out of time be set aside and quashed; and
2. This Honourable Court make any other orders it deems just and expedient.

[3] Order 37 rule 4 of the Magistrates Court Rules provides:

On the appellant failing to file the grounds of appeal within the prescribed time, he shall be deemed to have abandoned the appeal, unless the court below or the appellate court shall see fit to extend the time.

Section 61B(2) of the Magistrates Court Act provides:

Subject to any rules and directions made by the Chief Justice under this Part, any Magistrate exercising the jurisdiction and powers or performing any duties or functions of any statutory tribunal subject to this Part, shall do so in accordance with the written law which established that statutory tribunal.

[4] The provisions of Order 37 rule 4 are applicable to Magistrates' Court proceedings. Although the Tribunal is presided over by a Magistrate he is not exercising the powers of a Magistrate. Section 61B(2) of the Magistrates Court Act provides any Magistrate exercising powers of a tribunal he must do so in accordance with the law which established that statutory Tribunal. The Land Transport Appeals Tribunal has been established under the provisions of the Land Transport Act 1998.

[5] Section 48 of the Land Transport Act 1998 provides:

A decision of the Tribunal shall be subject to an appeal, only on points of law, to the High Court.

[6] In **Northland Transport Co Ltd v Land Transport Authority** [2020] FJHC 364; HBA19.2017 (27 May 2020) it was held:

4.13 Order 37 Rule 4 of MCR provide as follows:-

“On the appellant failing to file the grounds of appeal within the prescribed time, he shall be deemed to have abandoned the appeal, unless the court below or the appellate court shall see fit to extend the time.”

4.14 This Court finds that the Appellant’s Counsel is totally misconceived about the working of Order 37 Rule 4 of MCR.

4.15 Magistrates derive their Jurisdiction and Power from Magistrates Court Act 1945 or any other Acts of Parliament and does not have inherent jurisdiction.

4.16 Hence, power or jurisdiction to extend time for appeal a decision should be given to Magistrates under the Act that gives the Magistrates either as Magistrate or Statutory Tribunal to hear the Appeal.

4.17 If, power to extend time to appeal is given to the Magistrate as Statutory Tribunal without any provision setting down the practice and procedure to seeking extension of time to appeal then parties can utilize the practice and procedures laid down in Magistrate Court Rules.

4.18 Order 37 Rule 4 applies to Appeals from Appeals Tribunal (if Tribunal is not a Magistrate) to Magistrates Court.

4.19 The Appeal for which Appellant sought Leave for extension of time from Appeals Tribunal was Appeal from LTA Board’s decision to Appeals Tribunal and as such Order 37 Rule 4 of MCR has no application.

4.20 Power to extend time for appealing against LTA Board’s decision to Appeals Tribunal should have been provided for in Land Transport Act 1998.

4.21 It is apparent that no such power is given to LTA Appeals Tribunal under Land Transport Act 1998.

4.22 This Court has no alternative but to hold that Appeals Tribunal was absolutely correct in holding that he had no power under Land Transport Act 1998 to entertain Appellant's Application before him for extension of time.

- [7] The above matter was also an appeal from the Land Transport Appeals Tribunal to the High Court and the court has cleared any doubts as to the jurisdiction of the Tribunal to extend the time to appeal and the Tribunal is bound to follow the principles in the said judgment.
- [8] The learned counsel for the appellant has made lengthy submissions on inherent jurisdiction and inherent powers of the court. Inherent powers of the court can only be exercised when there are no express provisions in law on a particular issue of law and in the interest of justice.
- [9] A court or tribunal does not possess inherent powers to override a binding decision of a higher court or to add provisions to a statute which has not been provided for by the legislature.
- [10] For these reasons the court holds that the Tribunal is correct in holding that it had not power to grant leave to appeal out of time.

ORDERS

- (1) The appeal of the appellant is dismissed.
- (2) There will be no order for costs.




Lyone Seneviratne

JUDGE

25th April 2022