

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action HBC 323 of 2019

Merchant Finance PTE Limited
Plaintiff

v

Land Transport Authority
First defendant

Maiyale Investments Limited
Second defendant

Counsel: Mr A. Pal for the plaintiff
Mr N. Chand for the first defendant
The second defendant is absent and unrepresented

Date of hearing : 7th December 2020

Date of Judgment: 30th September 2022

Judgment

1. The plaintiff, in its originating summons seeks an Order that the first defendant, the Land Transport Authority,(Authority) renews and transfers the registration of motor vehicles IP 253, IP 254, IP 329, JI 065, JI 066, JI 420 and EV 091 from the second defendant to the plaintiff, on payment of transfer fees.

2. The affidavit in support states that the second defendant obtained credit facilities from the plaintiff and provided vehicles as securities. The second defendant defaulted in repayments. The plaintiff repossessed the vehicles. The first defendant advised that it will not transfer the vehicles, until all outstanding fines imposed on the second defendant by the first defendant are cleared in terms of Regulation 7 of the Land Transport(Traffic Infringement Notice) Regulation, 2017,(LTINR).
3. The affidavit in reply filed on behalf of the first defendant states that the plaintiff did not satisfy the Authority that the vehicles had been lawfully seized nor that it complied with 14(7)(a)(b) of the Land Transport(Vehicle Registration and Construction) Regulation,2000,(LTVRCR). The outstanding penalties accumulated in various TINs with fixed penalties. Any late payment of a fixed penalty is considered a prescribed fee under Part 1 -Miscellaneous Fees of Schedule 1 of the Land Transport (Fees and Penalties) Regulation,(LTFPR) and as such covered by Regulation 14(9) of the LTVRCR.

The determination

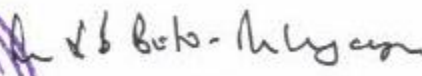

4. The plaintiff contends that the Authority has been unfair and unreasonable in requesting the plaintiff to pay all fees and penalties imposed on the second defendant, irrespective of whether the fees or penalties relate to the vehicle secured. Regulation 14 of the LTVRCR was intended to apply to registrations and renewal of registrations to the exclusion of mortgagees.
5. The first defendant contends that Regulations 14 and 8(1)(f) of the LTVRCR must be read with the provisions of the LTINR and LTFPR. The plaintiff did not establish that the vehicles had been lawfully seized nor that it complied with Regulation 14(7)(b).

6. Regulation 14 of the LTVRCR titled “*Transfer of registration*” provides that on a “*vehicle being lawfully seized*” -
- the registered owner must inform the Authority of the change of possession and the repossessor is required to apply to be registered as owner, both within 7 days - sub-sections (7)(a) and (b).
 - the Authority on “*being satisfied that a change of ownership has taken place lawfully may*” register the vehicle -14(8).
 - the Authority may refuse to transfer the registration until “*any outstanding prescribed fees have been paid in full*”: sub-section (9).
7. The plaintiff has not established to Court that it satisfied the Authority that a change of ownership took place lawfully.
8. On the contention that the Authority has acted unfairly and unreasonably, Regulation 6 of the LTINR states that a person to whom a TIN is issued “*must ...pay the fixed penalty*” within 90 days. If he does not, he is additionally liable to pay a late penalty fee.
9. Regulation 7 (1E) of the LTINR provides that if a fixed penalty is not paid, “*the Authority must suspend the registration of the person’s or principal’s vehicles and any other vehicle the person or the principal utilizes for the purpose of carrying loads*”. (emphasis added)
10. Amaratunga J in *All Earthworks Ltd v Land Transport Authority*, [2018] FJHC 21; HBJ03.2017 (23 January 2018) interpreted the above Regulation as follows:

The Respondent can not only suspend the vehicle to which TIN was issued but also the person’s or principle’s any other vehicle utilized for the purpose of carrying loads. This is to prevent similar offences being committed by the replacement of the vehicle or using other vehicles. This can be extended to only the vehicles used for carrying loads only. It cannot be extend to Machinery where primary purpose is not to carry loads. So implementation of Sub-Regulation 7(1E) has to strictly confine to vehicles carrying loads. The definition of loads exclude people and clearly any car or SUV is clearly excluded from that Sub-Regulation 7(1E). It should only be confined to vehicles that is capable of carrying excess loads similar to the vehicles that were issued with TIN for excess loads.

...it is mandatory to the Respondent to suspend all vehicles involved in TINs relating to excess loads, if the fixed fine was not paid within stipulated time. The Applicant had failed to pay the fixed fine and are refusing to do pay it. As such no renewal of such registration for the vehicles possible. This suspension can extend to other vehicles that were not issued with TINs but are being used to carry loads by the Applicant.

11. Regulation 8 (1)(f) states that the Authority “*must not refuse to transfer the registration of a vehicle, unless it is satisfied that- “any outstanding fees or penalties ...have been paid in full”*”.
12. In my judgment, the first defendant is entitled, in terms of the above regulations, to decline to renew and register vehicles, unless all fees and penalties imposed on the vehicles in respect of which TINs were issued are paid as well as all other vehicles belonging to that person that are utilized for the purpose of carrying loads.
13. I would note that the vehicles referred to in the credit facility agreements attached to the plaintiff’s supporting affidavit are used for the purpose of carrying loads.
14. The summons fails.
15. **Orders**
 - (a) The originating summons of the plaintiff is declined.
 - (b) The plaintiff shall pay the first defendant costs summarily assessed in a sum of \$1500.00



L.B. Brito-Mutunayagam
JUDGE
30th September, 2022