

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO.ABU 40 of 2017
(High Court at Suva HBC 7 of 2016)

BETWEEN : **RAJENDRA DEO PRASAD**
Appellant

AND : **DALIP CHAND & SON LIMITED**
First Respondent

AND : **NORTHERN BUSES LIMITED**
Second Respondent

Coram : Calanchini P
Basnayake JA
Guneratne JA

Counsel : Mr. A. Pal for the Appellant
Mr. A. Kohli for the First Respondent
No appearance by or on behalf of the Second Respondent

Date of Hearing : 21 September 2018

Date of Judgment : 30 November 2018

JUDGMENT

Calanchini P

[1] I agree that the appeal should be dismissed.

Basnayake JA

- [2] This is an appeal filed by the appellant (1st defendant) against the judgment of the learned High Court Judge dated 26 April 2017. The appellant is canvassing two orders of the said judgment, namely, (a) Restraining the appellant from operating his buses on the bus routes allocated to the 1st respondent (Plaintiff), that is the route to Qawa Road (formerly Boubale Road) via Bulileka Road and (b) Costs in a sum of \$5000.00.
- [3] The learned Judge had in his judgment disallowed the 1st respondent's claim for damages against the appellant. The 1st respondent's claim against the 2nd respondent (2nd defendant) too was dismissed. There is no appeal against the dismissal of the claim for damages and the dismissal of the action against the 2nd respondent.

The 1st respondent's case

- [4] The 1st respondent in this case *inter alia* sought an order to restrain the appellant from operating buses along the routes allocated to the 1st respondent by the Land Transport Authority. According to the statement of claim of the 1st respondent (pgs. 27-29 of Vol. 1 of the Record of the High Court (RHC)) the 1st respondent and the appellant are operators of bus services in Vanua Levu. The 1st respondent is licensed to operate his buses on Road Route License (RRL) No. 12/23/23. One of the trips covered by the license commenced from Labasa Bus Stand to Boubale via Bulileka Road.
- [5] The appellant has a license to operate his buses on RRL 12/23/34. One of the routes covered by the said RRL had been from Labasa Bus Stand to Qawa Circular Road via Vunivau/Basogoda Road. The 1st respondent states that the appellant in 2002 commenced operating their buses on the route allocated to the 1st respondent, namely Qawa Road and previously known as Boubale Road. The 1st respondent claims that the action of the appellant is illegal. The 1st respondent states that the "Qawa Road" referred to in the appellant's RRL is in Vunivau, which is situated about 5 km away from the Qawa Road, formally known as Boubale Road in Bulileka.

The defence

- [6] According to the appellant's statement of defence (pgs. 72-74 of the RHC) the appellant was granted RRL No. 12/23/34 to operate on the Labasa Bus Station-Qawa Road-Labasa Bus Station by the LTA by RRL Amendment dated 16 July 2002.
- [7] The appellant in the statement of defence maintains his right to operate bus services on the Labasa Town/Qawa Road/Labasa Town. The appellant also admitted to an injunction issued on him against operating buses to Qawa Road in Bulileka. However the appellant claims that it was only an interim injunction. The appellant states that he recommenced operations on the prohibited route on 7 July 2010 for a brief period. The appellant states that the proceedings in connection with the issue of interim injunction were struck out by Labasa High Court about 2006. However the appellant recommenced operations again in 2015. The appellant claimed that by this time there was no court order restraining him from plying buses through Bulileka. The appellant moved that the 1st respondent's writ of summons be dismissed.

The Minutes of the Pre Trial Conference

- [8] At the pre-trial-conference it was admitted that one of the trips covered by the 1st respondent's RRL No. 12/23/23 commenced from Labasa Bus Station to Boubale via Bulileka Road. It was also admitted that the appellant's RRL No. 12/23/34 had the following routes, namely:
- a. Route No. 508, Labasa/Basoga,
 - b. Route No. 508A, Basoga/Labasa/Vunivau,
 - c. Route No. 509, Labasa/Vunivau,
 - d. Rout No. 500, Labasa/Hospital.
- [9] It was admitted that the appellant's application to operate on the route Labasa/Qawa Junction/Labasa was approved by LTA on 16 July 2002. It was also admitted that RRL No. 12/23/23 was once allocated to Bulileka Transport Limited. On 27 September 2002,

Bulileka Transport Limited obtained an injunction restraining the appellant from operating buses through Labasa Bus Station to Qawa Road via Bulileka. It was also admitted that the appellant ceased operations on Qawa Road in Bulileka on 15 October 2002, in compliance with the Court order.

Issues

[10] Nine issues have been raised. I find that issues Nos. 8 and 9 are not relevant to this appeal. These issues relate to damages. The learned High Court Judge had refused to grant this relief. There is no appeal filed against the refusal. The other issues are as follows:-

1. Are the defendants (presently the appellant) also operators of bus service in Vanua Levu?
2. Where is the location of Qawa Road, that is to say, is it in Vunivau or is it in an area past Bulileka?
3. Was Boubale Road renamed as Qawa Road on the 16th of September, 2002?
4. What route did RRL 12/23/34 cover?
5. Did the defendants (appellant) commence operating its buses on a route covered by the plaintiff's RRL on the 18th December, 2015 and continue to do so?
6. Are the defendants continuing to illegally operate their buses on the plaintiff's routes?
7. Did the LTA stop the defendants from operating the bus service?

[11] Although there are so many issues, after considering the evidence I think the only issue relates to the location of Qawa Road. There is evidence that Boubale Road had been renamed as Qawa Road. Another Qawa Road was in existence in Vunivau which is about five km from the Qawa Road which is formally Boubale Road.

Evidence

- [12] The learned Judge had summarized the evidence of witnesses in his judgment. Portions of that summary have been used as far as they are relevant. Six witnesses gave evidence for the 1st respondent. The appellant gave evidence for the defence.

Witness No. 1 was the transport officer attached to the Land Transport Authority. He had worked in Labasa for a period of 12 years in two spells of six years. According to his evidence the appellant applied for an amendment of his RRL 12/23/34 to cover Labasa Town via Labasa Vulovi Road. This application was made with a sketch plan. LTA relies on sketch plans. The LTA does not rely on government plans. The appellant was given approval to operate from Labasa to Vulovi Road in Vunivau. He said the sketch plan depicted the amended route; that is Labasa Bulileka Road, Vulovi Road, Qawa Road and Qawa settlement. After the amendment was approved the LTA received a complaint from Ravindra Deo Prasad of Bulileka Transport Limited that the appellant was operating illegally from the roundabout of Vaturekuka, Bulileka Road. The appellant was not given approval to operate from Bulileka Road, Vaturekuku roundabout.

- [13] On 26 September 2002 the LTA warned the appellant to cease operations on Bulileka Road. The appellant did not heed to the warning. Then the appellant was issued with another warning on 28 October 2002. Under cross-examination the witness said by letter dated 25 July 2002 that the appellant's application was approved. He said that the letter dated 28 October 2002 refers to, "Malau Road, to clarify (what the LTA meant was) Qawa Road in Vunivau and not Qawa Road in Bulileka. Before applying for the amendment the appellant was operating on Vulovi Road leading to Malau Road or Wainikoro Dama Road. It is common to have multiple names for roads in Labasa. If two roads are called Qawa road the sketch plan would indicate the road meant.

- [14] Witness No. 2 is the authorized officer of the LTA, Vunivau. This witness has worked in Vunivau for more than 13 years. She said the appellant was operating on Vunivau Road and Valebasoiga Road. The appellant had applied for an amendment to his route permit to Qawa Road Junction where vulovi Road met Vunivau Road. His application sets out

the route he sought, viz, :Labasa Town/Qawa Road Junction/Labasa Town via Labasa Vulovi Road. There were no objections to this amendment. She identified the sketch plan prepared by Samisoni Ravudi which was attached to this application. She said that Qawa Road was marked in Vunivau. She also said that it is a sketch plan that was attached to the application and not a government map. She said that later when checked, the LTA found a Qawa Road in Bulileka. At the time of the amendment the LTA knew only one Qawa Road. That is in Vunivau. If an accident took place in Qawa Road she said she would go to Vunivau police station. Qawa Road in Vunivau leads to Qawa Primary School Road.

- [15] She said that Bulileka Transport Limited operated on Bulileka Road. She corroborated the evidence of PW 1 with regard to the letters issued and the injunction Bulileka Transport obtained restraining the appellant from operating on Bulileka Road. The appellant stopped operating buses along Bulileka Road with the issue of the injunction. In 2010 again the appellant started operating for 2 to 3 days and the appellant was issued with a warning and a Traffic Infringement Notice (TIN). She said the appellant started to operate on the prohibited route again in 2015. She also said that the records kept in LTA office in Labasa were destroyed in 2014. Under cross-examination she said that the appellant did not apply for additional trips. The appellant only applied for an amendment of his route. She said that the public are aware of Qawa Road in Vunivau. From Labasa Bus Station it would take 10 to 15 minutes to go to Qawa Road. To go to Boubale which is now named as Qawa Road it would take 30 minutes. She said she did not know the existence of a Qawa Road in Bulileka. She reiterated that the appellant's application for an amendment was from Labasa Town to "inside" of Qawa Road and Vunivau.

- [16] Ravindra Deo Lakshman is a brother of the appellant. He had a licence in the name of Bulileka Transport Limited. He operated from Labasa Town to Bulileka Road. The appellant did not operate on that route. The appellant operated from Labasa Town to Vunivau and Valesbasoiga. Valesbasoiga Road is on the opposite side of Bulileka Road. The appellant was operating on Vulovi Road, Qawa Road, Qawa Primary School and Vunivau Road. The witness said that he did not object to the amendment of the RRL of

the appellant as it had nothing to do with his route which is Bulileka Road. The amendment did not cover Boubale road (now Qawa Road). He said that he lived in Bulileka Road. He said he came to know of a Qawa Road in Bulileka only on 16 Septmeber 2002 when the appellant started operating on that road. In 2002 he said that a signage was put up in Bulileka for a Qawa Road.

- [17] This witness said that he made a complaint with the LTA against the appellant. He said the amendment to the appellant's route did not refer to Qawa Road in Boubale. He said that he did not see the appellant or anyone operating on Bulileka with a "Qawa" name board prior to 2015. He said if they did, the passengers to Vunivau would have got into this bus. Everyone in Labasa knew that "Qawa Road" is in Vunivau. He said that even the newspapers would report an incident as having occurred in Qawa in Vunivau. The road leading to Qawa Primary School was known as Qawa Road. He said that before Qawa Road signage came up in Bulileka Road, it was called Boubale Road as it still known and called. He said that from 1999 the appellant's buses had the sign, Qawa to Vunivau. The appellant started to operate from Bulileka from 17 September 2002. He said the LTA warned the appellant and issued TINs. He said Vulovi Road is opposite All Saints Secondary School and leads to Qawa Road Primary School Junction where Qawa Road begins. He said that Vulovi Road falls on to Malau Road and Wainikoro Road. He further said that the 1st respondent's licence refers to Boubale Terminus and not Qawa Terminus as the LTA was unaware of a Qawa Road in Boubale.

- [18] Sarafina Selai Toga is (PW 4) a journalist. She said that she had travelled to Vunivau, Bulileka and all over Labasa. She too said that Qawa Road is in Vunivau. She said that she had not heard a Qawa Road in Bulileka. She said that she had not covered a story that had occurred in Qawa Road in Bulileka. She produced a copy of Fiji Times of 26 August 2016 which had reported a police investigation in Qawa Road in Vunivau. She said that Qawa Road was known to be in Vunivau. There are two other witnesses whose evidence does not relate to the geography and/or events that took place and hence I refrain from giving a summary of them.

- [19] The appellant giving evidence said that the amendment of his RRL 12/23/34 to Qawa Road was unopposed. He said that he applied to operate on Qawa Road in Bulileka and not Qawa settlement. He produced an advertisement, time table for Qawa route and a map as D1, D2 and D3. He said that Qawa Road is depicted in the government map. He said that there is no Qawa Road in Vunivau or Malau Road. He said that he started operating on Qawa Road after his application was approved in July 2002. He admitted that on 26 September 2002 the LTA asked him to cease operations on Bulileka Road immediately until further clarification. The LTA wrote to him again on 28 October 2002. He said that he did not agree with the contents of that letter. On 27 September 2002 he said that Bulileka Transport Limited obtained an injunction restraining him from operating on this route. He said however that he was never found guilty of committing an offence for operating on Bulileka Road.
- [20] He said that his permit was renewed in 2006. He said in 2014 he made inquiries and found out that the action filed by Bulileka Transport Limited against him was no longer active and this action was dismissed. He said his solicitor wrote to the 1st respondent stating that the appellant was entitled to commence operating services since the action filed by Bulileka Transport Limited was struck out. He said that the 1st respondent's solicitor never replied. The solicitor denied to having received such letter. Anyhow no copy of such letter was produced in court by the appellant. He also said that the LTA undertook to clarify, but never did. He said legal proceedings started against LTA in HBC 102 of 2015. He said that he resumed operations in January 2016 and also received a notice from the LTA to cease operations.
- [21] In cross examination the appellant agreed that in 2001 he was illegally operating on Wainikovo Road and Malau Road. He said his route terminated at Vunivau Terminus and he came to town on Wainikovo Road and Malau Road as it was shorter. He denied that the LTA asked him to regularize his route and that his illegal trips were taken care of by the amendment as stated in the LTA's letter of 26 September 2002. He said that he did not know that the road between Vunivau Road and Wainikovo Road leading to Qawa Primary School was called Qawa Road. Later he said that it is called Qawa School Road

and finally admitted that it is commonly referred to as Qawa Raod. He said that after the court order, he did not operate till 2006. He said that he operated only 2 days as he was issued with a TIN. He said on 10 July 2006 12 TINs were issued to him and his drivers. He said that he received a letter from the LTA on 14 July 2006, stating that he had agreed to suspend operations from 12 July 2006. He said that he stopped operating. He states that now he operates on the advice of his solicitor.

Judgment

- [22] The learned Judge (pgs. 9-25 of the RHC) having summarized the evidence had identified the issue involved. He said, “the case for the plaintiff (1st respondent) is that the 1st defendant (appellant) is illegally operating his buses on the plaintiff’s routes to Qawa Road off Bulileka Road. The 1st respondent’s case is that the appellant’s amended licence permits him to operate on Qawa Road in Vunivau. The appellant contends that his RRL as amended permits him to operate on Qawa Road in Bulileka. The dispute arises from the fact that Labasa has two roads called Qawa Road. One is off Bulileka Road which was one time called Boubale Road. The other is in Vunivau. Qawa Road in Vunivau leads to Qawa Primary School.
- [23] The learned Judge said in paragraphs 14 and 15, that, “The relevant bus routes of the plaintiff commences from Labasa Bus Station, proceeds pass sugar mill and All saints Secondary School up to the roundabout, turns right to Bulileka Road and branches to Boubale Road which was renamed Qawa Road. The appellant’s bus route runs from Labasa Bus Station and turns left to Vunivau Road after passing All Saints Secondary School. One of his routes is Velesbasoiga.

Map or sketch produced along with the application seeking the amendment to RRL

- [24] The appellant produced an official map stating that as the one he submitted along with his application, seeking an amendment to the route. The map depicts Qawa Road in Bulileka. The learned counsel for the 1st respondent disputed this claim. The learned Judge too

refused to believe that it was a map as against a sketch that was annexed to the application for amendment. The learned Judge said (page 19 of the RHC) that, “the sketch plan produced on behalf of the 1st respondent (marked P6 at page 335 of the RHC) gives the name of the appellant and RRL No. on top of the page. The learned Judge appears to have considered P6 as the sketch that was annexed to the application seeking an amendment to the route. The learned Judge said that the appellant has not adduced cogent evidence to prove that he submitted the map along with his application. The learned Judge further observed that the map does not indicate the bus routes.

- [25] The learned Judge referring to the witnesses called for the 1st respondent stated that, “PW 1, PW 2 and PW 3 testified that the LTA requires a sketch plan setting out the proposed bus routes with markings of where the journey commences and terminates, not a government map. PW 1 and PW3 pointed out that many buses depict a signage not found in government maps”. Thus the learned Judge placed his reliance on the sketch plan depicting the amended route viz. Labasa Bulileka Road, Vulovi Road, Qawa Road and Qawa settlement prepared by a senior safety officer of the LTA (P6). The learned Judge expressed his view with regard to the evidence of witnesses PW1 and PW2 that the approval of the amended RRL of the appellant was based on a sketch produced.
- [26] The learned Judge further said that the sketch plan indicates Qawa Road in Vunivau and that it does not refer to Qawa Road in Bulileka. The evidence of PW 3 should be further considered in this regard. He is the brother of the appellant. Originally the RRL 12/23/23 belonged to him. The 1st respondent got the RRL No. 12/23/23 from this witness (PW 3). He lived in Bulileka. He said that there was no road by the name of Qawa in Bulileka at the time the appellant submitted his application for an amendment of the RRL. Qawa Road in Bulileka started on 16 September 2002. The appellant submitted his application for an amendment on 26 September 2001. Therefore there was no way that the LTA issued a licence to ply buses through Qawa Road in Bulileka.
- [27] The learned Judge also referred to the warnings given by the LTA to the appellant to make amendments to his licence to legalise the routes as he was illegally operating on

Vulovi Road, Qawa Road, Qawa Primary School and Vunivau Road. The appellant has admitted in his application dated 26 September 2001 (pg. 124 of the RHC) to the illegal operations. These illegal operations were done in Vunivau area. Originally the appellant did not have a licence to ply through Qawa Road. His original route (pg. 124 of the RHC) was Labasa/Vunivau/Labasa/Basoga, Labasa/Town Area via Hospital. There is no doubt that all these routes are in Vunivau area. Vunivau is away from Bulileka. The appellant admitted in evidence that in 2001, prior to the amendment to his RRL he was illegally operating on Malau Road, Wainikoro Road. His new route after the amendment included Qawa Road and the new route as it appears in the RRL (pg 121) is “ Labasa Town/Qawa Road Junction/ Labasa Town via Labasa /Vulovi Road”. By this time there was no Qawa Road in Bulileka and it was impossible for the appellant to ply his buses on Qawa Road in Bulileka.

The warning letters by the LTA dated 26 September and 28 October 2002

- [28] The appellant has denied that he was warned by the LTA to legalise his route and to file an amended application. The learned Judge met this denial in paragraph 33 (pg. 21 of the RHC). *“His denial is refuted by the note in his application for amendment (pg. 125) which states that, “some trips operates illegal””*. The letter dated 26 September 2002 provides that the amendment has “taken care of the illegal trips (he) had been operating through Qawa area for the past years under the RRL 12/23/34. The learned Judge himself has drawn up a sketch to explain where “Qawa Road” is situated. According to this sketch (pg. 22 of the RHC) Qawa Road is shown connecting Vulovi Road and Vunivau Road. It is closer to Qawa settlement and to Labasa Town. Boubale Road is outside Vunivau and Vulovi Roads. Boubale has been named as Qawa Road. It appears that the learned Judge has used P6 sketch to draw up the sketch in the judgment itself. The learned Judge states that this Vulovi road has been called Malau Road as well. The learned Judge has said that Qawa Road in Vunivau is closer to Labasa Bus Satation than Qawa Road in Bulileka.

[29] The learned Judge also made reference to the evidence of witness No. 2 who said that she was unaware of a Qawa Road in Bulileka. Being satisfied with the vast amount of evidence led for the 1st respondent that Qawa Road referred to in the RRL of the appellant is in Vunivau and not Bulileka, the learned Judge concluded that the appellant has no licence to operate to Qawa Road in Bulileka. He thus granted a restraining order against the appellant operating buses to Qawa Road (formally Boubale Road).

Grounds of Appeal

- [30] “i. *The learned trial judge erred in law and in fact failing to consider the principles set out in the matter of Karan v National Insurance Company of Fiji Limited HBC 137J of 1999L and in particular whether the Plaintiff had a higher onus of proof to meet through the First Respondents principle allegation that the Appellant and the Second Respondent were operating bus services illegally. The operation of bus services without a road route licence would be a breach of section 62 of the Land Transport Act.*
- ii *The learned trial judge erred in law in failing to first consider that a determination of the location of Qawa Road as set out in the Road Route Licence 12/23/34 issued by the Land Transport Authority to the Appellant (via an amendment approved through the Land Transport Authority’s Board Resolution of 16 July 2002) was a review of the decision of the Board of the Land Transport Authority and therefore was only to be determined through an appeal to the Land Transport Appeals Tribunal pursuant to section 46 of the Land Transport Act.*
- iii. *The learned trial judge erred in law in failing to consider the application of section 46 and 48 of the Land Transport Act and the decision of Justice Jitoko in the matter of State v Land Transport Authority, Ex parte Prasad HBJ ID of 2005 which limits the remedies available to aggrieved parties to appeals to the Land Transport Appeals Tribunal or judicial review in the High Court where the grievance of a party relates to public service vehicles and in the present instance, making a determination as to the location of Qawa Road on Road Route Licence 12/23/34, held by the Appellant. Whilst a claim for damages and restraining orders can be pursued through a Writ action of the High Court, a review of a road route licence is not permissible.*
- iv. *The learned trial judge erred in law reviewing the decision of the Land Transport Authority Board made on 07 July 2002 which allowed the Appellant to operate his services on Qawa Road without having the necessary powers under the Land Transport Act to do so. The determination*

of the location of Qawa Road as set out in Road Route Licence 12/23/34 was in effect a review of the decision of the Land Transport Authority Board.

- v. *The learned trial judge erred in law and in fact in holding that the Land Transport Authority being the regulator of land transport (pursuant to section 9(1) of the Land Transport (Act) and the regulator with the powers to issue, amend, vary or cancel Road Route Licences (section 63 of the Land Transport Act and Land Transport (Public Service Vehicles) Regulation 2000 was not required to be a party to proceedings where the dispute being determined related to a location of a road in the Road Route Licence issued by the Land Transport Authority. The Appellant further relies on the Fiji Court of Appeal decision of Pacific Transport Limited v Khan ABU 021 of 1996.*
- vi. *The learned trial judge erred in law and in fact making a determination of the location of Qawa Road set out in Road Route Licence 12/23/34 without the requisite evidence being presented before the Court, for the Court to make a determination of the issue. The official Land Transport Authority Board minutes, files and records were not produced in Court by the Plaintiff who had the onus to prove the location set out in Road Route Licence 12/23/34 was the Qawa Road in Vunivau and not Qawa Road in Bulileka. Such documents were necessary for the Court to make the determination and the learned trial judge proceeded to make the determination without the evidence being presented before it.*
- vii. *The learned trial judge erred in fact in finding that the Qawa Road in Bulileka had no official recognition at the time the Appellant first made his application for amendment of Road Route Licence 12/23/34 in September 2001 when in fact the Public Works Department letter of 4 October 2002 expressly stated that the road was recorded in their inventory as Qawa Road and official maps issued by the Department of Lands and Survey recorded the roads as Qawa Road in its map (Exhibit D 6 in the High Court trial) which showed Qawa Road existing in Bulileka. The said official map noted that the date of photograph was 1982 and the date of field check was 1986.*
- viii. *The learned trial judge erred in fact and in law in relying on commonly used names as a basis of interpreting locations set out on Road Route Licence 12/23/34 being a permit issued by Land Transport Authority under the Land Transport Act instead of official names contained in official government documents, namely official government maps issued by the Department of Lands and Surveys.*
- ix. *The learned trial judge erred in law and in fact to adequately consider Part 10 of the Final Joint Closing Submissions of the Defendants filed on 8 March 2017 and in particular the Appellants submissions in relation to the operation of the Land Transport Act and the Land Transport (Public Service*

Vehicles) Regulations 2000, powers of the Land Transport Authority Board, powers of the Land Transport Appeals Tribunal and the operation of the law in relation to issues of Road Route Licences and matters ancillary to such road routes licences.

- x. *The learned trial judge erred in law in failing to consider the floodgates principles in holding that a party that is aggrieved about the contents, locations, routes or such similar matters relating public service permits issued by the Land Transport Authority pursuant to the Land Transport Act could circumvent the processes established under the Land Transport Act and have the grievance determined through private litigation between two private parties without the involvement of the Land Transport Authority being the regulator and issuer of the such public service permits."*

Submissions of the learned counsel and the analysis of evidence

- [31] The 1st ground of appeal relate to the burden of proof. The learned counsel submitted that the respondent has a higher onus of proof with regard to the appellant operating an illegal bus service.
- [32] The issue in this case is a matter relating to geography. In this case there are two roads bearing the same name. That is Qawa Road. The appellant's RRL No. is 12/23/34. The appellant had been permitted to use the route, namely, Labasa/ Vunivau, Labasa/Basoga, Labasa/Town Area via Hospital. According to the appellant's own evidence he had been using Qawa Road as a shorter route to reach Labasa. Hence the appellant was required to apply for an amendment by the LTA. The appellant on 26 September 2001 applied for an amendment as a result of which the appellant was allowed to use Labasa Town/Qawa Road Junction/Labasa Town via Labasa/Vulovi Road (pg. 125 of the RHC). The Qawa Road referred to is in Vunivau. According to the evidence adduced in this case it is this Qawa Road that was commonly known.
- [33] There is another Qawa Road. That is situated in Bulileka. This Qawa Road was known as Boubale Road. (That is situated in Bulileka). Boubale Road or newly named Qawa Road is situated about five km from the Qawa Road in Vunivau. The appellant's contention is that his RRL No. 12/23/34 permits him to ply through Qawa Road in Bulileka. While

giving evidence the appellant denied that there is another Qawa Road in Vunivau. The appellant appears to have believed that he had a good chance of plying his buses through Bulileka. That is why he denied knowledge of another Qawa Road in existence. However at the time the appellant made the application for an amendment to use Qawa Road, there was no other Qawa road in existence. The only Qawa Road was found in Vunivau.

- [34] The evidence of witnesses and documents including that of the appellant's application dated 26 September 2001 is ample proof of the fact that the RRL No. 12/23/34 permitted the appellant the use of Qawa Road in Vunivau. Thus ground one is irrelevant as there is nothing to establish that the respondent needs to prove his case with a higher degree.
- [35] In the second ground the learned counsel for the appellant submits that the learned Judge has no jurisdiction to hear this case as this is a case for judicial review. The 1st respondent in this case is not challenging the decision of any authority or a statutory body or to get a decision declared void. Therefore this ground is without merit and is rejected. The 3rd and 4th grounds are also of similar nature and without merit. The 5th ground is with regard to the LTA not being made a party. None of these questions were raised before and are of no value. The 1st respondent is not claiming any relief from the LTA and the LTA is not a necessary party.
- [36] In the 6th ground the learned counsel submitted that the learned Judge erred in deciding the location of Qawa Road without the Board minutes of files, records etc. as they were not produced in court. I am of the view that the court had enough material to decide the whereabouts of Qawa Road. The appellant is well aware of the destruction of the LTA office in Labasa in 2014. For that reason this court assumes that even if the court requires any material, it will not be possible to obtain them due to the destruction of records. The appellant appears to think that as the records are destroyed he will be able to flout the law. I need not reiterate the voluminous evidence adduced in this case through witnesses and documents; The restraining orders, warnings and TIN's issued by the LTA in 2002 and again in 2010. In both those occasions the appellant obeyed and prevented plying buses on this particular route. The appellant started using this route again without a

licence apparently not on the basis that he got authority from the LTA but on the advice of his solicitor. This ground is without any merit and is rejected.

- [37] The seventh ground too relates to a question of fact. The learned counsel submitted that Qawa Road was in existence even prior to the date of the application by the appellant for an amendment on 26 September 2001. The issue is not whether a Qawa Road existed in Bulileka prior to 26 September 2001. The issue is whether the appellant was permitted to use Qawa Road in Vunivau. This question has been answered by the learned Judge in favour of the respondent on the evidence available. I am of the view that the learned Judge has correctly decided the issue as to the location of Qawa Road allocated to the appellant by his RRL.
- [38] Ground No. 8 too concerns the lack of reliance placed on maps issued by the Department of Lands and Surveys. In considering road route licences the evidence of the officials of the LTA was that they use sketches and not government maps. Sketches are attached to applications. The evidence of the witnesses is that the appellant too had attached a sketch. The learned counsel submitted that the appellant attached a map. The learned counsel for the respondent submitted that the reason for not submitting the sketch was that if submitted that would have been unfavourable to the appellant. The learned counsel for the appellant could not show any law or regulation that compelled the LTA to accept maps instead of sketches. I see no merit in this ground.
- [39] With regard to ground nine the learned counsel submitted in the written submissions that the learned Judge erred in not considering the Land Transport Act and Regulations. However the learned counsel does not specify which provision he wished the learned Judge to consider. With regard to ground 10 the learned counsel submits that the Land Transport Act sets out how parties are to challenge decisions relating to public service vehicles and permits. However in this case I do not find any party challenging a decision relating to public authority. Therefore these grounds are lacking merit.

[40] I am of the view that this case is without merit and should be dismissed with costs in a sum of \$5000.00 in favour of the 1st respondent.


Guneratne JA

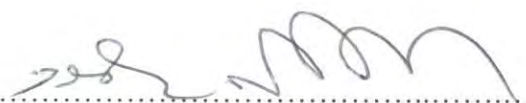
[41] I agree with the reasoning and conclusion contained in Basnayake JA's Judgment.


Orders of the Court are:

1. *Appeal dismissed.*
2. *Costs in a sum of \$5,000.00 payable to the first respondent by the appellant within 28 days from the date of this judgment.*




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Hon. Justice W. Calanchini
PRESIDENT, COURT OF APPEAL


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Hon. Justice E. Basnayake
JUSTICE OF APPEAL


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Hon. Justice Almeida Guneratne
JUSTICE OF APPEAL