

**IN THE MAGISTRATES COURT
OF THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

**Civil
Case No. 20/2262 MC/CIVL**

BETWEEN: DENNIS TOA

Claimant

AND: REGINALD TABI (CEO PLTA)

First Defendant

AND: PUBLIC LAND TRANSPORT AUTHORITY

Second Defendant

Before: Senior Magistrate Moses Peter

*In Attendance: Mr. Richly Bule holding Papers for Mrs. Christina Thyna Gezza
on behalf of the claimant*

Mr. Tom Loughman for the defendants

Copy: Parties

DECISION

A. Introduction

1. Claimant initiated this proceeding against the defendant as an authority responsible for management of public land transport in Vanuatu.
2. He alleges the Authority (Public Land Transport) unlawfully detained his vehicle for a month resulting in substantial loss to his transport business.
3. The relief sought for are that his vehicle be released to him and that damages be awarded for loss of income caused by the defendant's unlawful act of impounding his vehicle.



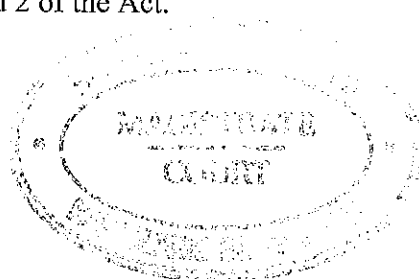
4. The claim was filed together with an interlocutory order application seeking for order of the court with regard to immediate release of the vehicle to the claimant. The court upon dealing with the ex parte application issued order for the release of the vehicle to the claimant.
5. The pending issue is in relation to damages suffered due to unlawful detention of the vehicle.

B. Background

6. The claimant obtained loan from Bank South Pacific and purchased a Nissan Bus registration no. B18462 (hereinafter referred to as the vehicle).
7. He has paid the required fees in order to operate the bus business.
8. On 28 July 2020, the police officers of the Traffic Section of the Vanuatu Police Force did a traffic check on the bus as it was driving to Port Vila from Pangpang Area on East of Efate.
9. Upon examining the driver, they established that the driver of the vehicle namely Partis Kaipen was driving without a valid driver's license.
10. The police officers brought the vehicle to their premises where it was seized pending further actions of the responsible authorities.
11. Mr. Partis Kaipen was issued with a notice of a fine of VT 10,000.
12. On 6 August 2020, he paid the fine of VT 10,000 and was issued with a receipt to confirming his payment.
13. The Police officers then transferred the said vehicle to the Public Land Transport for further action as the driver was seen driving the vehicle at the time while under the influence of alcohol.
14. Further to the transfer of the vehicle to the PLTA, Police Sergeant Jack Laan issued a penalty notice to the claimant to pay a fine of VT 500,000 for drink and drive.
15. The vehicle remained under custody of the PLTA with no action taken by the authority despite the claimant's persistent efforts to have his vehicle released to him.

C. Defence

16. The defendant says the driver at the time; Mr. Batis Kaipen was not only driving without a valid driver's license but was also under the influence of alcohol.
17. These actions are contraventions of section 16 of the Road Traffic Control Act and section 37 (1) (e) of the Public Land Transport Act.
18. Therefore the actions of the defendant to impound the claimant's vehicle are lawful as was taken pursuant to the relevant provisions of Public Land Transport Act (section 37 (2) (4) and the Penalty Notice in Schedule 1 and 2 of the Act.



D. Law

Public Land Transport Act No.4 of 2015:

Section 37 (1) A police officer or municipal warden or any person authorized by the Authority may impound a public land transport vehicle on any of the following grounds:

- a) If the person driving the vehicle has no valid general or tourist driver's permit; or
- b) If the vehicle has no public land transport vehicle permit; or
- c) If the vehicle does not have an approved number plate; or
- d) If the vehicle is not in a roadworthy condition; or
- e) If the vehicle is being driven in a manner which contravenes section 16 of the Road Traffic (Control) Act [CAP 29].

(2) A vehicle that is impounded may only be released only after the prescribed penalty fine has been paid. (Underlining is mine)

(3) A person who owns a vehicle that has been detained and impounded under paragraph (1)(d), must not apply for a public land transport vehicle permit, in respect of that vehicle, for a period of 6 months commencing on the date on which the vehicle is released from being impounded.

(4) if a vehicle has been detained and impounded under paragraph (1)(e), a police officer is to seize the driver's public land transport driver's permit and the permit is deemed to be suspended from the moment of seizure until such time as determined by the Authority. (Underlining is mine).

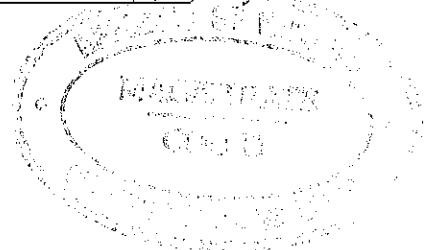
Road Traffic Control Act [Cap 29]

Section 16: It is an offence for any person to drive on the road when under the influence of alcohol liquor or a drug to such extent that the driver is incapable of properly controlling his vehicle. A police officer shall be empowered without warrant to arrest any person contravening this section. (underlining is mine).

Section 53- Offences and Penalties

- 1) Except as provided in sections 12,13,14,15, 20 (3), 20A, 34,35,47,55 and subsections (2) and (3) of this section, any person who contravenes a provision of this Act shall be guilty of an offence and shall be liable to a fine not exceeding VT 10,000 or to imprisonment not exceeding 1 month or to both such fine and imprisonment:

Provided that a police officer of the rank of inspector or above, upon consideration of the report sent to him or if he himself establishes the contravention, may issue an



offender with a compounding notice giving such offender the option of paying a fine on the scale prescribed by the Minister or appearing before the court for trial.
(Underlining is mine).

(2)

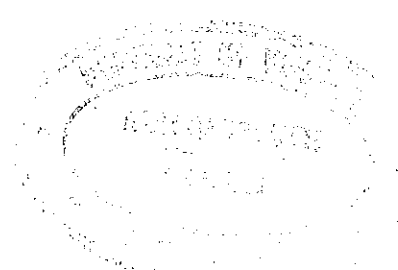
(3) *Any person convicted by a competent court of offences against section 16 (41)(1), 51 or 52 shall be liable to a fine not exceeding VT 100,000 or imprisonment not exceeding 1 year, or to both such fine and imprisonment.*

E. Issues

- a. Whether the actions of the Police officers and the Public Land Transport Authority to impound the Claimant's vehicle is lawful?

F. Discussion

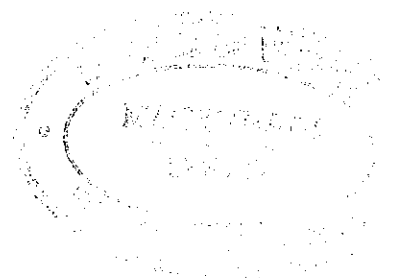
19. I will discuss the issue in two parts. Firstly, it is imperative to deal with the legality of the actions of the police officers dealing with issuing compounding fine on the driver of the claimant's vehicle and the manner in which the vehicle has been detained and delivered to the Public Land Transport authority for their actions.
20. The similar discussions will follow with regard to the actions of the Public Land Transport Authority.
21. Section 16 of the Road Traffic Control Act permits the police officers to arrest without a warrant a person who drives a vehicle while under influence of alcohol to such extent that he or she is incapable of controlling the vehicle.
22. The Police officers confirmed drawing the suspicion by observing the way the claimant's bus is travelling towards Port Vila at Pangpang road, on East Efate.
23. Consequently, they pulled in front of the bus forcing it to stop and upon questioning; they identified the driver as Patis Kaipen who is alleged to be drunk with three other persons one of whom is the claimant.
24. Patis Kaipen told the police he does not have a driver's license (Sworn statement of Ondia Taga and Melinda Fakiasi).
25. No depositions clearly reported the arrest of the driver of the vehicle who was observed to be drunk with his three friends except that Superintendent Samson Garae drove the claimant's bus to Port Vila with the driver and his other friends in it and deliver the key to Inspector Kalontas Titus who is in charge of the Traffic Unit of the Vanuatu Police Force. (Sworn statement of Ondia Taga, Melinda Fikiasi).
26. What became obvious to the police when questioning the driver of the claimant's vehicle was that two matters came up for the police to deal with within the confines of Road Traffic Control Act and possibly Public Land Transport Act.



27. First the defendant is alleged to be driving while under the influence of alcohol to such extent that he was incapable of controlling his vehicle. This is a matter triable only in the court with prescribed penalty imposed where the guilt of the driver is established beyond reasonable doubt. The prescribed penalty is stipulated in section 53 (3) of the Road Traffic Control Act to be VT 100,000 fine or 1 year imprisonment.
28. The Police is only empowered without a warrant to arrest a driver alleged to be under the influence of alcohol. Once the driver is arrested, cautioned and substantial evidence has been received then the matter should be prosecuted in a competent court.
29. This is not the way the police officers deal with this first issue but have pursued it respect to the provisions of the Land Transport Authority. I will explain that later.
30. The second issue relates to the driver Patis Kaipen driving the claimant's vehicle without a driver's license.
31. Section 53 (1) grants authority to a police officer in a rank of Inspector or above to consider contravention on several sections of the Road Traffic Control Act except the sections particularized as follows:
 32. *Except as provided in sections 12,13,14,15, 20 (3), 20A, 34,35,47,55 and subsections (2) and (3) of this section...*
 33. *(2) Any person convicted by a competent court of offences against the provisions of section 11, 18, 23, 25, 32(3), 32(5), 42 or 45...*
 34. *(3) Any person convicted by a competent court of offences against section 16 (41)(1), 51 or 52 ...*
35. The penalty for any actions contravening any sections other than those mentioned above carries a penalty of VT 10,000 fine or 1 year imprisonment or both (Section 53 (1) of the Road Traffic Control Act).
36. The court having established the burden of prove of contravening these sections is to impose the penalty above stated.
37. However, a Senior Inspector of the Police or any rank above may consider the report for such contravention and issue a compounding notice to the offender giving him the options to pay compounding fine on the scale set by the Minister or that he prefers to appear before the court.
38. The driver of the claimant's vehicle namely Patis Kaipen does not have a driver's license therefore he contravenes section 42 of the Road Traffic Control Act.
39. This section amongst other sections not stated in section 53 (1) (2) and (3) can be dealt with by a Police Inspector explaining the options to the offender on how he wishes to have his offending dealt with either by paying a compounding fine or that he appears before the court.
40. Apparently, there is no evidence to suggest that a senior inspector in the Police Department has suggested these options to Patis Kaipen and that he agrees to the Police issuing a compounding fine as per the scale prescribed by the Minister.



41. What transpired is that a police officer in the rank of a sergeant namely Jack Laan issued a compounding fine of VT 10,000 to the offender namely Patis Kaipen for driving without a driver's license. A receipt annexed as JL1 confirmed payment by Patis Kaipen (sworn statement of Jack Laan).
42. That not being sufficient to put the matter at rest, Sargent Jack Tom Laan issued a formal Penalty Notice and Fines to the claimant Mr. Dennis Toa to present himself to the office of the Public Land Transport Authority for the offence of driving under the influence of alcohol.
43. The Notice is annexed as JL3 in the sworn statement of Sargent Jack Laan.
44. The offence is stated as 'driving under the influence of alcohol' and the penalty is 'VT 500,000 fine'.
45. Evidently, the police officers who intervened at Pangpang road identified the driver as Patis Kaipen. This led to the penalty notice and fine issued to him, which he had paid.
46. What instigated the matter before the Public Land Transport Authority is that the police officer Jack Laan relied on section 37 (1) *A police officer or municipal warden or any person authorized by the Authority may impound a public land transport vehicle on any of the following ground:*
 - (a).....
 - (b).....
 - (c).....
 - (d).....
 - (e) *If the vehicle is being driven in a manner which contravenes section 16 of the Road Traffic (Control) Act [CAP 29].* (My underlining).
47. Section 16 of the Road Traffic (Control) Act states: *It is an offence for any person to drive on the road when under the influence of alcohol liquor or a drug to such extent that the driver is incapable of properly controlling his vehicle. A police officer shall be empowered without warrant to arrest any person contravening this section.*
48. Section 16 is a criminal offence and punishable on conviction by a fine of VT 100,000 or 1 year imprisonment or both (section 53 (3) Road Traffic Control Act [Cap 29]).
49. This particular section can be invoked only if the Penalty Notice and Fine had been issued to the driver at the time of offending who is Patis Kaipen.
50. Even though the claimant was in the vehicle at the time and was alleged to be drunk, he cannot be held responsible for contravening section 16 of the RTCA. He did not drive the vehicle at the time.
51. If the Penalty Notice and Fine had been issued to Patis Kaipen then there is no merit in the PLTA compounding the claimant's vehicle.



52. No evidence suggests that the Police officers have seized the driver's public land transport permit and the permit is deemed to be suspended pending determination by the PLTA pursuant to section 36 (4) of the Public Land Transport Act No.4 of 2015.
53. This might be due to the fact that the driver at the time of the incident did not possess a driver's license.
54. However, a letter by PC Jack Laan of the Traffic Crash Unit to Public Land Transport Authority on 5 August 2020 seeks for their decision with regard to the claimant Mr. Denis Toa.
55. Apparently, from 28 July 2020 to 25th August 2020, the claimant's vehicle had been impounded by the police.
56. The letter dated 5 August 2020 appears to suggest that further action is required to be taken by the PLTA after the police officers have dealt with the driver namely Patis Kaipen.
57. Not action has been taken by the PLTA as the CEO confirms he was away on Ambae Island for work purposes and that the police report had not reached his office so he was therefore unable to make a decision on that regard. (Sworn statement of CEO- Reginald Tabi).
58. Section 45 of the PLTA states: "A permit officer may serve a penalty notice on a person if it appears to him or her that the person has committed an offence under this Act or the regulations and the offence is one that is stated by the regulations to be an offence to which this section applies.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay within a time and to a person specified in the notice, the amount of penalty stated in the penalty notice."
59. It remained unclear if PC Jack Laan satisfies the definition of a permit officer by issuing a penalty notice to the claimant for a fine of VT 500,000 for driving while under the influence of alcohol.
60. The interpretation section of the PLTA interprets a 'permit officer' as a person appointed by the Authority under section 13 of the Act.
61. Section 13 gives power to the Authority to appoint a permit officer for each Association.
62. While it appears in the penalty notice that PC Jack Laan may introduce himself in the penalty notice as an authorized officer, it is obvious that he fall short to fit the description of a permit officer.
63. If he actually is a permit officer, then he is required to make the options available to the offender as to whether he wishes to have his matter dealt with in the PLTA or that he wishes to appear before the court.
64. No evidence produced appears to show that this option was expressed to the claimant.
65. Apparently, the situation remained the same until the interlocutory orders of the court was served on him and the vehicle was released to the claimant on 26 August 2020.



66. It is of a concern that while section 16 of the Road Traffic Control Act sets the basis for the processes to deal with the vehicle and the driver of a public vehicle under the Public Land Transport Act, the consequences on the offenders action is very harsh based on an allegation of drink and drive while the court is required to ascertain guilt of the offender and consider penalty options which are lenient.
67. By that, I mean, the prescribed fine by Minister with regard to drink and drive is VT 500,000 with impounding of vehicle while the court upon finding a person guilty for drink and drive, can only sentence the driver to a maximum of VT 100,000 fine or 1 year imprisonment.
68. I am of the view that if the permit officer explains the options available of dealing with an offence of drinking while under the influence of alcohol, I am sure he will decide to have his offending dealt with by the court.

G. Finding

69. The following are the findings of the court:

- a) The claimant own and operates a service bus (Registration No. B18462) after satisfying all legal requirements.
- b) The claimant obtained through credit facility by Bred bank to purchase his bus.
- c) His business income would service monthly loan repayments as agreed between the claimant and his bank.
- d) The claimant earns daily income from his bus business at range of VT 8,000 to VT 15,000.
- e) The Police Officers who questioned the driver of B18462 namely Partis Kaipen did not arrest him but detained the bus he was driving.
- f) A police officer under the rank of Senior Inspector namely Sargent Jack Land issued a fine of VT 10,000 to Partis Kaipen for driving without a driver's license.
- g) The Police Officers did not suggest the options to Partis Kaipen whether he wishes to appear before the court or that he pay the fine imposed on him by Sargent Jack Laan.
- h) The claimant (Dennis Toa) was not driving the vehicle at the time when the police officers forced it to stop at Pangpang Road.
- i) A penalty notice issued by Sargent Jack Laan to the Claimant fall short in satisfying the definition of a permit officer under section 13 of the PLTA.
- j) No options is explained to the claimant if he wishes to appear in court or that he pays the fine of VT 500,000.
- k) The Claimant's bus remained impounded and no action was taken by the PLTA from 28 July 2020 until the court orders for its release on 26 August 2020.


H. Order



70. I find for the claimant after satisfying myself that the authorities failed to observe the relevant laws when dealing with the claimant's vehicle.
71. Judgment is entered in the sum of VT 290,000.
72. Defendant has 30 days to settle this judgment failing which, the claimant has liberty to file enforcement proceedings against it.
73. Cost for the claimant to be taxed failing agreement.

DATED at Port Vila this 16th day of June 2021

BY THE COURT


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MOSES PETER
Senior Magistrate

