

revoked for a month by the defendant; that fairness requires the defendant to substantiate the alleged failure made against Mrs Tewera through evidence before holding her liable of the allegation. Further, the plaintiff argued the decision was not authorized by law as pursuance to section 11(1) of the Business Licence of the Teinainano Urban Council Bye Law 2011.

INGREDIENTS OF CLAIM TO BE PROVED

Mrs Tewera has to prove on the balance of probabilities that:

1. The Teinainano Urban Council's action of revocation of her bus operational licence for a month from 31 March 2014 to 30 April 2014 was unjustifiable;

In addition, Mrs Tewera must prove that as the result of the TUC's unlawful decision made her suffer damages, being the claimed loss of income and other costs.

UNDISPUTED ISSUES

There is no dispute that the plaintiff operated a valid licensed bus business for her three (3) buses TA1227, BA1108 and BA1110 prior it suspension by the defendant.

It is also agreed that the defendant wrote three (3) letters to the plaintiff: the first letter dated 6th March 2014 from Transport Committee signed by the Deputy Clerk for the Clerk of the Tarawa Urban Council informing the plaintiff of her bus BA 1227 failure to observe the condition of the bus service Business Licence. The second letter dated 11 March 2014 is an immediate suspension of the plaintiff's business licence for her three (3) buses, TA1227, BA1108 and BA 1110.

The Defendant's third letter dated 21 May 2014 was decision of the Joint Transport BTC and TUC Transport Committee suspending the Plaintiff bus service Business Licence. The letter was signed by the CW- Teakamatang B Timi for the CEO TUC.

All of the decision entailed in the defendant's three (3) letters were made by the Transport Committee.

Both parties agree in their Statements that the plaintiff wrote a letter to the defendant on 2 April 2014 to revert its decision and request the defendant to conduct a fair hearing.

Further both parties agree that the business licence is the mandate of the Council to suspend.

(2) *Prior to any suspension or revocation, the council shall advise the licensee in writing that it is considering taking action to suspend or revoke their license, and the reasons why such action is being considered.*

(3) *The licensee shall be given a reasonable period of time to respond, after which time the Council may proceed to consider the matter.*

Further, the plaintiff evidence is that the revocation of her business licence was decided by a body not authorized by law. Again, on the face of the letters of the defendant, the decision to suspend the Business Licence of the plaintiff was made by the Transport Committee. The Transport Committee is the creation of the Council.

It is clear that the suspension and revocation of Licences is the mandate of the Council under section 11(1) of the Teinainano Urban Council Business Bye-Law 2011 which states:

(1) *The Council may, in its discretion, suspend or revoke a business license.*

Under section 2 of the same Bye Law, the word 'Council' means the 'Teinainano Urban Council' which would imply the full Council that includes the Mayor, the Clerk and the Councilors. Even though the Bye Law is silence as to the process of the suspension of business licence, one will have no doubt that the decision of the Transport Committee is not final as legally speaking is not a full Council.

Therefore, I have found that the defendant failed to comply with section 2 and section 11(1) of the Teinainano Urban Council Bye Law 2011.

CASE AUTHORITY CONSIDERED

Tebetanga v Betio Town Council – Judgment [2014] KHC 43; Civil Case 192 of 2010 (17 October 2014)

APPLICATION OF FACTS AS FOUND TO INGREDIENTS OF CLAIM

It is clear that the defendant, the Teinainano Urban Council (as full Council), is the appropriate authority to suspend the business licence and not its creation, the Transport Committee.

Therefore, I am satisfied that the action of the Transport Committee in suspending the business licence of the plaintiff is ultra vires therefore void and invalid.

The defendant was obliged to give the plaintiff the opportunity within a reasonable time to defend herself against the allegation before suspending her business licence. The plaintiff did not consent to the allegation therefore it is the duty of the defendant to establish in evidence on the balance of probabilities that the breach was indeed materialized to qualify the imposing of the penalty and when the defendant did not do that I am satisfied that there was no evidence to substantiate the allegation against the plaintiff drivers for breaching the condition of the business licence.

CONCLUSION

I therefore find that the plaintiff has proven her claim.

FORMAL DECISION

Accordingly, I order judgment for the plaintiff of \$18,000.00 for specific damages for loss of income of the three (3) buses for a month. The interests and costs of the action for the plaintiff to be taxed if not agreed.

There is no award on general damages as there is no evidence provided to prove that the plaintiff suffered distress due to the action of the defendant.



SISTER BERNADETTE MEE EBERI FDNSC
COMMISSIONER

[Delivered in open Court by Chief Justice on 20 August 2018].

