THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. CA P028 of 2021
Claim No. CV 2020 - 03720

IN THE MATTER OF
THE MOTOR VEHICLE AND ROAD TRAFFIC ACT CHAPTER 48:50

AND

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF
THE LICENSING AUTHORITY OF TRINIDAD AND TOBAGO

Between

ZACHARY DE SILVA

Appellant

AND

LICENSING AUTHORITY OF TRINIDAD AND TOBAGO

AND

TRANSPORT COMMISSIONER

Respondents

Panel:

A. Yorke-Soo Hon, JA

P. Rajkumar, JA

R. Boodoosingh, JA

Appearances:

Mr Christophe R. Rodriguez and Mr Devvon Williams instructed by Ms Kimaada Ottley for the Appellant

Mr Ravi Nanga and Ms Rachel Theophilus instructed by Ms Savitri Maharaj for the Respondents

Date of Delivery: 12 August 2021

I have read the judgment of Boodoosingh JA. I agree with it and have nothing to add.

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A. Yorke-Soo Hon, JA

I have read the judgment of Boodoosingh JA. I agree with it and have nothing to add.

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P. Rajkumar, JA

Judgment

Delivered by: R. Boodoosingh, JA

1. The issue for consideration in this appeal is which Court is the correct forum for an appeal against the decision of the Licensing Authority of Trinidad and Tobago (the Authority) when it disqualifies a person from holding a driver's licence under a 2017 amendment to the **Motor Vehicles and Road Traffic Act, Chap 48:50**.

2. The appellant, Mr Zachary De Silva (Mr De Silva or the appellant), during the May to September 2020 period received three fixed penalty notices or "tickets" for driving while using a mobile phone, breach of a traffic sign and driving a vehicle with a person in the front passenger seat not wearing a seatbelt. All of these are breaches of the Act. By letter dated 7 October 2020, under the hand of the Transport Commissioner, Mr De Silva was informed that he had accumulated ten demerit points within a three year period and he had fourteen days to provide reasons why the Authority should not disqualify him from driving or suspend his driver's permit for a period of six months. Mr De Silva, by letter dated 19 October 2020, sent in representations as requested. By letter dated 23 October 2020, the Authority, through the Transport Commissioner, informed him that a decision was made to disqualify him or suspend him from holding a driver's licence for a period of six months (the decision). By a Fixed Date Claim filed 6 November 2020, Mr De Silva purported to file an appeal before a judge of the High Court of this decision.

3. Mr De Silva's claim sought several remedies. These included a declaration that the authority's decision to disqualify or suspend him from holding or obtaining a driving permit for six months was unreasonable, irregular, and / or improper; a declaration that the decision to disqualify or suspend was exercised disproportionately; a stay of execution of the decision until the appeal was heard and determined; an order (in effect, a declaration) that the Authority took account of irrelevant considerations; an order (in effect, a declaration) that the Authority failed to take account of relevant considerations; costs; other orders that may be considered just.

4. The claim, therefore, resembled a judicial review claim being brought to challenge the decision of the Authority. In fact, the remedies being sought were squarely within the realm of judicial review. Notwithstanding this, Mr De Silva's attorneys accepted both before the trial judge and on appeal that what was filed before the judge was considered by them to be an appeal and not a judicial review application challenging the decision of the Transport Commissioner. In any event, a leave application for judicial review was not filed.

5. The matter came up before Seepersad J. The judge, on his own motion, as a preliminary issue, requested and considered submissions on the issue of whether the High Court was the proper forum before which the appeal should be pursued. He held that the High Court was not the correct forum for the appeal to be heard. The correct forum, according to the judge, was the Court of Appeal. He made no order as to costs given his finding that the legislation under which the Authority's power was exercised was

unclear and caused uncertainty as to the forum for an appeal. Mr De Silva has appealed that order dismissing the claim before the judge and he contends that the High Court is the correct forum.

6. The **Road Traffic and Motor Vehicle Amendment Act, No. 9 of 2017**, (the Amendment Act) provided for a demerits points system for certain road traffic breaches. A red light camera system was also introduced. This system came into effect on 26 May 2020. Section 35 of the Amendment Act introduced, among other things, a new **section 88M** of the parent Act as follows:

> *"88M. (1) Where a newly licensed driver or the holder of a provisional permit accumulates seven or more demerit points within a period of twelve months from the date of issue of the driving permit or the provisional permit, the Licensing Authority shall disqualify that person from holding or obtaining a driving permit for a period of one year.*
>
> *(2) Where a person who holds a driving permit for more than twelve months, accumulates within a period of three years—*
>
> > *(a) ten or more but less than fourteen demerit points, the Licensing Authority shall disqualify that person from holding or obtaining a driving permit for a period of six months;*
> > *(b) fourteen or more but less than twenty demerit points, the Licensing Authority shall disqualify that person from*

holding or obtaining a driving permit for a period of one year; or

(c) twenty or more demerit points, the Licensing Authority shall disqualify that person from holding or obtaining a driving permit for a period of two years.

(3) The Licensing Authority shall, before disqualifying a person under subsection (2), give that person notice in writing of its intention to do so, and shall specify a date not less than fourteen days after the date of the notice, upon which the suspension shall be made and call upon the person to show cause why he should not be disqualified.

(4) Where a person fails to show cause under subsection (3) and the Licensing Authority after taking into consideration any facts in mitigation, decides to disqualify that person from holding or obtaining a driving permit, the Authority shall forthwith, in writing, notify that person of the disqualification.

(5) A disqualification imposed under this section shall not take effect until the expiration of fourteen days after the Licensing Authority has informed the person of the disqualification.

(6) Where a person has been disqualified from holding or obtaining a driving permit under this section, that person shall, within

fourteen days of being informed of the disqualification, surrender his driving permit to the Licensing Authority.

(7) A person who fails to surrender his driving permit to the Licensing Authority as required under subsection (6), commits an offence and is liable to a fine of five thousand dollars and further disqualification for an additional period of one year.

(8) Where the disqualification period under this section expires, all demerit points recorded against the driving permit record of the person shall be expunged.

(9) A person who is disqualified from holding or obtaining a driving permit under this section may, within fourteen days of the receipt of the notice under subsection (4), appeal to ***a Court of competent jurisdiction*** *against that decision and the decision of that Court shall be final.*

(10) For the purposes of subsection (1), "newly licensed driver" means a person who is the holder of a driving permit for a period of twelve months or less from the date of issue.'

7. There is some common ground shared by Mr De Silva and the Respondents. They agree that the expression "a Court of competent jurisdiction" is not defined in the principal Act or the amended Act. The term "Court" was also not defined. They both submitted that the Summary

Court was not the correct forum for appeals to be made from the Authority. Thus, the parties were agreed that the forum for an appeal was either the High Court or the Court of Appeal. It was further agreed that there is no appeal from the Court to which the appeal lies. Mr De Silva's attorneys informed this Court that the attorneys had looked at Parliament's Hansard Record of the proceedings relating to this amendment but that there was no reference to what was meant by the term "Court of competent jurisdiction" for the purposes of the **section 88 M (9)** appeal.

8. In considering the issue of jurisdiction, the following statutes are of relevance.

9. **Section 99** of the **Constitution of the Republic of Trinidad and Tobago, Chap. 1:01** states:

> *"99. There shall be a Supreme Court of Judicature for Trinidad and Tobago consisting of a High Court of Justice (hereinafter referred to as "the High Court") and a Court of Appeal with such jurisdiction and powers as are conferred on those Courts respectively by this Constitution or any other law."*

10. **Section 101 (2**) of the **Constitution** states:

> *"(2) The Court of Appeal shall be a superior Court of record and, save as otherwise provided by Parliament, shall have all the powers of such a Court."*

11. **Section 35** of the **Supreme Court of Judicature, Chap 4:01** provides:

> *"35. Subject to the Constitution, to the provisions of this Act and to the Rules of Court, the Court of Appeal shall have all the jurisdiction and powers formerly vested in the former Supreme Court in the exercise of its appellate jurisdiction under the Judicature Ordinance."*

12. This section refers to the **1950 Judicature Ordinance, Chap. 3 No. 1 (**Judicature Ordinance). **Sections 32** of the **Judicature Ordinance** states:

> *"32 (1) Subject to the provisions of this Ordinance, in any cause or matter, not being a criminal proceeding, an appeal shall lie from any judgment given or order made or refused by a single Judge.*
>
> *(2) Subject to the provisions of this Ordinance, and Jurisdiction notwithstanding the provisions ·of the West Indian Court of Appeal Act, 1919 (which said Act is set out in the Schedule to this Ordinance), an appeal shall lie and application may be made to the Full Court in respect of the several matters hereinafter specified,*

and the Full Court shall have exclusive jurisdiction to hear and determine all such appeals and applications, namely:

(a) appeals from a Judge or Registrar in Chambers;

(b) appeals from interlocutory orders;

(c) appeals in all actions and matters in which, prior to the 1st of January, 1918, the Court exercised a summary jurisdiction;

(d) appeals in applications for prohibition;

(e) appeals in proceedings analogous to proceedings either on the Crown side, or on the Revenue side, of the Kings Bench Division of the High Court of Justice in England;

(f) appeals under subsection, (2) of section 99 of the Bankruptcy Ordinance;

(g) appeals under section 20 of the Married Women's Property Ordinance;

(h) appeals under section 46 of the Land Acquisition Ordinance;

(i) appeals under section, 212 of the Companies Ordinance;

(j) applications for the giving of security for costs to be occasioned by any appeal to the Full Court or to the West Indian Court of Appeal;

(k) applications for a stay of execution on any judgment, order, or decision appealed from pending the determination of such appeal by the Full Court or by the West Indian Court of Appeal;

(l) applications to extend the time for appealing to the Full Court;

(m) applications for leave to appeal in formâ pauperis to the Full Court or to the West Indian Court of Appeal;

(n) applications for new trials;

(o) cases of Habeas Corpus in which a Judge directs that a rule nisi for the writ, or the writ, be made returnable before the Full Court;

(p) cases stated under section· 38 of the Building Societies Ordinance;

(q) all and any other matters in which by any Ordinance, whether passed before or after the commencement of this Ordinance, a right of appeal to the Full Court is or shall be expressly given.

(3) Subject to the provisions of this Ordinance, and notwithstanding the provisions of the West Indian Court of Appeal Act, 1919, the Full Court shall also have exclusive jurisdiction:

(a) to hear and determine appeals from Magistrates or Justices under the Summary Courts Ordinance;

(b) to hear and determine questions of law arising on cases stated by Magistrates or Justices under section 155 of the Summary Courts Ordinance;

(c) to hear and determine appeals under section 35 of the Petty Civil Courts Ordinance; (d) to revise proceedings of

inferior courts under section 34 of this Ordinance; (e) to hear and determine appeals under section 46 of the Agricultural Contracts Ordinance.

(4) Provided that no order made by the consent of parties or as to costs only, which by law are left to the discretion of the Court, shall be subject to any appeal except by leave of the Judge making the order.

(5) No appeal to the West Indian Court of Appeal shall lie from any judgment given or order made or refused by the Full Court.

(6) Nothing in this section contained shall prejudice or affect the right of any person to appeal to His Majesty in Council."

13. **Section 33** of the **Judicature Ordinance** states:

"33 (1) Appeals under the Summary Courts Ordinance arising in Trinidad shall be heard and determined by a Full Court if there are in the Colony two or more Judges not incapacitated from acting by illness or interest, but If there is only one Judge in the Colony not incapacitated as aforesaid, such appeal shall be heard and determined by, such Judge alone, and his decision shall be final and without appeal: Provided that where an appeal is heard by a Full Court of two Judges and such Judges differ in opinion, the appeal shall be reheard by a Full Court consisting of three Judges.

(2) Subject to the proviso hereinafter contained, appeals under the Summary Courts Ordinance arising in Tobago shall be heard and determined by a single Judge, who shall, for the purposes of such appeal, have and exercise all the powers and authorities of the Full Court, and his decision shall be final and without appeal: Provided that such appeals shall be heard and determined in Trinidad in the same manner as the like appeals arising in Trinidad if the appellant, either at the time of giving notice of appeal, or within three days thereafter, gives notice in writing to the Clerk, as defined by the Summary Courts Ordinance, that he desires the appeal to be heard and determined by a Full Court."

14. **Part 64.17** of the **Civil Proceedings Rules 1998 (CPR)** as amended states:

"General powers of the court

64.17 (1) In relation to an appeal the court has all the powers and duties of the High Court.

(2) The court may receive further evidence on questions of fact, either by oral examination in court, by affidavit, or by deposition taken before an examiner, but, in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) may be admitted except on special grounds."

15. Mr De Silva relied on a trilogy of Canadian cases, **Mills v. The Queen, [1986] 1 SCR 863**; **Singh v. Minister of Employment and Immigration [1985] 1 SCR 177** and **R. v. Hynes [2001] 3 SCR 623** which considered **section 24** of the **Canadian Charter of Rights and Freedoms** where the term "court of competent jurisdiction" was used. His attorneys suggested five principles were derived from these cases.

16. First, a court of competent jurisdiction in an extant case is a court that **has jurisdiction** over the person and the subject matter as well as jurisdiction to order the remedy sought. Second, jurisdiction can depend on sources **external** to the legislation, following which is the third principle where the court can then **fit** the application (or, as in this case, the appeal) into the existing jurisdictional scheme of the courts in an effort to provide a direct remedy for the relief sought. Fourth, absent the jurisdictional provisions in legislation, there is **no change** to the existing jurisdiction. The law is not intended to turn the legal system upside down. What is required is that the remedy be **fitted into** the existing legal procedures. Finally, the court must look to the **statute and policy** to determine whether a court is competent to exercise jurisdiction (Emphasis supplied). The Respondents' attorneys accept these propositions.

17. Mr De Silva's attorneys submitted that neither the Summary Courts nor the Court of Appeal has jurisdiction to hear the matter as provided under **section 88(M)(9)** of the amended Act as both courts are "creatures of statute". Parliament expands jurisdiction through express legislative

provisions. The 2017 Amendment Act, did not give the Summary Courts an appellate jurisdiction. The Court of Appeal is not given this jurisdiction under **sections 32** and **33** of the **Judicature Ordinance**. Had Parliament intended to expand the jurisdiction of the Court of Appeal, they would have done so as they did under similar Acts such as provided under **section 32(3)** of the **Arbitration Act Chap. 5:01** or **section 16 (8)** of the **Town and Country Act Chap. 35:01**. In support of this submission, they cited a principle from **Craies on Statute Law 7th Edition** which reads:

> *"a distinct and unequivocal enactment is also required for the purpose of either adding to or taking from the jurisdiction of a superior court of law."*

18. Mr De Silva's attorneys stated that the High Court is the only Court that can be regarded as a 'Court of competent jurisdiction' within the meaning of **section 88 M (9)** since owing to its unlimited jurisdiction it can claim jurisdiction over the person, the subject matter and it is able to grant the remedy sought.

19. Additionally, they submitted that the trial judge's reasoning that the jurisdiction of the Court of Appeal was the correct forum to hear appeals from the Authority, was not in keeping with the provisions under section 88(M) as the Court of Appeal never exercised any jurisdiction over decisions of the Authority even from the inception of the Principal Act. Rather, the Court of Appeal exercised and continues to exercise appellate jurisdiction over the decisions of Magistrates relating to traffic offences.

20. The Respondents' attorneys submitted that **section 35** of the **Supreme Court of Judicature Act** which references the Rules of Court concurrently with **Part 64.1(2)** of the **CPR**, provides for an appeal to be filed in the Court of Appeal in relation to a decision from a tribunal. The judge at first instance dealt with this aspect of jurisdiction stating that prior to the amendment of the Act, the three courts had specific jurisdiction in relation to traffic matters. The Court of Appeal was the only Court that had an appellate jurisdiction. Any reference to the High Court meant a trial on an indictment. The finding of the judge was that after the 2017 Amendment Act, appeals were still to be heard by the Court of Appeal. The judge came to this conclusion on three pillars:

    (i) the finality of the wording of **section 88M(9)** on appeal;
    (ii) the fact that the appellate jurisdiction of the Court of Appeal existed from inception of the Act in relation to traffic offences; and
    (iii) in relation to traffic offences the High Court never exercised an appellate jurisdiction.

21. The Respondents submitted that Mr De Silva is treating the appeal as a first instance hearing. They also submitted that because the wording of **section 88M** was vague, the trial judge went through the exercise of analysing what Parliament meant in the use of the word "Court". The principles stated in **Bennion on Statutory Interpretation** were used by the trial judge for further analysis. That analysis inevitably led the judge to conclude that appeals went to the Court of Appeal.

The Judgment

22. The judge made the following key findings. He found the term "Court of competent jurisdiction" was not defined. Under the red light camera system at Parts VA and VI of the amended Act, the term "Court" was given the meaning assigned in the **Summary Courts Act Chap. 4:20**.

23. He found the jurisdiction of the Summary Court is defined in the **Summary Courts Act** at **section 6**. The jurisdiction of the High Court was constituted in the **Supreme Court of Judicature Act** in the interpretation section **9 (2)**. He found that the jurisdiction to deal with traffic offences was largely vested in the Summary Courts. Appeals from the summary jurisdiction of Magistrates' Courts are made to the Court of Appeal under **section 128** of the **Summary Courts Act**.

24. The judge noted that the determination of the disqualification arising from the operation of the demerits points system was placed in the hands of the Authority instead of the Magistrates' Court which continued to deal with challenges to ticket offences. The jurisdiction of the Magistrates' Court was preserved for matters other than the automatic demerit-points system disqualification. Those who wished to dispute a ticket or the allocation of demerit points still had to go before the Magistrate. This, however, did not affect the appellate jurisdiction of the Court of Appeal. The jurisdiction of the High Court was, and remained, only confined to dealing with indictable matters arising from traffic incidents.

25. Accordingly, the judge held that appeals from the Authority lay to the Court of Appeal as it is for summary matters, and as it was before for traffic matters.

Discussion and Analysis

26. It is important to consider what was effected by **section 88M**. The section provided that the Authority shall disqualify persons who, with different levels of driving experience, acquired a certain number of demerit points. Before this disqualification can take place the person must be given the opportunity to show cause why he or she should not be disqualified. If cause is not shown, the person has a certain time frame to surrender his or her permit. The person who is disqualified under the section may, within 14 days after receiving the notice of disqualification, "appeal to a Court of competent jurisdiction against that decision and the decision of that Court shall be final": **section 88M(9)**. What the person is appealing from is the penalty of disqualification imposed by the operation of the law and the determination by the Authority that he or she has failed to show cause why the disqualification should not occur.

27. A person who challenges the issue of a ticket does this before the Magistrate. If the Magistrate determines the person is guilty of the ticketed offence, the Magistrate can impose the same penalty or an increased penalty. That penalty may include disqualification from driving. An appeal from that decision of the Magistrate lies to the Court of Appeal.

28. It would be odd in those circumstances for the Parliament to have intended the appeal forum for appeals from the Authority to lie to the High Court without expressly saying so in the legislation. This is particularly so since **section 88 M (9)** provides that no appeal lies from that Court. Both the **Supreme Court of Judicature Act** and the **Judicature Ordinance**, provided for the Court of Appeal to hear appeals from a High Court judge. It would be odd again if Parliament had, in effect, impliedly amended this section to prohibit appeals from the High Court where the High Court was making a decision on an appeal from the Authority.

29. It would be an anomaly for appeals of traffic ticket matters to proceed from the Magistrate to the Court of Appeal while at the same time appeals from the Authority imposing one of the same penalties which the Magistrate could impose would lie to the High Court, with no further appeal being possible. This bifurcated process has the potential to create confusion and inconsistent decision making by two bodies. For example, if Mr De Silva's submission is accepted, an appeal from a Magistrate in respect of the issue of a ticket would lie to the Court of Appeal, but a disqualification by the Authority utilising that same ticket to calculate the demerit points, would lie to the High Court. This potentially could lead not just to confusion, but to absurdity. The court must of course construe statutes so that an absurd result does not follow as was noted in the well-known case of **Adler v George [1964] All ER 628**. In that case, it was an offence to obstruct HM Force "in the vicinity" of a prohibited place in section 3 of the Official Secrets Act 1920. The Court did not uphold the argument of the arrested person that he was not in the vicinity of a

prohibited place but ***in*** the prohibited place. Lord Palker CJ at page 629 of the judgment stated:

> *"The sole point here, and a point ably argued by the appellant, is that if he was on the station he could not be in the vicinity of the station, and that it is an offence under this section to obstruct a member of Her Majesty's forces only while the accused is in the vicinity of the station. The appellant has referred to the natural meaning of "vicinity", which I take to be quite generally the state of being near in space, and he says that it is inapt and does not cover being in fact on the station in the present case. For my part I am quite satisfied that this is a case where no violence is done to the language by reading the words "in the vicinity of "as meaning "in or in the vicinity of". Here is a section in an Act of Parliament designed to prevent interference with, amongst others, members of Her Majesty's forces who are engaged on guard, sentry, patrol or other similar duty in relation to a prohibited place such as this station. It would be extraordinary, and I venture to think that it would be absurd, if an indictable offence was thereby created when the obstruction took place outside the precincts of the station, albeit in the vicinity, and no offence at all was created if the obstruction occurred on the station itself. It is to be observed that if the appellant is right, the only offence committed by him in obstructing such a member of the Air Force would be an offence contrary to s 193 of the Air Force Act, 1955, which creates a summary offence, the maximum sentence for which is three months, whereas s 3 of*

the Official Secrets Act, 1920 is, as one would expect, dealing with an offence which can be tried on indictment and for which under s 8 the maximum sentence of imprisonment is one of two years. There may be of course many contexts in which "vicinity" must be confined to its literal meaning of "being near in space", but, under this section, I am quite clear that the context demands that the words should be construed in the way which I have stated."

30. The High Court could potentially dismiss the appeal on the disqualification from driving resulting from the application of demerit points while the Court of Appeal could decide that the "ticket" was not warranted in the circumstances. The "ticket" which then led to obtaining demerit points would fall by the wayside, but no appeal would be possible from the High Court's order dismissing the appeal on the suspension of the licence. To avoid this absurdity, it makes sense for the Court of Appeal to have the jurisdiction to deal with all aspects of the matters arising from the issuance of the "ticket" in the first place.

31. The Canadian trilogy of authorities cited by attorneys for Mr De Silva in actuality supports the Respondents' position. The Court of Appeal previously had jurisdiction to deal with convictions resulting from a Magistrate's decision on the challenge of a "ticket". This jurisdiction continues with respect to appeals from a Magistrate. The appeal of the Authority's decision is meant to fit into the existing jurisdictional scheme which is that the Court of Appeal can hear the appeal. Parliament could not have intended to turn the legal system upside down, without expressly

saying so, by adding to the responsibility of a civil High Court judge to hear an appeal in an area in which the judge had never exercised jurisdiction before and by denying the Appeal Court a jurisdiction to hear appeals on road traffic matters that it exercised before. The intention must have been to fit these appeals into the existing scheme.

32. The quotation from **Craies on Statute Law 7th Edition** also supports the Respondents' submissions. If Parliament had intended to add to the High Court jurisdiction in relation to traffic matters or take away from the Court of Appeal jurisdiction in relation to appeals of traffic matters, the statute would have expressly said so. In **Bennion on Statutory Interpretation, fifth edition**, at pages 191 to 192, the learned authors stated:

> *"…It is necessary to understand that an Act usually has a scheme. The drafter will have designed it conceptually. Like an engine, its various elements interlock so as to function efficiently.*
> *…An Act is not just a series of statements, such as one might find in a novel or a history. It is laid out in a special way. Its features reveal the long development of our legislative process…"*

At page 197, the learned authors continue:

> *"When passed, an Act takes its place as part of the corpus juris, or body of existing law. Modern Acts are usually tailored to fit neatly within this large and complex framework, as far as possible; indeed they are required to do this or the system will not work."*

These extracts support the point that the Amendment Act fitted in the new role of the Authority to the existing framework of legislation already in place in relation to appeals. Thus, the term "Court of competent jurisdiction" has to be ascribed to it the meaning "the Court that previously had the competent jurisdiction to consider appeals in traffic related matters". There was no alteration of that competent jurisdiction by the amending Act.

33. Further, considering policy issues as a whole, it makes sense that appeals should lie to the Court of Appeal unless the contrary intention is expressly stated. One intention of the amendment it appears was simply to accord to the Authority the responsibility to deal with suspension or disqualifications of driving permits arising from the acquisition of the requisite number of demerit points. This would make sense given that the Authority issues the driving permits in the first place and this would allow the Authority to monitor and make appropriate changes to its records as necessary. The legislation provided a show cause process. There was no expressed policy position to affect the respective jurisdictions of the High Court and the Court of Appeal in relation to appeals from traffic cases.

34. The way Mr De Silva's claim was framed before the judge illustrates why the High Court is not the correct forum for an appeal. The appellant used the language of judicial review suggesting the decision was unreasonable irregular or improper, took account of irrelevant considerations and ignored relevant ones. The claim was supported by affidavit evidence. What would follow from this? The Authority would likely have to put in

evidence in reply. The case would then be case-managed. At a trial, the judge would have to engage in fact finding and make declarations which could lead to an order setting aside the decision. These declaratory reliefs would not be subject to appeal. A costs order may likely follow including the assessment of costs which, in a complicated case, may be assessed by a Registrar or Master. In contrast, the appeal of a traffic matter takes place by the appellant filing a simple notice of appeal briefly stating the grounds. The Record of Proceedings is forwarded to the Court of Appeal and two judges hear submissions on whether the Magistrate was correct in the fact finding or the application of the law. If the conviction or order of disqualification is upheld, the Appeal Court can hear the appellant's plea of mitigation. There is no justification for this Court to infer that by using the term "Court of competent jurisdiction" those far reaching changes to the existing process of appeals of traffic matters could have been intended. A simple application of statutory criteria by the Authority could not lead to such a complicated process for the hearing of the appeal without this being clearly expressed.

35. The Court of Appeal under **section 101 (2)** of the **Constitution** is expressed to be a superior court of record. Under **section 35** of the **Supreme Court of Judicature Act** the Court of Appeal was vested with all jurisdiction and powers vested in the former Supreme Court under the **Judicature Ordinance**. **Part 64.17** of the **CPR** refers to the Court of Appeal having all the powers and duties of the High Court. The submission by Mr De Silva's attorneys that the High Court's jurisdiction is therefore, in a sense, wider than that of the Court of Appeal is untenable.

36. It is also significant to recall that the Authority is imposing a penalty. It is logical to infer from the structure of the legislation that one rationale may have been to ease the workload of the Magistrates' Courts by removing from them the administrative aspects consequent upon a decision that the requisite number of demerit points has been obtained. In doing so, a due process obligation has been vested in the Authority to assess the show cause aspect. Ultimately, a penalty is imposed. Given the historical context, the Court of competent jurisdiction for an appeal involving the imposition of a penalty can only be the Court of Appeal unless the relevant statute states it is to be some other body.

37. Having regard to the reasoning above, it was not necessary to address other matters raised in the appeal relating to the procedure adopted by Mr De Silva and whether this matter should be remitted to a different judge.

Conclusion

38. The **2017 Amendment Act** was deficient in not stating precisely the forum for appeals to be made. It instead used the vague formula of "Court of competent jurisdiction". The drafters could have easily removed the confusion created by these words by being clear and specific and saying an appeal shall be made to the Court of Appeal, or to the High Court, if that was the intention. Clarity in drafting laws is an absolute necessity. It fell to the court to interpret the legislation. The judge correctly did so as a matter of law. He was correct to hold that the Court of Appeal, and not

the High Court, is the proper forum for appeals of the decisions of the Authority under **section 88M** of the Act. Accordingly, this appeal is dismissed. The parties will be heard on costs.

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R. Boodoosingh, JA