

CITATION: *Qadir v The Director of Commercial Passenger (Road) Transport* [2017] NTSC 76

PARTIES: QADIR, Abdul

v

THE DIRECTOR OF COMMERCIAL PASSENGER (ROAD) TRANSPORT

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING APPELLATE JURISDICTION

FILE NO: LCA 9 of 2016 (21328982)

DELIVERED ON: 12 October 2017

DELIVERED AT: Darwin

HEARING DATE: 2, 9 October 2017

JUDGMENT OF: BARR J

APPEAL FROM: LOCAL COURT

CATCHWORDS:

Commercial Passenger (Road) Transport Act – Taxi licences – appeal from decision of Director to cancel taxi licence – appeal to Local Court – appeal by way of a hearing *de novo* – judge on appeal took into account evidence given in earlier appeal hearing – such evidence not in evidence on second appeal – evidence adverse to appellant – error of law – real possibility that error of law affected decision – decision vitiated by error of law – appeal allowed – matter remitted to differently constituted Local Court for re-hearing of appeal

Commercial Passenger (Road) Transport Act s 77(7), s 79(1)
Local Court Act s 19

Turnbull v New South Wales Medical Board (1976) NSWLR 281;
Development Consent Authority v Phelps [2010] NTCA 3, 27 NTLR 174,
followed

REPRESENTATION:

Counsel:

Appellant:	M Crawley
Respondent:	L Nguyen

Solicitors:

Appellant:	Pipers Legal
Respondent:	Solicitor for the Northern Territory

Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Qadir v The Director of Commercial Passenger (Road) Transport
[2017] NTSC 76

No. LCA 9 of 2016 (21328982)

BETWEEN:

ABDUL QADIR
Appellant

AND:

**THE DIRECTOR OF COMMERCIAL
PASSENGER (ROAD) TRANSPORT**
Respondent

CORAM: BARR J

REASONS FOR JUDGMENT

(Delivered 12 October 2017)

Background

- [1] This appeal raises similar issues to those in the appeal decided by Kelly J in *Qadir v Department of Transport*.¹ However, there are some significant differences in the present appeal, not only because of the difference in the procedural history, the case having progressed, but also because the facts previously in evidence have been clarified and refined somewhat.
- [2] On 4 July 2013, the Director of Commercial Passenger (Road) Transport (“the Director”) cancelled the appellant’s accreditation and taxi licence

¹ *Qadir v Department of Transport* [2015] NTSC 86.

pursuant to s 75(2)(b) of the *Commercial Passenger (Road) Transport Act* (“the Act”) on the ground that the Director was satisfied that the appellant was not a fit and proper person to be accredited or to hold a taxi licence.

- [3] The appellant was aggrieved by the Director’s decision and, pursuant to s 77 of the Act, appealed to the Local Court against the decision (“the first appeal”).
- [4] The hearing of the first appeal took place on 20 August 2013. The appellant participated in the appeal hearing without legal representation. A number of witnesses were called on behalf of the Director, including Raymond Jenner, Abbey Bowen and Bernadette Ingram. Those witnesses gave evidence in relation to disturbing threats made by the appellant.
- [5] Bernadette Ingram said that, on 8 May 2013, a man who identified himself as “Abdul Qadir” had rung her at work to discuss his upset over the outcome of a recent court case involving his failure to provide records for the operation of his taxi. In the course of the conversation, the man said: “I know where you live. Do you have a boyfriend, because I am going to come around and fuck you”. Ms Ingram terminated the call a short while later.²
- [6] Mr Jenner said that, on 7 June 2013, he received a threat to kill (“I’m going to kill you”) from a male whom he did not identify.³ The threat was made in the course of a phone call. Although Mr Jenner did not identify the caller,

² Transcript 20 August 2013, p 11.4.

³ Transcript 20 August 2013, p 16.6.

Abbey Bowen, a work colleague of Mr Jenner, had put the call through to him. Ms Bowen recognized the number displayed on her phone and the voice of the caller as the same person who had identified himself as “Abdul Qadir” in the course of a phone conversation a short while earlier.⁴

[7] It emerged during the hearing of the first appeal that the Director had not given sufficient particulars of the substance of all the adverse matters relied on, which were set out in a bare chronology or list of matters (“88 events of concern”⁵) taken into account by the Director in making the decision to cancel the appellant’s accreditation and taxi licence. Moreover, the presiding magistrate expressed concern that the matters relied on were not in a proper form to allow (1) the court to assess them and (2) the appellant a proper opportunity to rebut them.⁶ It further emerged that the appellant claimed not to have received a procedurally significant ‘show cause’ letter dated 13 June 2013, to which he had not replied. As a result, counsel for the Director requested that the magistrate order the Director to issue a new ‘show cause’ letter, to which the appellant would have a reasonable time to respond.⁷

[8] As a result, the magistrate made orders, inter alia, as follows:

- Within 14 days, the appellant provide the Director with any information that the appellant considers relevant to support the continuation of his accreditation, commercial passenger

⁴ Transcript 20 August 2013, p 34 - 35.

⁵ Transcript 20 August 2013, p 28; later referred to by the magistrate as “a great big list”.

⁶ Transcript 20 August 2013, pp 39, 41, 43 - 44, 48, 49.

⁷ Transcript 22 August 2013, pp 3 - 5.

vehicle license, identification card and his licence to drive a commercial passenger vehicle.

- The Director is to reconsider his various decisions of 4 July 2013 concerning the appellant's accreditation, commercial passenger vehicle license, identification card and licence to drive a commercial passenger vehicle and inform the appellant of his ultimate decision or decisions in writing within 60 days.
- The Director is to file with the court a copy of the decision or decisions referred to within seven days of informing the appellant.
- The parties have liberty to re-list the matter within three months.

[9] The orders set out in the previous paragraph were probably made pursuant to s 79(1) of the *Commercial Passenger (Road) Transport Act*, which permits the Local Court, instead of determining an appeal, to direct the Director to reconsider "the matter to which the appeal relates".⁸ It seems to me that whether the Local Court actually determines the appeal as provided for in s 77(7) of the Act, or directs the Director to reconsider the matter under s 79(1), the appeal is at an end. The parties to the present appeal do not contest that proposition.

[10] If my preliminary view is correct, there was no basis in law for the magistrate to keep the existing appeal proceedings on foot in a 'suspended state', as it appears he may have done by his order that the parties have liberty to relist the matter. However, nothing turns on that. On 13 September

⁸ The Local Court is also empowered to give the Director directions in relation to the reconsideration of the matter that is referred back – see s 79(2)(b).

2013, the Director ultimately determined to confirm his earlier decision to cancel the appellant's accreditation and taxi licence. Whatever irregularities there may have been in the process to that point, the parties to the present appeal accept that the Director's confirmation on 13 September 2013 of his earlier decision to cancel the appellant's accreditation and taxi licence was in fact a fresh decision, which triggered the right of appeal to the Local Court under s 77(1)(b) of the *Commercial Passenger (Road) Transport Act*.

- [11] The appellant appealed the Director's decision of 13 September 2013 by notice dated 9 October, signed 10 October 2013, and filed in the Local Court on 10 October 2013 ("the second appeal"). The solicitors acting for the Director entered an appearance to the appeal, but did so on behalf of the Registrar of Motor Vehicles. This was another irregularity in a string of irregularities, but it did not seem to have any relevance to the parties' cases on the appeal to this Court.
- [12] The second appeal was heard on 11 June, 24 June and 1 September 2014. On 30 September 2014, the magistrate made orders for the cancellation of the appellant's accreditation and taxi licence on the basis that his Honour had determined that the appellant was not a fit and proper person to hold same.⁹
- [13] The appellant then appealed, successfully, to the Supreme Court.¹⁰ The appeal succeeded because the magistrate had taken into account a piece of evidence, the contents of a précis of facts in relation to the appellant's

⁹ Transcript 30 September 2014, p 11.

¹⁰ *Qadir v Department of Transport* [2015] NTSC 86.

conviction for drink driving in October 2010, which was not in evidence on the hearing of the second appeal. The Magistrate relied on the précis to find material inconsistencies between (1) the explanation given by the appellant to the police at the time of his arrest for drink driving; (2) a statement made by one of the appellant's referees, and (3) the explanation for his drink driving given by the appellant in his affidavit of 18 August 2014. Kelly J was not satisfied that the magistrate's decision was not influenced by the précis and concluded that there was a real possibility that the error of law made by the magistrate in referring to material not in evidence had affected his ultimate decision.¹¹

[14] On 23 December 2015, Kelly J ordered that the matter be remitted to the Local Court for determination according to law.

[15] The hearing of the remitted second appeal resumed in the Local Court on 11 April 2016. A directions hearing took place on 11 April 2016 and subsequently, after each of the parties had filed or identified the materials relied on, the appeal was heard on 27 April 2016. The hearing resumed on 16 June 2016, for receipt of written submissions, and was then adjourned for decision.

[16] On 23 June 2016 the judge dismissed the remitted second appeal. His Honour once more made orders for the cancellation of the appellant's accreditation and taxi licence.

¹¹ *Qadir v Department of Transport* [2015] NSC 86 at [49] – [51].

[17] In deciding the remitted second appeal, the judge took into account evidence adduced at the hearing of the first appeal in August 2013, in particular the evidence of Bernadette Ingram and Raymond Jenner, set out respectively in [5] and [6] above.¹² That evidence was clearly adverse to the appellant and was an important, if not crucial, factor in the judge's reasoning which led him to the conclusion that the appellant was not a fit and proper person to continue to be accredited and to hold a taxi licence.¹³ Significantly, however, the evidence was not evidence in the second appeal.

[18] The judge's reliance, in the remitted second appeal, on evidence adduced at the first appeal, was a clear error of law. Therefore, the question for this Court is whether the identified error of law vitiated the judge's decision on the remitted second appeal. The test is whether there was a real possibility¹⁴ that the error of law affected the decision. In my opinion, that test is clearly satisfied. Moreover, the point was ultimately conceded by the respondent's counsel.

[19] Given the contamination of the factual findings made by the Local Court, it is not possible for this Court on appeal to determine the facts for itself. The principle, that undetermined or wrongly determined issues of fact must be remitted, therefore applies.¹⁵

¹² Transcript 23 June 2016, pp 44 - 46.

¹³ Transcript 23 June 2016, p 48.

¹⁴ See *Development Consent Authority v Phelps* (2010) 27 NTLR 174; [2010] NTCA 3 at [23].

¹⁵ *Turnbull v New South Wales Medical Board* (1976) NSWLR 281, per Glass JA at 297D.

[20] I have made orders allowing the appeal and remitting the matter to a differently constituted Local Court to be heard and determined according to law.
