



TRANSPORT LICENSING APPEALS BOARD AT NAIROBI APPEAL

CASE NO. 01 OF 2019

FREESTYLE CONNECTION LIMITED.....APPELLANT

-VERSUS-

NATIONAL TRANSPORT AND SAFETY AUTHORITY....RESPONDENT

JUDGMENT

Introduction

1. The Appellant, which is a LIMITED COMPANY that is registered under the Companies Act (Cap 486), filed an appeal at the Transport Licensing Appeals Board (TLAB) on the 17th of January 2019, after it had been unlawfully deregistered without notice by the Respondent (National Transport and Safety Authority) on the 27th of October 2018.

2. The Respondent, National Transport and Safety Authority, is established under section 3 of the National Transport and Safety Authority Act No. 33 of 2012 and has the responsibility to: advise and make recommendations to the Cabinet Secretary on matters relating to road transport and safety, implement policies relating road transport and safety; plan, manage and regulate the road transport system; ensure the provision of safe, reliable, and efficient road transport services and to administer the Traffic Act.

The Appellant's Case

3. Through a letter dated the 22nd of October, 2018, the Respondent informed the Appellant that it had not fully complied with the provisions of the Legal Notice No. 23 of 2014 on Public Service Vehicles operations. The areas of non-compliance included that: twenty one (21) vehicles of the Appellant had expired Road Service License; the Appellant had only seventeen drivers in the portal and that the Appellant had not presented their staff payroll, NHIF and NSSF for the last three months to the Authority. As per the letter, the Appellant was given fourteen (14) days from the date of the letter to comply with the provision of the Regulations, failure to which the Authority could take appropriate action.

4. The appeal was based on the grounds that: NTSA had deregistered the Appellant before the lapse of the fourteen days that had been stipulated in its non-compliance letter; NTSA failed to give notice of the intended action of deregistering the Appellant; the Respondent failed to answer to the Appellant's letter that had been addressed to them on the 30th of October 2019 seeking the re-opening of the Sacco in order to address the compliance issues that had been raised by the Respondent.

The Respondent's Case

5. The Respondent undertook to take up the Appellant's matter and averred that it will facilitate their registration if they are compliant with the necessary NTSA Regulations.

6. The Respondent requested for the case to be mentioned in seven days so as to enable the Respondent to give an official update to the Tribunal on the progress of the Appellant's matter. The Appellant, on the other hand, requested for the case to be mentioned in twenty one (21) days so as to give them ample time to comply with the Respondent's regulations.

Ruling

7. The Tribunal notes, in this matter, that the Authority gave the Appellant the legitimate expectation that they would be de-registered only if they failed to comply with the stipulated provisions of the Legal Notice No. 23 of 2014 on Public Service Operations after fourteen (14) days from the date of the issued letter which was dated on the 22nd of October 2018. This undertaking was therefore not honoured by the Respondent as they later on deregistered the Appellant on the 27th of October 2018 which did not culminate into fourteen days from the 22nd of October 2018.

8. The Tribunal is of the considered opinion that the enforcement of regulations such as the Legal Notice No. 23 of 2014 can only meet the standards set under the Fair Administrative Action Act of 2015 if they are applied uniformly and without any bias.

9. The Tribunal also takes into account the undertaking given by the Respondent on their willingness to facilitate the registration of the Appellant if they are compliant with the requisite regulations.

10. Having considered the facts and the law applicable to this matter, the Transport Licensing Appeals Board hereby finds:

1. THAT the Appellant, Freestyle Connection Limited, be given twenty one (21) days from the date of this judgement to comply with the stipulated provisions of the NTSA.

2. THAT the Respondent, NTSA, erred by failing to honour their undertaking and should open the Appellant's portal for vehicle registration to occur.

Delivered, dated, and signed in Narok by the Transport Licensing Appeals Board on this 15th day of February 2019.

Dick Waweru Chairman

Prof. Kiarie Mwaura Member

Aden Noor Ali Member

Moses Parantai Member



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