



TRANSPORT LICENSING APPEALS BOARD AT NAIROBI

APPEAL CASE NO 06 OF 2018

RUKAGINA 44 SACCO LTDAPPELLANT

-VERSUS-

SUNBIRD SERVICES FIRST RESPONDENT

NATIONAL TRANSPORT AND SAFETY AUTHORITYSECOND RESPONDENT

RULING

Introduction

1. The Appellant is a SACCO that is registered under the Cooperative Societies Act (Cap 490) and licensed by the Second Respondent to operate public service vehicles.
2. The First Respondent is a company that is licensed by the Second Respondent to operate public service vehicles.
3. The Second 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

4. The Appellant filed an application at the Transport Licensing Appeals Board (TLAB) with the complaint that the Second Respondent had failed to respond to a letter dated December 15, 2017 concerning the release of motor vehicle registration number KBQ 272 P from the portal of Sunbird Services.
5. The Appellant was seeking the release of the vehicle from Sunbird portal because the vehicle had been issued with an RSL under Rukagina Sacco.
6. In August 2017, the owner of the vehicle, Faith Gikunda, requested Sunbird Services to release the vehicle and they did. However, after three months, the vehicle was taken back to the portal of Sunbird Services.
7. The Chairman of Rukagina Sacco wrote to NTSA on December 15, 2017 enquiring how the vehicle was moved from Rukagina Sacco to Sunbird Services.
8. On July 19, 2018, Faith Gikunda wrote to Sunbird Services Ltd requesting them to release the vehicle to Rukagina Sacco, as the vehicle was not operating under Sunbird Services since September 2017.

9. On July 25, 2018, Sunbird wrote back to Faith Gikunda asking her to pay a debt of KES 75, 000 before the vehicle could be released.

10. It was Faith Gikunda's claim that Sunbird Services owed her KES 50, 000 being the cost of the vehicles she had hired to transport IEBC materials during the election period.

11. It was Faith Gikiunda's claim that the Second Respondent, NTSA, was involved in the irregular releasing of the vehicle from Rukagina portal.

The First Respondent's Case

12. The Chairman of Sunbird Services, James Kimani, contended that Sunbird was not involved in releasing the vehicle from Rukagina portal.

13. It was the Chairman's case that Faith Gikunda owed a debt to Sunbird services. He contended that when she joined the company, she was supposed to pay KES 50, 000 joining fee and a daily fee of KES 1500.

14. When Faith Gikunda requested in 2017 to have the vehicle removed from the Sunbird portal, James Kimani asked her to clear her debt first so that the vehicle could be released.

15. Afterwards, James Kimani realised that the vehicle had been move irregularly to the portal of Rukagina Sacco. As a result, he wrote to NTSA on September 8, 2017 to report the illegal activity and request them to investigate.

16. On cross examination, James Kimani averred that it is the company that has the responsibility of removing and adding vehicles to the portal. In the case of Sunbird Services, he averred that the Chairman, Secretary and Accountant have the password to the portal. According to the records provided by NTSA, the transfer appeared to have been done by Sunbird on August 17, 2017 on the following IP address: 196.207.135.156 at 13:14 hours.

17. James Kimani averred that after his complaint to NTSA, the vehicle was returned back to Sunbird Portal.

18. Both Simon Kamau Kimani, Operations Manager for Sunbird as well as Daniel Kiarie Wanyoike, Accountant for Sunbird, contended that they did not release the vehicle to Rukagina.

19. An Independent Computer Consultant for Sunbird, Peter Kamakia, contended that he checked the browser history of the only computer in Sunbird's office and found no trace of any transaction regarding the transfer of a vehicle.

20. Peter Kamakia averred that Sunbird had only one computer whose IP address is 196.207.188.15, which is different from what NTSA gave as the source of the transaction. As a result, he averred that the activity did not come from Sunbird Services.

21. The Second Respondent's Case

22. It was NTSA's claim that the issue at hand was a civil dispute between two parties that does not have a connection to the a licensing decision of NTSA. It was their claim that NTSA had done nothing wrong and should, therefore, not be a party to these proceedings. Consequently, TLAB should also not get involved in a dispute that does not have a bearing on the licensing decisions of NTSA.

23. A Senior Systems Analyst for NTSA, Samuel Muturi Njuguna, confirmed that upon receipt of a complaint from Sunbird regarding the irregular transfer of the vehicle to Rukagina Sacco, the NTSA's Director of Licensing, Jacqueline Githinji, instructed Brenda to revert the vehicle to Sunbird as they conducted investigations.

24. It was Samuel Njuguna's claim that NTSA never gets into the account of a Sacco to transfer a vehicle. However, a database

administrator could access the system to back up data, but not to change data.

Determination

25. Following the arguments adduced in court, the Transport Licensing Appeals Board has isolated the following issues to be the ones requiring a determination:

a. Whether the Second Respondent, NTSA, was culpable in transferring the vehicle in question from the portal of Sunbird Services to Rukagina Sacco.

b. Whether the Transport Licensing Appeals Board has jurisdiction to determine this dispute.

a. Whether the Second Respondent, NTSA, was culpable in transferring the vehicle in question.

26. From the evidence adduced, it was not proven that the Second Respondent, NTSA, was involved in the transfer of the vehicle in question. Although Sunbird Services averred that the vehicle was not transferred at their offices, it is not inconceivable that the transfer could have been effected at any other location, including on a mobile device. As such, it is possible that the transfer could have been done by any person with access to the password.

b. Whether the Transport Licensing Appeals Board has jurisdiction to determine this dispute.

27. In the absence of evidence showing the culpability of NTSA, the case falls outside the jurisdiction of the Transport Licensing Appeals Board. This is because the dispute at hand remains that of a debt between Faith Gikunda and Sunbird Services. It is the Cooperative Tribunal that has jurisdiction to handle such disputes.

28. The jurisdiction of the Transport Licensing Appeals Board over the administrative actions of the National Transport Authority is set out in section 38 of the National Transport and Safety Authority Act, 2012 in the following terms:

Sec. 38. Appeals against decision of Authority

a. A person who—

1. being an applicant for the grant or variation of a licence, is aggrieved by the decision of the Authority on the application;

2. having made an objection to any such application as aforesaid, being an objection which the Authority is bound to take into consideration, is aggrieved by the decision of the Authority thereon; or

3. being the licensee, is aggrieved by the revocation or suspension thereof,

4. may within the time and in the manner prescribed appeal to the Appeals Board established under section 39.

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

1. THAT the Second Respondent, NTSA, was not culpable in the irregular transfer of motor vehicle registration number KBQ 272P.

2. THAT in the absence of culpability on the part of NTSA, the Transport Licensing Appeals Board does not have jurisdiction to determine the dispute on debt between the parties.

Delivered, dated, and signed in Nairobi by the Transport Licensing Appeals Board on this 5th day of November 2018.

Dick Waweru	Chairman
Prof. Kiarie Mwaura	Member
Betty Chepng'etich Bii	Member



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