



TRANSPORT LICENSING APPEALS BOARD AT NAIROBI

APPEAL CASE NO. 11 OF 2018

NAIROBI KIRULINE SERVICES LTDAPPELLANT

-VERSUS-

NATIONAL TRANSPORT AND SAFETY AUTHORITY.....RESPONDENT

JUDGMENT

Introduction

1. The Appellant is a limited company that is registered under the Companies Act (Cap 486) and that was challenging its deregistration by the Respondent.
2. The Respondent, National Transport and Safety Authority (NTSA), 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. The Appellant filed an application at the Transport Licensing Appeals Board (TLAB) on the 8th November 2018 with the complaint that the Respondent had deregistered the company.
4. The Appellant, through one of its members, Wilson Thiongo Gathumbi, averred that the company was deregistered on 18th October 2018. He also confirmed that the company did not have the required thirty (30) vehicles for licensing purposes.
5. The Appellant requested to be given three months within which they would comply with the licensing conditions of NTSA. The request was based on the grounds that: the company would suffer loss if the extension was not given; membership would decrease as operators would transfer their vehicles from the company; and that members had bank loans that they needed to repay.

The Respondent's Case

6. It was NTSA's case that, before deregistration, they had given sufficient notices and warnings to the Appellant for not having the mandatory thirty (30) serviceable Public Service Vehicles as required under section 5 of the PSV Regulations, but they had declined to comply. The Appellant admitted to having received the notices.
7. The first notice for non-compliance was issued on 2nd May 2018 and it gave the Appellant fourteen (14) days to comply.
8. The second notice for non-compliance was issued on 10th July 2018 and the Appellant was summoned to appear at NTSA's headquarters with a view to explaining the non-compliance and showing cause why the company should not be suspended. The

Appellant did not honour the summons.

9. NTSA wrote to the Appellant again on 13th August 2018 suspending the operations of the company for thirty (30) days and requiring the company to comply with the regulations within the suspension period.

10. As a result of the failure to comply with the conditions of the suspension, NTSA deregistered the company vide letter dated 18th October 2018. Upon receiving the letter, the Appellant wrote to NTSA on 24th October 2018 requesting for a period of three (3) months to comply with the regulations. The Appellant confirmed that they received all the letters sent by NTSA.

11. Reagan Mugambi Mureithi, a compliance officer for NTSA and appearing as a witness, confirmed that the Appellant could add vehicles to his portal during the suspension so as to reach the threshold of thirty, but did not do so. He also confirmed that, at the time of deregistration, the Appellant had 24 vehicles. Out of these, 13 had licenses, but 11 were non-compliant.

12. Reagan Mureithi also confirmed that the procedure that the Appellant needs to follow in order for the company to be reinstated entailed having: a minimum of 30 serviceable Public Service Vehicles; 30 drivers with licenses; and inspection of vehicles.

Determination

13. Following the arguments adduced during trial, the Transport Licensing Appeals Board has isolated the following issue to be the one requiring a determination: whether NTSA acted unreasonably by declining to grant the Appellant an additional three (3) months to comply with the licensing conditions.

14. The Transport Licensing Appeals Board has considered the fact that the Appellant had a period of almost six (6) months to comply with the regulations. This is because the first notice for non-compliance was issued on 2nd May 2018, but the deregistration was done on 18th October 2018. We are of the view that this time was sufficient to comply with the licensing conditions regarding the acquisition of thirty (30) vehicles.

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

1. THAT NTSA did not act unreasonable by declining to grant the Appellant an additional three months to comply with the licensing conditions.
2. THAT the Appellant needs to comply with the licensing conditions and then apply for reinstatement as a licensed operator.

Delivered, dated, and signed in Murang'a by the Transport Licensing Appeals Board on this 11th day of January 2019.

Dick Waweru	Chairman
Prof. Kiarie Mwaura	Member
Aden Noor Ali	Member
Moses Parantai	Member
Betty Bii	Member



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