



TRANSPORT LICENSING APPEALS BOARD AT MERU

CASE NO. 18 OF 2018

TUNYAI MATIRI TRANSPORT RURAL SACCO.....APPELLANT

-VERSUS-

NATIONAL TRANSPORT AND SAFETY AUTHORITY...RESPONDENT

JUDGMENT

Introduction

1. The Appellant is a Sacco registered under the Cooperative Societies Act (Cap 490) and it had been licensed by the Respondent Authority to operate public service vehicles.
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. Ronald Cheruiyot appeared for the Respondent.

The Appellant's Case

3. The Appellant filed an application at the Transport Licensing Appeals Board (TLAB) on the 9th December 2018 with the complaint that the Respondent had deregistered the company.
4. The Appellant, through its manager, Chabari Titus Kitharari, averred that the Sacco was deregistered on 22nd November 2018 for not having a minimum of 30 serviceable vehicles. He confirmed that they indeed did not have 30 vehicles, but requested for an extra four months to comply with the regulations.
5. On cross examination, the Appellant confirmed that, prior to the deregistration, they had received notices warning them of non-compliance.

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.
7. The first notice for non-compliance was issued on 16th August 2018 and it gave the Appellant fourteen (14) days to comply.
8. The second notice for non-compliance was issued on 13th September 2018 and it summoned the Appellant to appear at NTSA's headquarters with a view to explaining the non-compliance and showing cause why the Sacco should not be suspended. The

Appellant did not honour the summons.

9. NTSA wrote to the Appellant again on 18th October 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 suspension, NTSA deregistered the Sacco vide letter dated 22nd November 2018. Upon receiving the letter, the Appellant wrote to NTSA on 7th December 2018 and 9th December 2018 requesting for more time to comply with the regulations. The Appellant confirmed that they received all the letters sent by NTSA.

11. Frankline Mureithi Njiru, a compliance officer for NTSA and appearing as a witness, confirmed that the Sacco was deregistered for failure to comply with the regulations.

Determination

12. 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 additional time to comply with the licensing conditions.

13. The Transport Licensing Appeals Board has considered the fact that the Appellant had a period of more than three (3) months to comply with the regulations. This is because the first notice for non-compliance was issued on 16th August 2018, but the deregistration was done on 22nd November 2018. We are of the view that this time was sufficient to comply with the licensing conditions regarding the acquisition of thirty (30) vehicles.

14. 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 additional time 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 Meru by the Transport Licensing Appeals Board on this 22nd day of January 2019.

Dick Waweru Chairman

Prof. Kiarie Mwaura Member

Moses Parantai Member



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