



REPUBLIC OF KENYA

IN THE STANDARDS TRIBUNAL AT NAIROBI

TRIBUNAL APPEAL NO.1 OF 2013

BETWEEN

JINNAH NAZIR NURMOHAMMED.....APPELLANT

AND

KENYA BUREAU OF STANDARDS.....1ST RESPONDENT

KENYA REVENUE AUTHORITY.....2ND RESPONDENT

JUDGMENT

By a statement of Appeal dated 15th July, 2013 and lodged in this Tribunal on the same day, the Appellant moved this Tribunal for the following orders;

1. A review of the 1st Respondent's decision dated 2/7/2013 to refuse to give authority for registration of the Appellant's Motor Vehicle described in the Appellant's documents as Mercedes Benz C 200 Chassis No. WDC 2030452R054650 and Engine No. 111955323840621.
2. The Appellant be allowed to register the said motor vehicle.
3. Costs be costs in the suit.

It was the Appellant's case that he purchased the Motor Vehicle in the United Kingdom. The vehicle's destination was Uganda through the Port of Mombasa, Kenya. Somewhere in between, the vehicle apparently developed mechanical problems necessitating the Appellant to take it to D.T. Dobbie, Nairobi for repairs. At that point, according to the Appellant he made up his mind to have the vehicle registered in Kenya for home use rather than have it registered in Uganda the original destination.

The Appellant made an application to the 2nd Respondent for registration of the vehicle in Kenya. The 2nd Respondent advised him to seek the approval of the 1st Respondent given the fact that this was a second hand vehicle which required a "no objection" approval from the 1st Respondent.

The Appellant made the request vide his letter dated 24/5/2013. According to the said letter the Appellant was applying for a "No Objection" letter for the motor vehicle in question to be registered in Kenya since there was full compliance of the 8 years age criteria.

In a decision dated 2/7/2013 the 1st Respondent through its Waivers Evaluation Technical Committee ruled that the approval was unavailable to the Appellant because the basis for that request did not fit into any of the established categories for waiver

consideration. It is against that decision that the Appellant lodged the appeal herein.

The 1st Respondent filed a written submission on 22/8/2013 to which among other documents were annexed minutes of the 1st Respondent's Waivers Evaluation Technical Committee held on 18/6/2013 to deliberate on the application. It was the 1st Respondent's case that the application by the Appellant was made under Kenya Standards KS 1515:2000 in Code of Practice for Inspection of Road Vehicles. Under this code registration of motor vehicles may be rejected on three grounds, namely "(1) that the motor vehicles are over 8 years old, (2) "that the motor vehicles are left hand drives, and (3) that the motor vehicles are unroadworthy. According to the 1st Respondent the approval of the Appellant's application was rejected because the application did not fall in any of the three categories and more so the first category which was relevant to the application.

The 2nd Respondent filed its written submission on 30/7/2013 denying the Appellant's claim. On 6/11/2013, the 2nd Respondent filed an Affidavit by one Sylvester Okello reiterating its position.

On 10/12/2013 parties were invited to make highlights on the written submissions.

The Tribunal has considered issues both in the pleadings as well as in written submissions and is indebted to counsels for the parties for their powerful yet persuasive arguments. For purposes of determining the real issues in controversy, the Tribunal considered three main issues for determination;

1. Whether the Tribunal was properly seized of the matter herein.
2. Whether the motor vehicle in question satisfied the requirements of the 8 years rule as set out in clause 2.5 of Kenya Standard KS1515:2000 as amended in July 2008.
3. Whether the 1st Respondent was justified in declining to grant the Appellant the approval sought.

This Tribunal had no difficulty in determining that the matter against the 1st Respondent was properly before it by virtue of Section 11 of the Standards Act Cap 596 Laws of Kenya which states inter alia that any person who is aggrieved by a decision of the Bureau (Kenya Bureau of Standards) may within 14 days of the notification of the act complained of being received by him, appeal in writing to the Tribunal. The decision complained of was made by the 1st Respondent through its Waivers Evaluation Technical Committee and was communicated to the Appellant vide the 1st Respondent's letter dated 2/7/2013. The statement of Appeal was lodged in the Tribunal on 15/7/2013 which the Tribunal hereby determines was lodged in time. The Tribunal is thus properly seized of the matter as against the 1st Respondent.

As regards the claim against the 2nd Respondent, the Tribunal found no justification in law for the Appellant to proceed against the 2nd Respondent. The Tribunal exercises judicial power conferred to it by the Standards Act. There is no provision under that Act for the Tribunal to hear disputes other than those involving the Kenya Bureau of Standards or the National Standards Council established under Section 6 of the Act. Kenya Revenue Authority, the 2nd Respondent is not an arm of the Kenya Bureau of Standards or of the National Standards Council. It is a distinct public body established under a separate legal regime. It has nothing to do with the 1st Respondent and most importantly it plays no role with regard to "no objection" requests made to the 1st Respondent. Accordingly, the Tribunal has no legal basis to make any determination against the 2nd Respondent as sought. The claim against it, the 2nd Respondent fails on account of want of jurisdiction.

We now move to the second issue. Did the motor vehicle satisfy the 8 years rule requirement as set out in Clause 2.5 of Kenya Standard KS1515:2000 as amended in July 2008"

Under this clause "all motor vehicles which are more than eight years old from the year of first registration shall not be allowed for importation." How is the year of first registration determined" The answer lies in the documents presented for registration of the given motor vehicles in Kenya. Often, such documents will show the date of registration.

This is the relevant date for purposes of determining the age of the vehicle under clause 2.5.

According to the Sales Invoice dated 1/12/2008 marked JNN1 and attached to the Appellant's Statement of Appeal, the date, month and year of registration of the motor vehicle in question is shown as 20/6/2002. The Bill of Lading which was annexed to the said

Statement of Appeal and marked JNN2 shows the year of registration as 2002 without indicating the date or month.

This Tribunal found no difficulty in determining the year of registration of the vehicle as 20/6/2002.

When did the Appellant present his application to the 1st Respondent for consideration under Kenya Standards KS1515:2000" According to the evidence on record (see JNN7 of the Appellant's documents) the application to the 1st Respondent by the Appellant was made on 24/5/2013. Indeed, in its communication to the Appellant vide its letter dated 2/7/2013 the 1st Respondent made it clear that it had considered the Appellant's application made through his letter dated 24/5/2013. This Tribunal found no evidence to negate this. As at 24/5/2013 the motor vehicle in question was 11 years and 11 months old. This was way beyond the 8 years rule required. The 1st Respondent's hands were tied. It could arrive at no verdict different from the one it arrived at. Indeed, the 1st Respondent has no power for a Waiver of this requirement. The only person who has power to issue a waiver is the Cabinet Secretary for Industrialization and Enterprise Development. He derives his power from Section 8 of Legal Notice No. 78 of 2005.

Counsel for the Appellant made a spirited effort to convince the Tribunal to accept his proposition that where the year of registration is shown in the documents of registration but not the date and/or month, then time starts running on any date and month in that year. We were not persuaded by this argument. The Tribunal hereby determines that for purposes of giving effect to clause 2.5 of Kenya Standard KS1515:2000 a year means twelve calendar months, no more, no less.

Was the 1st Respondent justified in declining to grant approval to the Appellant" This is the third issue for determination. According to the Appellant, he made an application to the 1st Respondent pursuant to a letter dated 18/5/2013 received by him from the 2nd Respondent. The letter which was attached to the Appellant's statement of Appeal and marked JNN6 stated inter alia as follows:

"In order to facilitate collection of taxes and collection of the aforementioned motor vehicle, we wish to request that you first obtain a letter of no objection from the Kenya Bureau of Standards in compliance with the Kenya Standard KS1515:2000".

It is clear from the Appellant's letter dated 24/5/2013 that the Appellant was by necessary implication aware of the 8 years rule on importation of motor vehicles. He was applying for conversion of the motor vehicle for "home use". This was his first application to the 1st Respondent for consideration of this matter under Kenya Standard KS1515:2000 Clause 2.5.

It is clear from the available material before the Tribunal that at the time the motor vehicle landed at the Port of Mombasa on 29/4/2009, it was in transit to Uganda. It was as it were meant for registration not in Kenya but in Uganda.

In determining whether to give its 'no objection' letter, the 1st Respondent was in our view, properly guided by clause 2.5 of Kenya Standard KS1515:2000 which is very categorical that no vehicle older than 8 years from the year of first registration shall be imported into Kenya. According to the Appellant, the motor vehicle was first registered in 2002. No specific month was given. But this is not true. As pointed out earlier the motor vehicle's first registration was shown as 20/6/2002. Thus, as at 24/5/2013 the age of the motor vehicle was way outside the 8 years rule. Although, there was evidence of the Appellant (vide his letter dated 20/5/2009 being annexure JNN3), having made an application to register the motor vehicle in Kenya and which application was in our view made in time, the said application was made to the 2nd Respondent which is not the proper party for purposes of determination under clause 2.5 of Kenya Standard KS1515:2000. Needless to say, there was no evidence of the said letter having been received by the 2nd Respondent.

In the ultimate, we find no merit in the complaints raised by the Appellant in this appeal. In arriving at this conclusion we are persuaded by the authority in Mombasa H C JUD REVIEW No. 122 of 20110 Rep. – vs Kenya Revenue Authority in which Justice Mary Kasango held inter alia that once the test of 8 years fails, registration is properly refused.

At the Tribunal's instance, the Appellant furnished the Tribunal with copies of proceedings in Nairobi CMCR. CASE NO. 1498 OF 2010 REP – vs – The Appellant herein. The reason for seeking to be supplied with a copy of the said proceedings was purely to assist the Tribunal to ascertain the status of the case. We say no more.

Having determined that there is no merit in the appeal, we now turn to the issue of costs.

We note that an award on costs lies squarely in the discretion of this Tribunal. Under normal circumstances, costs usually follow

the event.

In this particular case we find that although the Appellant's case against the 2nd Respondent failed for want of jurisdiction, the 2nd Respondent's conduct militates against it benefiting on costs. We say so because the 2nd Respondent misled the Appellant. For instance, why did the 2nd Respondent fail to draw the Appellant's attention to the requirements of approval from the 1st Respondent in respect of second hand motor vehicles as a mandatory requirement"

Secondly, why did the 2nd Respondent demand duty from the Appellant and even went further to receive the same without ascertaining whether the vehicle was registrable in Kenya. In a way, the 2nd Respondent failed to be vigilant in the discharge of their legal duty.

Accordingly, the Tribunal declines to award costs of the appeal to the 2nd Respondent.

As against the 1st Respondent, we determine that the 1st Respondent is entitled to costs. We so award it costs of the appeal to be paid by the Appellant.

The Tribunal's final orders are that this appeal is hereby dismissed in its entirety against the 1st and 2nd Respondents with costs to the 1st Respondent to be borne by the appellant. There will be no order as to costs in respect of the appeal against the 2nd Respondent.

Dated at Nairobi this 19th day of February 2014.

Aggrey S. Shitsama.....(Chairman)

Benjamin M. Musyoki.....(Member)

Julius K. Kolil.....(Member)

Irene F. Magut.....(Member)

Judgment Delivered thisday of2014.

In the presence of:

Jinnah Nazir Appellant

Christine Ooko Counsel for Appellant

Luise Rasanga Counsel for the 1st Respondents and holding briefly for counsel for the second Respondent.

CHAIRMAN



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