



IN THE TRANSPORT LICENSING APPEALS BOARD

AT NAIVASHA

APPEAL CASE NO 10 OF 2020

STEPHEN MWANGI ING'ANG'I.....APPELLANT

VERSUS

THE NATIONAL TRANSPORT & SAFETY AUTHORITYRESPONDENT

JUDGMENT

Introduction

1. The Appellant is a driver of Digital Luxury Shuttle Travellers, an entity that is licensed by the Respondent Authority to operate public service vehicles.
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 the 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 a case at the Transport Licensing Appeals Board on the 25th of August 2020 on the ground that the Respondent had refused to renew his driving license and PSV driver badge. As a result, he claimed to have suffered economically because he could not engage in meaningful employment as a driver.
4. The Appellant averred that he had been driving for more than twenty (20) years, but when he tried to renew his license online in the month of March of 2020, it could not be renewed.
5. The Appellant averred that, in the month of March of 2019, he allowed another driver to drive the vehicle he was in charge of because he was sick. Consequently, the vehicle got involved in an accident and five people died. The Appellant was charged with careless driving in the Kibera Traffic Case number 1522 of 2019.
6. The Appellant confirmed that he knew it was wrong to allow another unlicensed driver to drive a PSV vehicle.
7. The Appellant wrote to NTSA on the 16th of September 2020 requesting for the renewal of his license but he had not received a response.
8. It was the Appellant's case that he was not given notice or reasons for the suspension of his license.
9. It was the Appellant's prayer that his license should be renewed as he was facing economic hardships.

The Respondent's Case

10. The Respondent averred that the reason for not renewing the license was based on the fact that the Appellant had a pending traffic case in Kibera Law Court.

11. It was the Respondent's case that sections 29 and 34 of the NTSA Act gave the Respondent the discretion to revoke and suspend a license where a licensee fails to comply with a condition of license.

12. The Respondent averred that the Appellant had not written to NTSA requesting for the reinstatement of his driving license and, as a result, he could not be an aggrieved person before informing NTSA of his grievances.

13. During the hearing of the case on 16th of October 2020, the Respondent requested for fourteen days to establish the status of the Kibera case, but they had not furnished TLAB with the records of the case by 16th of November 2020.

Determination

14. Following the evidence adduced by the parties before the Transport Licensing Appeals Board, the Board has isolated the following issues to be the ones requiring a determination:

1. Whether the Appellant was an aggrieved person who has failed to get a remedy from NTSA after writing to them.
2. Whether the Appellant's constitutional right to a fair administrative action was violated by the Respondent.

Whether the Appellant was an aggrieved person who has failed to get a remedy from NTSA after writing to them.

15. The Appellant was able to prove that he wrote to NTSA on the 16th of September 2020 requesting for the renewal of his license and his letter was received by NTSA on the same day. However, he had not received a response and was, therefore, an aggrieved person.

Whether the Appellant's constitutional right to a fair administrative action was violated by the Respondent.

16. The evidence adduced in the trial indicated that the Appellant was not given a notice or reasons before the administrative action was taken against him.

17. It is the case that Article 47 of the Constitution of Kenya 2010 guarantees every person the right to administrative action that is fair, efficient, and reasonable. This constitutional provision is implemented through the Fair Administrative Action Act of 2015. According to section 4 of the Fair Administrative Action Act (2015):

“4 (2) Every person has the right to be given written reasons for any administrative action that is taken against him.

(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision:

- (a) prior and adequate notice of the nature and reasons for the proposed administrative action;
- (b) an opportunity to be heard and to make representations in that regard;
- (c) notice of a right to a review or internal appeal against an administrative decision, where applicable;
- (d) a statement of reasons pursuant to section 6;
- (e) notice of the right to legal representation, where applicable;

(0 notice of the right to cross-examine or where applicable; or

(g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.

18. From the above, it is clearly the case that an administrative decision was taken against the Appellant without regard to the requirements of the law on the need to be given a *prior* notice, reasons for the actions, and a hearing. It is now an established principle of administrative law that a decision that is taken without due regard to the rules of procedurally fairness cannot be allowed to stand. This was the position espoused in the case of *Onyango Oloo vs. Attorney General [1986-1989] EA 456*, where the Court of Appeal held that the “denial of the right to be heard renders any decision made null and void *ab initio*.”

19. In relation to the impact of the denial of a fair administrative action, Kaluma also notes that:

“Notice is a condition precedent to fair hearing. Any hearing undertaken without due notice to the affected party violates the requirements of natural justice, is null and void and lends itself to being quashed ... notice to be good should contain sufficient detail to enable one to fully appreciate the charge or complaint he is to face. The details requiring specific mention in a notice include the complaint or charge, the time, day and location of the incident charged or matter complained about ... the action proposed to be taken and the grounds on which the charge or complaint is based.” (Peter Kaluma, *Judicial Review: Law Procedure and Practice* (LawAfrica, Second Edition, 2012), p. 178.)

19. Although NTSA has the discretion to suspend a license, the discretion must be exercised within the confines of the law, which requires there to be a notice, reasons for the decision, and a hearing before an administrative action is taken.

20. Having considered the facts and the law applicable to this case, the Transport Licensing Appeals Board hereby makes the following orders:

1. THAT the decision of NTSA to suspend the Appellant’s driving license and driver badge is reversed.
2. THAT the NTSA renews the Appellant’s driving license and driver badge within five (5) days.

Delivered, dated, and signed in Naivasha by the Transport Licensing Appeals Board on this 7th day of December 2020.

Prof. Kiarie Mwaura **Member**

Aden Noor Ali **Member**

Moses Parantai **Member**



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