



TRANSPORT LICENSING APPEALS BOARD

RONGO - APPEAL NO. 05 OF 2021

TRANSLINE GALAXY SACCOAPPELLANT

VERSUS

NATIONAL TRANSPORT AND SAFETY AUTHORITYRESPONDENT

JUDGMENT

Introduction

1. The Appellant is a cooperative society that is registered under the Co-operative Societies Act (Cap 490) and has been licensed by the Respondent Authority to operate public service vehicles (PSV).
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 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 case that the Appellant filed at the Transport Licensing Appeals Board arose as a result of the failure by NTSA to register them as a new PSV operator.
5. Transline Galaxy Sacco was issued with a certificate of registration under the Cooperative Societies Act (CAP 490) on 2nd February 2021. The registration of Transline Galaxy Sacco had been triggered by the removal of some vehicles from Transline Sacco. According to the Appellant, the vehicles were forcefully removed from Transline Sacco because the owners of the vehicles had complained about the excessive charge that the Sacco was levying on its members for TLB licenses. It is upon the removal of their vehicles from Transline Sacco that they registered Transline Galaxy Sacco on 2nd February 2021.
6. Subsequently, Transline Galaxy Sacco made an application for registration to NTSA on 13th February 2021, which was responded to on 18th February 2021. In the response, NTSA declined to register them as a new Sacco on the basis that NTSA had received a complaint, from Transline Sacco, regarding the existence of another brand called Transline Galaxy. NTSA also indicated that the name and logo of the Appellant conflicted with those of Transline Sacco and, as a result, the issuance of registration under the same names would amount to a breach of copyright law.
7. In his court testimony on 9th March 2021, the Secretary of Transline Galaxy Sacco, Fred Nyachae Meshack, confirmed that they made an appeal to NTSA 23rd February 2021 after which they were invited to a meeting at NTSA offices in Nairobi on 24th February 2021. The meeting was attended by Fred Nyachae Meshack (Secretary), Milton Ongoro (Treasurer), and Benjamin Onkoba (Chairman). The meeting did not resolve the issue, as NTSA could not make a final determination on the similarity of trade names.

8. It was the Appellant's case that NTSA exceeded its mandate and acted ultra vires and without powers when it rejected the Appellant's application. This was because the Appellant had fulfilled all the licensing requirements in the checklist provided by NTSA, which did not include the issue of trade names. The Appellant argued that it was sufficient to prove that the Sacco was duly registered under the Cooperatives Act. He further contended that, before registration of the Sacco, the Commissioner of Cooperatives must have satisfied himself that Transline Galaxy Sacco was different from Transline Sacco.

9. In the written submission, the Appellant indicated that a search at the Kenya Intellectual Property Institute (KIPI) on whether Transline Galaxy Sacco had been registered as a trademark, and whether the designs and logos had been copyrighted by Transline Sacco, showed that they had not been registered. This fact, however, conflicts with the testimony of Fred Nyachae Meshack that was given in court on 9th March 2021, when he indicated that he visited KIPI's office on 19th February 2021 and conducted a search on the trade name. According to him, the search results came out on 1st March 2021 and indicated that the trademark was NOT available, as it was similar to another existing mark under Transline Classic.

10. The Appellant averred that NTSA acted maliciously by failing to register Transline Galaxy Sacco.

The Respondent's Case

6. The Respondent confirmed that they declined to register the Transline Galaxy Sacco as a new PSV operator on the basis of an objection received from Transline Sacco. The objection was in a letter signed by the Director of Transline Sacco, Walter Ombui, which indicated that:

- a. The registration of Transline Galaxy Sacco was illegal; copies of the Sacco certificates were acquired illegally.
- b. Transline Sacco, as the owner of the trade name, would commence a court case to resolve the matter.
- c. Those purporting to be officials of Transline Galaxy Sacco are not authorized to conduct any transaction in the name of Transline Galaxy Sacco.
- d. NTSA should not register the Sacco or issue any road service license in the name of Transline Galaxy Sacco.
- d. Registration of the Sacco as a new operator would be illegal and would result in legal action being taken against NTSA.

7. The Respondent confirmed that both Saccos had the requisite registration certificates, but Transline Galaxy Sacco could not be registered owing to the objection highlighted above.

8. The report from KIPI indicated that the name Transline Galaxy Sacco was NOT available for registration, as it was similar to another which had been registered earlier.

Determination

8. It is important to establish first whether NTSA was bound to consider the objection from Transline Sacco. Section 38 (1) (b) of the NTSA, which provides a criterion of persons who can make an appeal to the Transport Licensing Appeals Board, indicates clearly that a third party can make an objection for grant of license to NTSA. It indicates that:

A person who

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

c. being a licensee, is aggrieved by the revocation or suspension thereof, may within the time and in the manner prescribed appeal to the Appeals Board established under section 39.

9. It follows, therefore, that it was lawful for NTSA to consider the objection by Transline Sacco.

10. It was the Appellant’s argument that NTSA ought not to have considered the issue of trademark given that it was not in the checklist provided by NTSA for registration of new Saccos. Given that both the report from KIPI as well as the testimony of Fred Nyachae Meshack confirm that the name, Transline Galaxy Sacco, was not available for registration, what remains to be determined is whether NTSA could ignore this fact and proceed with the registration of the new sacco. In the event that NTSA proceeded with the registration and it later turned out that the registration of Transline Galaxy Sacco was unlawful as alleged by Transline Sacco, then NTSA would be culpable for perpetuating an illegality.

11. It would also be against public policy for NTSA to register a new Sacco when it is clear that there is a pending trade name dispute between the parties. Such a registration would give rise to more confusion and chaos, which would be contrary to the mandate of NTSA in relation to the provision of safe, reliable, and efficient road transport services under section 3 of the National Transport and Safety Authority Act, No. 33 of 2012.

12. It would be prudent for the Sacco registration dispute to be determined by the Cooperatives Tribunal before NTSA can consider the application for registration of the new Sacco.

13. Having considered the facts and the law applicable to this matter, the Transport Licensing Appeals Board makes the following orders THAT:

a. NTSA acted lawfully in declining to register Transline Galaxy Sacco as a new PSV operator.

b. The Appellant should resolve the Sacco registration dispute at the Cooperatives Tribunal before approaching NTSA for the registration of Transline Galaxy Sacco.

DELIVERED, DATED, AND SIGNED IN NAIROBI BY THE TRANSPORT LICENSING APPEALS BOARD ON THIS 22ND OF MARCH, 2021

Dick Waweru **Chairman**

Betty Chepng’etich Bii **Member**

Moses Parantai **Member**

Aden Noor **Member**

Prof. Kiarie Mwaura **Member**



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