



REPUBLIC OF KENYA

TRANSPORT LICENSING APPEALS BOARD

NAIVASHA

APPEAL CASE NO 16 OF 2020

EXPRESS PRESTIGE SHUTTLE LTD.....APPELLANT

VERSUS

NATIONAL TRANSPORT & SAFETY AUTHORITY.....RESPONDENT

JUDGMENT

Introduction

1. The Appellant is a limited company 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 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 memorandum of appeal and a certificate of urgency on the 14th October 2020 seeking to lift the order suspending the operation of all its vehicles following an alleged incident of reckless driving of one of their vehicles, KCW 895Q. The Respondent had suspended the vehicles on 29th September 2020.
4. It was the Appellant's argument that the suspension of the vehicles pending their inspection at the Likoni Motor Vehicle Inspection Centre was unconstitutional, illegal, irrational, unreasonable, and a gross miscarriage of justice, as it was done without following the procedural safeguards under the Fair Administrative Action Act of 2015, namely the right to be given a notice, hearing, reasons for a decision etc.
5. The Appellant also averred that they would suffer irreparable financial harm incapable of compensation by an award of damages due to the Respondent's draconian measure of suspending the operation of all their vehicles.
6. The Appellant argued that it should not be punished without the benefit of due process, including the right to exhaust the right of appeal.
7. Pending the hearing and determination of this matter, the Appellant applied for a temporary order to lift the suspension of their vehicles, which was granted on 29th December 2020.

8. In the main trial, the Appellant reiterated the failure on the part of the Respondent to follow the due process under the Fair Administrative Action Act 2015, which binds the authority to follow the rules of legality, proportionality, legitimate expectation, reasonableness, and giving reasons. The Appellant relied on the following authorities: *R v County Director of Education, Nairobi and 4 Others Ex parte Abdukadir Elmi Robleh* [2018] eKLR; *Martin G. Kihara v NTSA* [2020] eKLR; *General Medical Council v Spackman* [1943] 2 ALL ER 337; and *R v Vice-Chancellor JKUAT* Misc. Appl. No. 30 of 2007.

The Respondent's Case

6. Through a replying affidavit by the Deputy Director in Charge of Licensing, Cosmas Ngeso, the Respondent stated that it had followed all the rules of natural justice given that the Appellant was given a hearing on the 29th of September 2020. The minutes of this meeting were attached as evidence.

7. Following the meeting of 29th September 2020, the Respondent required the Appellant to fulfil the following three conditions:

- a) Compliance inspection on all its motor vehicles at the Inspection Centre from 2nd October 2020.
- b) That all drivers and conductors be subjected to road safety awareness training between 5th and 9th October 2020.
- c) The Appellant presents a road safety policy to the authority to facilitate the auditing of the Appellant company.

Determination

8. Following the arguments presented by the parties, the Transport Licensing Appeals Board has isolated the following issues to be the ones requiring a determination:

- a) Whether the Respondent satisfied all the conditions under the Fair Administrative Action Act of 2015 before suspending the vehicles"

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9. It was the Appellant's contention that the Respondent did not comply with the Fair Administrative Action Act of 2015, especially in relation to the need to give a notice, hearing, and reasons for the decision.

10. The Respondent was able to prove that it gave a hearing to the Appellant on the 29th September, 2020. However, no evidence was adduced to prove that a notice had been given prior to the meeting of the 29th of September 2020.

11. The need to be heard and given prior notice and reasons for an administrative action that affects a person negatively is a fundamental right under Article 47 of the Constitution, which is given effect by the Fair Administrative Action Act 2015. Section 4 of the Fair Administrative Action Act (2015) provides that:

“(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.”

12. 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.**”

13. On the need to give a notice, Kaluma 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.)

14. It follows, therefore, that there was a breach of Article 47 for failure to give a requisite notice.


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

- a) The suspension of the Appellants’ vehicles was unlawful and is lifted with immediate effect.
- b) The Respondent, whether by itself or its representatives, servants or agents, is restrained from suspending the Appellants’ portals and vehicles or impounding the Appellants’ vehicles on the basis of the **unlawful action** arising from this suit.
- c) The Respondent is at liberty to issue a fresh notice, conduct a hearing, and take administrative action that is **lawful**.

DELIVERED, DATED, AND SIGNED IN NAIVASHA BY THE TRANSPORT LICENSING APPEALS BOARD ON THIS 29TH OF MARCH, 2021.

Dick Waweru Chairman.....
Moses Parantai Member.....
Aden Noor Member.....
Betty Bii Member

Prof. Kiarie Mwaura Member

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