



REPUBLIC OF KENYA

TRANSPORT LICENSING APPEALS BOARD AT MURANGA APPEAL

CASE NO 23 OF 2020

THOMAT SAVINGS & CREDIT COOPERATIVE SOCIETY LTD.....APPELLANT

-VERSUS-

NATIONAL TRANSPORT AND SAFETY AUTHORITY.....FIRST RESPONDENT

MEIRUT LOGISTICS LIMITED.....SECOND RESPONDENT

RULING

Introduction

1. The Appellant is a savings and credit cooperative society (Sacco) that is licensed by the First Respondent to operate public service vehicles.
2. The First 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 to 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.
3. The Second Respondent is a company that is licensed by NTSA to operate public service vehicles.

The Appellant's Case

4. Through a Notice of Motion Application filed at the Transport Licensing Appeals Board (TLAB) and dated 9th July 2021, Thomat Sacco sought the following orders:
 - a. That the application be certified urgent and service thereof be dispensed with in the first instance.
 - b. That the honourable court do issue an interim temporary ex-parte injunction in the first instant restraining NTSA, his agents and employees from issuing a Road Service License to the Second Respondent in the name of **Meruit Logistics Limited** pending the hearing and determination of this application.
 - c. That the honourable court do issue an interim temporary ex-parte injunction in the first instance restraining **Meruit**, his agents and employees from operating public service vehicles using the Road Service License (RSL) in the name and style of **Meruit Logistics** company pending the hearing and determination of this application.
 - d. That the honourable court do issue an interim temporary injunction restraining NTSA his agents and employees from issuing an

RSL to **Meirut** Logistics in the name of **Meruit** Logistics pending the hearing and determination of this application.

e. That the honourable court do issue an interim temporary injunction in the first instance restraining Meirut Logistics his agents and employees from operating PSV vehicles using the RSL in the name and style of **Meruit** Logistics pending the hearing and determination of this application.

f. That the honourable tribunal do cancel the RSL for the Meirut logistics operating in the name and style of Meruit Logistics.

g. That the honourable tribunal do issue any other order sufficient to protect the rights of the applicant.

h. That the costs of this application be provided in full.

5. Through an affidavit of John Kiore Wainaina, Thomat averred that there was an appeal pending at this tribunal which sought the cancellation of the RSL granted in the name of Meirut Logistics. In this appeal, which was filed at TLAB on 14th December 2020, Thomat complaint concerned the fact that NTSA had licensed Meirut Logistics when it had not complied with Rules 5 and 6 of the NTSA (Operation of Public Service Vehicles) Regulations 2014 as well as not having the requisite 30 vehicles, not having the county authority for picking and dropping, and failure of NTSA to respond to Thomat's complaints. It was Thomat's contention that the entry of Meirut into their route brought about business rivalry, disorder, unnecessary confusion, congestion, and noise pollution due to touting and competition for passengers. As a result, Thomat sought the following orders:

a. A declaration that NTSA's delay and/or failure to consider and address the Appellant's objection and complaint as contained in the letters dated 27th November 2020 and 30th November 2020 was a violation of the law and the Appellant's right to fair administrative action.

b. A declaration that NTSA decision to license Meirut to operate in the Appellant's route was made in violation of the NTSA Act No. 33 of 2012.

c. An order directing NTSA to produce before this Honourable Board and provide the Appellant with a copy of the license issued to Meirut Logistics to operate in the Appellant's route together with copies of the registration and licensing documents that Meirut submitted in support of the application for the license.

d. An order directing NTSA to consider and respond to the Appellant's objection and complaint as contained in the letters dated 27th November 2020 and 30th November 2020.

e. An order directing NTSA to suspend or cancel the license issued to Meirut to operate in the route of Thomat.

f. Costs of this Appeal.

g. Interest on costs at court rates from the date of judgment until final payment.

h. Such further relief that this Honourable Board may consider fit and just to grant.

6. There is also a pending High Court case that seeks orders barring Meirut Logistics from trading in the name and style of Meirut Logistics. The case in question is *Edward Gitau Kariuki T/A Meirut Logistics Company v Meruit Logistics Company* E075 of 2021. In the plaint filed in the High Court on 5th February 2021, Gitau Kariuki T/A Meirut Logistics Company contended that Meruit logistics was operating public service vehicles along Odeon- Thika road and Marurui route using the name Meirut Logistics Company, which belonged to the plaintiff. This had affected the plaintiff's business and exposed him to loss of business and other unwarranted liabilities. As a result, Edward Gitau Kariuki T/A Meirut Logistics Company sought the following orders:

a. A permanent injunction against the defendant/agent/employees from using, operating, trading, advertising or whatsoever operating using the name Meirut Logistics Company.

b. General damages incurred by the plaintiff for loss of business due to the usage of his name, Meirut Logistics Company.

c. Costs for this suit.

d. Any other relief the court may deem fit to grant in the circumstances.

7. On 1st July 2021, Justice Muigai in the case of *Edward Gitau Kariuki T/A Meirut Logistics Company v Meruit Logistics Company* E075 of 2021 gave the following orders:

a. A temporary injunction is hereby issued restraining the Defendant/Respondent, Director of Meruit Co. Ltd as per Registration of Companies Certificate, his agents, servants or employees from operating PSV vehicles plying Odeon Thika Road Marurui route, while trading in the name of style of **Meirut Logistics Company** as per Registration of Compliance Certificate pending hearing and determination of this suit.

b. The order shall be supervised by OCPD/OCS of Kasarani area.

c. The order shall be effected within 30 days from today.

d. The vehicles shall at Defendant's cost have the PSV vehicles systematically painted with the correct company name.

e. The enforcement of the order shall not involve harassment and/or inconvenience of the commuters by stopping the PSV vehicles and hauling passengers out of vehicles or in any way interfering with their safe commute.

f. The issue of licences is with the Transport Licensing Appeals Board which has jurisdiction to determine.

8. Thomat contended that NTSA's action of changing the license from Meirut Logistics to Meruit Logistics after the High Court ruling and when there is a pending case in the tribunal amounted to disrespect of the tribunal.

9. It was Thomat's contention that the case before the High Court is different from the one pending at TLAB given that the parties in the two cases are different and that the subject matter in the two cases is different. They contended that the case in the High Court seeks to stop Meruit Logistics from trading in the name of Meirut Logistics. However, the case at TLAB challenges NTSA's process of granting the license to Meirut Logistics. Thomat relies on the following authorities: Article 169 (1) of the Constitution; section 38 (1) and 39 (5) of the NTSA Act; *Smoke City Sacco v NTSA* [2019]eKLR; *Figkomba Sacco Ltd v NTSA* [2016] eKLR; *Gakanago Sacco v NTSA* [2019] eKLR; *Edward Mwaniki Gaturu & Another v AG & 3 Others* [2013] eKLR

The Respondent's Case

10. It was the contention of Second Respondent that the prayers sought in the High Court (prayer number 4 in the High Court Notice of Motion) would have the effect of stopping the Second Respondent from operating, which is the same prayer made at TLAB.

11. The Second Respondent was also of the view that the High Court had already given directions to the effect that the Second Respondent should temporarily stop using the name Meirut Logistics, which they had already complied with by adopting a different name (Meruit Logistics). As such, it was their opinion that prayer number 2 in the Appellant's Notice of Motion at TLAB dated 9th July 2021 had been overtaken by events. The prayer reads "That the honourable court do issue an interim temporary ex-parte injunction in the first instant restraining NTSA, his agents and employees from issuing a Road Service License to the Second Respondent in the name of **Meruit Logistics Limited** pending the hearing and determination of this application."

12. That, contrary to what is alleged by Thomat, the cases before the High Court and TLAB, are the same given that Edward Gitau Kariuki, the plaintiff in the High Court case, is the Chairman of Thomat Sacco, which happens to be the Appellant in the TLAB case. As such, the Second Respondent averred that it was incumbent upon Thomat to notify TLAB of the High Court matter even if only for information purposes. They posit that since the issue of the use of the name "Meruit" has been handled by the High Court, it should not be an issue before TLAB.

13. That there is no valid reason given by Thomat seeking to stop the Second Respondent operating as Meruit Logistics and, as such, Thomat is seeking orders that are meant to incapacitate the business of Meruit given that there is no court order stopping them

from trading in the name of Meruit Logistics. The High Court order barred them from using the name Meirut, but not Meruit.

14. After receiving the High Court order, the Second Respondent requested NTSA to update its records. NTSA agreed and changed the name from Meirut Logistics to Meruit Logistics.

Determination

15. Following the arguments adduced by the parties, the Transport Licensing Appeals Board has isolated the following issue to be the ones requiring a determination:

a. Whether there are similarities between the case pending before the High Court and the one pending before the Transport Licensing Appeals Board.

Whether there are similarities between the case pending before the High Court and the one pending before the Transport Licensing Appeals Board.

16. The licensing of Meirut Logistics by NTSA gave rise to two causes of action. One case was filed at the Transport Licensing Appeals Board by Thomat Sacco on 14th December 2020. The Memorandum of Appeal was supported by the Affidavit of Edward Gitau Kariuki, who is the Chairman of Thomat Sacco. The other case was filed in the High Court on 5th February 2021 by Edward Gitau Kariuki, who is the registered owner of Meirut Logistics Company. This clearly indicates that Edward Gitau Kariuki has an interest in both cases.

17. A glimpse of the orders sought in both courts would also reveal whether the cases have similarities. In the Memorandum of Appeal filed at TLAB, Thomat asked TLAB to make “an order directing NTSA to suspend or cancel the license issued to **Meirut Logistics** to operate in the route of Thomat.” In the plaint filed in the High Court, Thomat asked the High Court to issue “a permanent injunction against the defendant/agent/employees from using, operating, trading, advertising or whatsoever operating using the name **Meirut Logistics Company**. The effect of the two prayers is similar and it is to stop the use of the name **Meirut Logistics**. The High Court has already acted on this prayer and issued a temporary injunction stopping the use of the name **Meirut Logistics Company**. This has already been complied with by the affected parties, including NTSA. Given that the High Court has pronounced itself on this matter, we cannot deal with it as prayed by Thomat. We note that the original complaint by Edward Gitau Kariuki/Thomat, both at the High Court and TLAB, was to do with the use of the name **Meirut Logistics**, but after getting a favourable order from the High Court stopping the use of the name **Meirut**, Thomat approached TLAB to stop NTSA from licensing the use of yet another name **Meruit**, a name that is different from the one he had complained about in the first instance.

18. In the plaint filed at the High Court, Edward Gitau Kariuki confirms that the Second Respondent is a registered company going by the name Meruit Logistics and that it ought to have been trading in that name instead of Meirut Logistics. Although the High Court has given a temporary injunction against the use of the name Meirut Logistics, the final determination on the use of the names Meirut Logistics and Meruit Logistics is still pending. A final determination of this matter will confirm which party has the right to use the name Meirut and Meruit. A finding on this matter will not only bind the Second Respondent, but also NTSA. Indeed, NTSA will be able to determine with finality who the owners of Meirut and Meruit are and, therefore, who to issue the license to. Asking TLAB to order NTSA not to license Meruit at this stage is tantamount to asking the tribunal to wade into a question that is pending determination at the High Court. It would thus not be in the interest of justice for TLAB to make a finding on this matter.

19. We also note that Thomat has asked the High Court for damages incurred for loss of business due to the usage of the name, Meirut Logistics Company. In the case pending at TLAB, Thomat has prayed for damages and losses incurred by Thomat Sacco since the alleged illegal registration of the Second Respondent by NTSA (see the supporting affidavit sworn by Edward Gitau Kariuki on 18th January 2021). It is evidently clear that these are the same prayers made to two different courts. Just like the stoppage of the use of the name Meirut Logistics, we find that the orders sought at the High Court will affect orders to be made by TLAB. In the event that the High Court awards the damages sought, it would be unjust for TLAB to award similar damages. Consequently, we find that it would be in the interest of justice to stay our proceedings first so that the case pending at the High Court can be concluded. Thereafter, a determination can be made on any pending issue regarding licensing. We exercise this discretion by virtue of section 39 (7) of the NTSA Act, which provides that “the Appeals Board shall regulate its procedure and proceedings as it may consider appropriate.”

20. Having considered the law applicable to this matter, the Transport Licensing Appeals Board makes the following orders:

1. THAT the case before the Transport Licensing Appeals Board is stayed pending the determination of the High Court Case of *Edward Gitau Kariuki T/A Meirut Logistics Company v Meruit Logistics Company* E075 of 2021.

DELIVERED, DATED, AND SIGNED IN MURANGA BY THE TRANSPORT LICENSING APPEALS BOARD ON THIS 30H DAY OF AUGUST 2021.


DICK WAWERU CHAIRMAN

PROF. KIARIE MWAURA MEMBER

BETTY CHEPNG'ETICH BII MEMBER

ADEN NOOR MEMBER

MOSES PARANTAI MEMBER

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