



Case Number:	Case 16 of 2018
Date Delivered:	18 Dec 2018
Case Class:	Civil
Court:	Transport Licensing Appeals Board Tribunal
Case Action:	Judgment
Judge:	Dick Waweru - Chairman Aden Noor Ali - Member Moses Parantai - Member
Citation:	Salty Supporters Investment Ltd v National Transport and Safety Authority [2018] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Civil
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Applicationn allowed.
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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REPUBLIC OF KENYA

TRANSPORT LICENSING APPEALS BOARD AT NAIROBI APPEAL

CASE NO. 16 OF 2018

SALTY SUPPORTERS INVESTMENT LTD.....APPELLANT

-VERSUS-

NATIONAL TRANSPORT AND SAFETY AUTHORITY.....RESPONDENT

JUDGMENT

Introduction

1. The Appellant is a LIMITED COMPANY that is registered under the Companies Act (Cap 486) and that was seeking to be licensed by the Respondent 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 an application at the Transport Licensing Appeals Board (TLAB) on the 30th November 2018 with the complaint that the Respondent had failed to register their company even after the Appellant had complied with all the requirements that were prescribed to them by the Respondent. This was in response to the letter sent to the Appellant by the Respondent dated November 29, 2018 that declined the Appellant's application.
4. The Appellant was seeking to be licensed as a public service transport operator plying the Ronald Ngala – Jogoo Road- Umoja Innercore- Komarock- Saika route as per the National Transport and Safety Authority Act Number 33 of 2012.
5. In relation to the Appellant, they had complied with all the instructions from the Respondent, including the provision of a letter from Nairobi County Offices approving their application for a picking and dropping bay (Exhibit 1) and the logbooks of the required vehicles together with the details of the Appellant's employees (Exhibit 2).
6. However, on the 5th of September 2018, the Respondent wrote back to them and requested for the Health and Safety at Workplace Certificate, the Work Injury Benefit Assurance Certificate, and the Letter of no objection from the Saccos operating the route the Appellant was seeking to apply. The Appellant complied with the given instructions and presented the needed materials, which were adduced before the Tribunal as exhibits.
7. The Respondent, after receiving the requested letters, wrote back on the 29th of September 2018 and enquired whether the Appellant could take the thirty (30) vehicles for pre-registration inspection at the nearest NTSA Motor Vehicle Inspection Unit to ascertain their road worthiness. The Appellant also complied with this condition.
8. Following the inspection, only twelve (12) vehicles were cleared as meeting the NTSA standard to which the Appellant asked for permission from the Respondent to add more vehicles in order to meet the thirty (30) vehicle threshold. The request was approved and the Appellant added more vehicles, whereby eighteen (18) more vehicles were cleared enabling the Appellant to reach the required threshold of thirty (30).

9. Thereafter, the Respondent requested the Appellant to present the thirty (30) vehicles at the Likoni Motor Vehicle Inspection Centre in Industrial Area, where the vehicles were inspected after the payment of the requisite fee and the Appellant was issued with compliance certificates. The certificates were presented in court as evidence.

10. The Appellant also presented, to the Respondent, various letters of no objection from SACCOs that operate on the same route. Some of the letters were presented to the Tribunal as evidence.

11. It was the Appellant's case that they had complied with all the requirements that were prescribed to them by the Respondent. They were surprised to receive a letter from the Respondent dated the 29th November 2018 declining their application for the reason that they had public service vehicles whose capacity was less than 25 passengers. The Respondent relied on section 4 (3) of the Legal Notice Number 179 of 31st December 2014 as a ground for rejecting the Appellant's application.

12. It was the Appellant's claim that section 4 (2) and (3) were in conflict with each other. Section 4 (2) provides that the "Authority shall not license any new Public Service Vehicles as Commuter Service Vehicle whose seating carrying capacity is less than twenty-five passengers." The Appellant contended that section 4 (2) should not apply to them, as they did not have new vehicles. Their vehicles were already in operation in other Saccos.

13. Section 4 (3) provides that the Authority shall not, with effect from the 1st January 2016, renew the license of any Public Service Vehicle whose seating carrying capacity is less than twenty-five passengers. The appellant contended that this section does not apply to them, as they were not seeking to renew their license, but applying for a new one.

14. It was the Appellant's claim that the Respondent, NTSA, had unfairly failed to register them after they had complied with all their requirements.

15. Evidence was adduced to show that the Respondent had indeed registered other fourteen seaters well after the 1st January 2016 deadline. As such, failing to register the Appellant was deemed to be discriminatory.

The Respondent's Case

16. The Respondent averred that it had relied on NTSA regulations, specifically Legal Notice Number 179 of 31st December 2014, whose section 4(3) restrains the Authority from licensing any Public Service Vehicle whose seating capacity is less than twenty-five (25) passengers as well as Section 5(1) of the PSV Regulations of 2014 which require a PSV Sacco/ Company to operate a minimum of thirty (30) serviceable motor vehicles.

17. The Respondent averred that Legal Notice Number 179 of 2014 implements the directive for decongesting the Central Business District (CBD) in Nairobi.

Determination

18. Following the arguments adduced in trial, the Transport Licensing Appeals Board has isolated the following issue to be the one requiring a determination:

a. Whether the Appellant had complied with the PSV Regulations for the purpose of registration and licensing as a Public Service Operator; and

b. Whether the Respondent had erred by failing to register the Appellant"

19. The law in Section 5 of the PSV Regulations gives the conditions that one must need to comply with in order for the Authority to license them that is:

5. Conditions to be met by applicants

"(1) A person desirous of operating public service vehicles shall be a member of a body corporate which shall—

- (a) be licensed to operate if the body corporate owns a minimum of thirty serviceable vehicles registered as public service vehicles or in respect to which an application for a license has been or is to be lodged with the Authority;
- (b) have in its employment a staff complement which must include at a minimum —
 - (i) a driver in respect to each public service vehicle;
 - (ii) an inspector for each route on which the public service vehicle is intended to operate;
 - (iii) an office manager;
 - (iv) an accounts clerk; and
 - (v) a qualified mechanic or a contract under which the services of a mechanic are outsourced;
- (c) have in place a code of conduct approved by the Authority governing its employees, agents and sub-contractors;
- (d) have in place a documented management system, safety management system based on ISO 39001:2012 “Road Traffic Safety Management Systems” or equivalent and customer complaints handling system;
- (e) comply with labour laws and regulations including in respect to statutory deductions, health and safety of the workplace, Work Injuries Benefits Act (Cap. 236) insurance, statutory leave days and written contracts of employment for staff; and
- (f) where it operated public service vehicles licensed under these Regulations in the immediately preceding calendar year fully complied with the requirements of these regulations in the immediately preceding year.”

20. Following the evidence adduced in the trial, the Appellant was able to prove that they had complied with conditions under section 5 of the PSV regulations, as they had a threshold of thirty (30) vehicles. They produced details of the required thirty vehicles together with the compliance certificates issued by the Respondent and also the compulsory insurance certificates from NSSF, NHIF and the Work Injury Benefit Insurance.

21. On the conditions under section 4 (2) and 4 (3) of the Legal Notice Number 179 of 2014, the Tribunal is of the view that there is no conflict between the two sections. This is because the sections provide for a mechanism of phasing out in stages the fourteen (14) seaters. As a regulation that came into force in 2014, the National Transport and Safety Authority (Operation of Public Service Vehicles) (Amendment No. 2) Regulations 2014 provides, through section 4 (2) that no new PSV vehicles would be registered as Commuter Service Vehicle whose capacity is less than twenty-five passengers. This means that the existing fourteen seaters would continue operating until 1st January 2016, when all the fourteen seaters would cease to be licensed by virtue of section 4 (3). As such, there is no conflict between the two sections.

22. In relation to the interpretation of the words “new” and “renew”, a purposive interpretation approach of the same leads to the conclusion that the intention of the Regulations was to phase out fourteen seaters by 1st January 2016. As such, the Tribunal takes the view that the words “new” and “renew” encompass new applicants for fourteen seater licenses.

23. The Tribunal notes that the Authority gave the Appellant the legitimate expectation that they would be licensed despite having fourteen seaters. This is because they were taken through all the approval processes and also spent money to have their vehicles inspected and issued with inspection certificates. It was not until the last stage when they were required to comply with section 4 (3) of the 2014 Regulations. Besides, the Appellant was able to prove that other fourteen seaters had been licensed after 1st January 2016. This, therefore, amounts to a discriminatory administrative action that is also contrary to section 7 (m) of the Fair Administrative Action Act 2015 for breaching the legitimate expectations of the Appellant.

24. The Tribunal is of the considered opinion that the enforcement of the regulations can only meet the standards set under the Fair Administrative Action Act 2015 if they are applied uniformly and without any bias.

25. Having considered the facts and the law applicable to this matter, the Transport Licensing Appeals Board hereby finds:

1. THAT the Respondent, NTSA, erred in failing to register the Appellant, Salty Supporters Investment Limited, after they had complied with all the prescribed requirements.

2. THAT the Respondent, NTSA, completes within seven (7) days the registration of the Appellant, Salty Supporters Investment Limited, as a company licensed as a transport operator.

Delivered, dated, and signed in Nairobi by the Transport Licensing Appeals Board on this 18th day of December 2018.

Dick Waweru Chairman

Aden Noor Ali Member

Moses Parantai Member



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