



Case Number:	Appeal Case 2 of 2021
Date Delivered:	15 Sep 2021
Case Class:	Civil
Court:	Transport Licensing Appeals Board Tribunal
Case Action:	Ruling
Judge:	Dick Waweru – Chairman, Prof. Kiarie Mwaura – Member, Aden Noor Ali – Member, Betty Chepng'etich Bii – Member & Moses Parantai - Member
Citation:	Justus Musabe Misiani & another v National Transport and Safety Authority & another [2021] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Tribunal
History Magistrates:	-
County:	Nakuru
Docket Number:	-
History Docket Number:	-
Case Outcome:	Appeal dismissed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

TRANSPORT LICENSING APPEALS BOARD

CASE NO. 2 OF 2021

JUSTUS MUSABE MISIANI

FREDRICK MWANGI MBUTHIA.....APPELLANTS

-VERSUS-

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

SUPER METRO LIMITED.....SECOND RESPONDENT

RULING

Introduction

1. The Appellants are objectors to the issuance of a license to Super Metro Limited, which is licensed by the National Transport and Safety Authority (NTSA) to operate public service vehicles.
2. The First Respondent, 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 the Respondent to operate public service vehicles.

Justus Mithani and Fredrick Mbuthia Case

1. Justus and Fredrick averred that the licensing of Super Metro had created unfair competition to an already crowded route and that the decision to license the company did not involve the operators of Ngong Nairobi route. It was argued that this fell short of meeting the threshold for public participation. Justus and Fredrick relied on section 5 of the Fair Administrative Action Act as well as Articles 27, 33 and 47 of the Constitution.
2. It was Justus and Fredrick's argument that section 5 of the Fair Administrative Action Act requires that public notice should be issued where a proposed action is likely to materially and adversely affect the legal rights or interests of a group of persons or the general public.

Super Metro's Case

3. In a replying affidavit dated 13th August 2021, Nelson Mwangi Nduki, who is a director and a shareholder of Super Metro, averred that there is a case pending at the Chief Magistrate's Court in Ngong that is similar to the one at the Transport Licensing Appeals Board (TLAB). The case number is MCCRE 064/2021, *Dennis Oeri Makori (suing on behalf of NTVRS Matatu Sacco v Super Metro, County Government of Kajiado and NTSA)*. The orders sought under this case are similar to the ones sought at TLAB.
4. Dennis Makori appeared before TLAB on August 16, 2021 and confirmed during his cross examination that there is a similar matter pending at the Chief Magistrate's Court in Ngong.

Determination

5. The case before the Chief Magistrate’s Court concerns a dispute between the same two parties that are before TLAB. We find that it would not be in the interest of justice to continue with our proceedings when the matter is pending in a different court. Doing so would render the matter before us sub judice. 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.”

ORDERS

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

a. THAT the appeal is dismissed.

DELIVERED, DATED, AND SIGNED IN NAIVASHA BY THE TRANSPORT LICENSING APPEALS BOARD ON THIS 15TH DAY OF SEPTEMBER 2021.

DICK WAWERU CHAIRMAN

PROF. KIARIE MWAURA MEMBER

ADEN NOOR ALI MEMBER

BETTY CHEPNG’ETICH BII MEMBER

MOSES PARANTAI MEMBER



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