



IN THE TRANSPORT LICENSING APPEALS BOARD AT NAIROBI

APPEAL CASE NO. K001 OF 2016

2 MK Travellers SACCO LTD APPELLANT

V

NTSA..... RESPONDENT

JUDGMENT

The Appellant's Case

The Appellant, 2 MK Sacco Ltd, filed an appeal with the Transport Licensing Appeals Board (TLAB) on the 22nd of June 2016 complaining about the reclassification of the driving license of one of its drivers, Samuel Mwangi Kamotho. He had been arrested along Kericho - Kisumu Road for driving a vehicle, KAZ 981J, whose seatbelts were not functional. Although his license had been taken away upon his arrest, he got it back after paying a court fine of Ksh. 2400. However, upon checking details of his license in the online portal of NTSA, he realized that his license had been reclassified from "Class A" to "Class BCE." In the past, the online portal indicated that he had a "Class A" license. The Appellant's plea to the Transport Licensing Appeals Board was to have his license reinstated to "Class A" so that he could continue driving Public Service Vehicles (PSVs). Although he did not have a receipt of payment to prove that he had paid for the "Class A" license that he had, he had a PSV badge as proof of having been issued with a "Class A" license. His argument was that the badge could not have been issued without a "Class A" license. As such, he averred that he should not be made to suffer because of misplacing his receipt of payment. The Appellant was of the view that the driver should not be made to suffer twice by requiring him to re-apply and pay for his "Class A" license.

2 MK Travellers Sacco Ltd v NTSA [2016] eKLR

The Respondent's Case

The Respondent's advocate, Judith Opili, confirmed that the NTSA records indicate that Samuel Mwangi Kamotho did not have a "Class A" license. She also contended that he has never held a "Class A" license and that is why the details of his "Class A" license were non-existent in the NTSA records. She also averred that there was no record showing that his "Class A" license has ever been revoked. However, she did not counter the evidence showing that the driver had a PSV badge, which he could not have obtained without a "Class A" license.

Determination

As a public body, NTSA has the responsibility to provide efficient, fair and reasonable services under Article 47 of the Constitution of Kenya 2010 and section 4 of the Fair Administrative Action Act of 2015.

Article 47 (1) of the Constitution provides that:

"Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair."

On the other hand, the Fair Administrative Action Act 2015, which implements Article 47 of the Constitution, similarly provides in section 4 (1) that "every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair."

With an efficient record keeping system, it should have been easy for the Authority to track the history of the license and badge in question with a view to providing satisfactory answers to the questions at hand. It is worthy of note that the Respondent was given more than a week to file a response to the issues in question, but none was submitted.

Having considered the facts and the law applicable to this case, the Transport Licensing Appeals Board hereby orders NTSA to issue a "Class A" license to Samuel Mwangi Kamotho at no cost to himself.

Delivered, dated, and signed in Kericho by the Transport Licensing Appeals Board on this 27 day of September 2016.

2 MK Travellers Sacco Ltd v NTSA [2016] eKLR

Prof. Kiarie Mwaura Member

Nkanata Johnson Gitobu Member

Aden Noor Ali Member

Betty Chepng'etich Bii Member