



IN THE TRANSPORT LICENSING APPEALS BOARD AT NAIROBI

APPEAL CASE NO. 9 OF 2016

DAIMA CONNECTION LTD APPELLANT

V

NTSA RESPONDENT

JUDGMENT

The Appellant Company, Daima Connection Ltd, filed an appeal with the Transport Licensing Appeals Board (TLAB) on the 16th of September 2016, whereupon it challenged the suspension of its operator license by NTSA. Through a letter dated the 9th of September 2016, the Respondent suspended the license on the grounds that:

- a) Most vehicles in the fleet of Daima Connection exceed the speed limit of 80 km/hr;
- b) Only 35 vehicles out of 42 are in the fleet management system;
- c) All vehicles are not branded with the company name.

As a result of the above concerns, NTSA invoked section 34 of the NTSA Act and suspended the operator's license of Daima Connection Ltd. According to the suspension letter, the suspension was imposed from the 9th of September 2016 until the time that the appellant:

- a) Provides documented evidence that all the vehicles are in the fleet management system;
- b) Delivers for inspection the vehicles that were over -speeding.

In addition to the suspension, NTSA directed the Traffic Commandant to impound any vehicle, belonging to Daima Connection Ltd, that would be found operating on the road.

In its memorandum of appeal, the Appellant challenged the suspension of its license on the basis that: the administrative action taken by NTSA was unreasonable; the decision was itself unfair and also procedurally unfair; the Appellant was not given an

opportunity to be heard and to state its case; the Appellant was not given prior and adequate notice of the nature and reasons for the proposed administrative action; the Appellant was not given notice of the right to appeal to the Transport Licensing Appeals Board.

The appeal was heard on the 21st of September, 2016 and the Appellant, through David Ngugi Ngonge, averred that they ought to have been given a notice before all their vehicles were suspended. The Appellant also contended that it was unreasonable, unfair, and excessive for NTSA to suspend all the 42 buses instead of dealing with the errant drivers and vehicles. As a result of the suspension, it was contended that the Appellant and its employees had suffered heavy financial losses. They are also encountering difficulties in servicing their loans, as they are not in operation. It was also contended that they risk loss of business, as new entrants are likely to get to their routes. The Appellant also submitted that all their vehicles are fitted with speed governors and they had installed the "Track and Trace Fleet Management System."

The Respondent's advocate, Tom Abuga, produced a speed sheet from the fleet management system showing that a total of 18 vehicles had been over speeding. On the claim that Appellant had not been given a notice prior to the suspension of the license, the advocate presented a letter dated the 7th of September 2016 from NTSA, which notified the Appellant of the fact that a majority of the vehicles in their fleet system exceeded the speed limit of 80 km/hr. The same letter, which was written by John Muya, required the appellant to "confirm that the speed governor for vehicles speeding beyond 90 km/hr as per the attached list are functional and present them for inspection within 7 days failure to which the Authority will not hesitate to suspend their licenses."

It is worthy of note that the Appellant contended that he had neither been served with the said notification letter, nor had he ever seen it. It was his contention that he saw the notification for the first time in the court room. Upon being asked whether he had any evidence to prove that the notification letter was received by the Appellant, the Respondent's advocate confirmed that he did not have such evidence. As a result of this, the credibility of the notification letter is in question and it cannot, therefore, be relied upon.

The Transport Licensing Appeals Board noted that the notification letter was written on the 7th of September 2016 and required the Appellants to present vehicles for inspection within seven (7) days failure to which the Authority would not hesitate to suspend their licenses. All the 42 vehicles were, however, suspended on the 9th of September 2016, just two days after the issuance of the notification letter. Even if the notification letter were

to be relied upon as having been genuine, it would be both unfair and unreasonable to allow the suspension to stand given that the vehicles were suspended before the end of the seven (7) days notice within which the Appellant was supposed to present them for inspection. The failure to adhere to the terms in the alleged notice clearly invalidates the notification letter, as it breaches the legitimate expectations of the Appellant. This is contrary to section 7 (2) (m) of the Fair Administrative Action Act 2015, which allows for the review of an administrative action or decision if it violates the legitimate expectation of the appellant.

It is also worthy of note that the inconsistency or vagueness in the notification letter, coupled with the absence of evidence to prove the delivery of the notification letter, is a pointer to the fact that the said notification letter could have been produced as an afterthought and, therefore, fails to meet the requirement of due notice. According to Kaluma:

“a notice that mentions one ground but the action or decision is taken on some different or additional ground suffers vagueness and offends the requirement of due notice.” (Peter Kaluma, *Judicial Review: Law Procedure and Practice* (LawAfrica, Second Edition, 2012), p. 181.)

The need to be given notice and reasons for an administrative action that affects a person negatively is now 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;

As a result, all administrative bodies are under an obligation to respect this right and the failure to do so invalidates the administrative action taken. As Kaluma notes:

Aden Noor Ali **Member**

Betty Chepng'etich Bii **Member**