



IN THE TRANSPORT LICENSING APPEALS BOARD AT NAIROBI APPEAL  
CASE NO 13 OF 2016

KANGAROO SHUTTLE SERVICES LTD .....APPELLANT

VERSUS

THE NATIONAL TRANSPORT & SAFETY AUTHORITY .....RESPONDENT

**JUDGMENT**

*Introduction*

1. The Appellant Company is a corporate body that is registered under the Companies Act, Cap 486 of the Laws of Kenya. It is 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 the 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 appeal, on the 4<sup>th</sup> of October 2016, at the Transport Licensing Appeals Board (TLAB) on the grounds that the respondent erred in law for detaining vehicles and confiscating the drivers' licenses and Road Service Licenses for motor vehicle number KCF 563S.
4. In relation to the driver of KCF 563S, he had been arrested and arraigned in court on the 23<sup>rd</sup> of September 2016 for over-speeding. He pleaded guilty and was

fined Ksh, 1000. However, despite this, NTSA continued to hold on to the driver's license and vehicle's Road Service License. The vehicle was also blacklisted for 30 days. It was the Appellant's case that he was not given any notice or reasons for these administrative actions. However, the Appellant received a letter (dated 27<sup>th</sup> September 2016) from NTSA on the 4<sup>th</sup> of October 2016. The said letter informed the appellant of the actions taken against the vehicle. The letter was hand delivered to the Appellant's booking office in Eldoret instead of the Kitale Head Office. The Appellant was of the view that the letter was written as an afterthought and after the Appellant had filed an appeal at the Transport Licensing Appeals Board.

### *The Respondent's Case*

5. The Respondent averred that it was relying on the NTSA regulations of 20<sup>th</sup> of December 2015, which make provisions for night travel and imposes conditions for withdrawal of licenses and the need to retest a driver. The same also gives the Respondent the option of suspending the license for 30 days.

### *Determination*

6. Following the evidence adduced by the parties before the Transport Licensing Appeals Board, the Board has isolated the following issues to be the ones requiring a determination: whether the Appellant's constitutional right to a fair administrative action was violated by the Respondent.
7. The evidence adduced in the trial indicated that the Appellant was not given any notice or reasons before the administrative actions were taken against them. The letter dated the 27<sup>th</sup> of September 2016 giving reasons for the actions was indeed written after some administrative decisions had already been made and enforced.
8. It is the case that Article 47 of the Constitution of Kenya 2010 guarantees every person the right to administrative action that is fair, efficient, and reasonable. This constitutional provision is implemented through the Fair Administrative Action Act of 2015. According to section 4 of the Fair Administrative Action Act (2015):

"4 (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;
- (d) a statement of reasons pursuant to section 6;
- (e) notice of the right to legal representation, where applicable;
- (f) notice of the right to cross-examine or where applicable; or
- (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.

9. From the above, it is clearly the case that an administrative decision was taken against the Appellant without regard to the requirements of the law on the need for being given *prior* notices, reasons for the actions, and hearing. It is now an established principle of administrative law that a decision that is taken without due regard to the rules of procedurally fairness cannot be allowed to stand. This was the position espoused in the case of *Onyango Oloo vs. Attorney General* [1986-1989] EA 456, where the court of Appeal held that the “denial of the right to be heard renders any decision made null and void *ab initio*.”
10. Having considered the facts and the law applicable to this case, the Transport Licensing Appeals Board hereby makes the following declarations and orders:
  1. A declaration that the Appellant’s constitutional right to fair administrative action was violated.
  2. An order of **Certiorari quashing** the Respondent’s decision to confiscate the driver’s licenses and Road Service Licenses for motor vehicle registration number KCF 563S.
  3. An order of **Certiorari quashing** the blacklisting and detention of motor vehicle registration number KCF 563S.
  4. An order of **Mandamus compelling** the respondent to lift the blacklisting order and to surrender to the appellant the drivers’ licenses as well as the Road Service License for KCF 563S.
  5. That this order be served upon the NTSA and Traffic Commandant with a view to ensuring that the said vehicle, KCF 563S, is not impounded for the complaints relating to this case.

**Kangaroo Shuttle Services Ltd v National Transport & Safety Authority [2016]  
eKLR**

---

**Delivered, dated, and signed in Nairobi by the Transport Licensing Appeals Board on this 9<sup>th</sup> day of November 2016.**

**Nkanata Johnson Gitobu            Member**

**Aden Noor Ali                        Member**

**Betty Chepng'etich Bii            Member**