



IN THE TRANSPORT LICENSING APPEALS BOARD AT NAIROBI

APPEAL CASE NO. 007 OF 2016

MERU NISSAN SACCO v NTSA

JUDGMENT

The Appellant's Case

The Appellant, Meru Nissan Sacco, filed an appeal with the Transport Licensing Appeals Board (TLAB) on the 13th of September 2016. The Appellant's fleet manager, Bethuel Kingori, contended that their vehicle registration number KCB 895U was arrested in Embu on the 9th of September 2016 for allegedly contravening time regulations. As a result, the RSL sticker was removed from the vehicle and the vehicle has not been in operation since that time. He contended that it was unfair and unreasonable to remove the sticker given that the vehicle was arrested at 10 pm. The driver of the vehicle, Kimaita, was not given any reasons for the decision to take away the RSL. The prayer of the Appellant was that he ought to be given back the RSL so that the vehicle, which is still repaying a loan, could continue operating.

The Respondent's Case

The Respondent's advocate, Judith Opili, averred that the vehicle was arrested at 11.53 pm and confirmed that it is the NTSA's policy to suspend an RSL for thirty (30) days once a vehicle is arrested for contravening the time regulations. She also confirmed that the day license, which the Appellant had, runs from 6 am - 6 pm, but it was the policy of NTSA that only vehicles that operate after 10 pm are arrested. She relied on section 34 of the NTSA Act that gives the Respondent the power to suspend and revoke licenses. On the failure to give a notice and reasons for the confiscation of the RSL, she responded that the same would be given after the meeting of the Transport and Safety Committee, which shall deliberate on the issue.

Determination

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The Transport Licensing Appeals Board considered the foregoing facts and isolated the following issue as the one requiring the determination of the Board: whether NTSA breached the rules of natural justice whilst handling the Appellant's case and, if so, whether the administrative decisions and actions of NTSA were void.

It is noteworthy that the Constitution of Kenya under Article 47 and section 4 of the Fair Administrative Action Act 2015 guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair.

Rules of natural justice refer to the rules of fair play, namely the right to be heard and the rule against bias. It is an established principle under administrative law that any decision, however fair it may seem, is invalid if it is made without due regard to the rules of natural justice. As a result, a decision cannot stand unless the person directly affected by it was given a fair opportunity both to state his case and to know and answer the other side's case (see *R v Chief Constable of North Wales Police, Ex Parte Evans* [1982] 1 WLR 1152 (HL)).

The Appellant submitted that he was not given any reasons for taking away the RSL and this was indeed confirmed by the advocate for the Respondent, who averred that reasons will be given after the meeting of the internal committee.

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:

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Aden Noor Ali **Member**

Betty Chepng'etich Bii **Member**