



IN THE TRANSPORT LICENSING APPEALS BOARD AT NAIROBI APPEAL
CASE NO 17 OF 2016

NAKILI SACCO..... FIRST APPELLANT
SUPER METRO SECOND APPELLANT
EASTLEIGH ROUTE SACCO.....THIRD APPELLANT
EASTLEIGH COMMUTER SERVICESFOURTH APPELLANT

VERSUS

NATIONAL TRANSPORT AND SAFETY
AUTHORITY.....FIRST RESPONDENT
EXPRESSO LTD.....SECOND RESPONDENT
JOYLIFE TRAVELLERSTHIRD RESPONDENTS

JUDGMENT

Introduction

1. The Appellants are companies that are licensed by the First Respondent to operate public service vehicles.
2. The First 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.

3. The Second and Third Respondents are companies that are licensed by the Respondent Authority to operate public service vehicles.

The Appellant's Case

4. The Appellants filed an appeal, on the 19th of October 2016, at the Transport Licensing Appeals Board (TLAB) on the grounds that the First Respondent had licensed unlawfully a new operator, Espresso Ltd, without meeting the minimum requirement of thirty (30) of vehicles as required by law. It was also claimed that the First Respondent had failed to engage stakeholders before licensing the new operator.
5. The Appellants also complained about the fact that Espresso Ltd had been given a picking and dropping point outside Standard Bank Building along Tom Mboya Street, which belonged to Eastleigh Route Sacco, an entity that had used the point for over a decade.
6. That the invasion of the picking and dropping point by the new entrant, Espresso Ltd, had interfered with other operators and caused congestion and public disorder. It was claimed that Espresso's operation outside Standard Bank Building had caused chaos on the 10th of September 2016.
7. The First Appellant, Nakili Sacco, also complained of the fact that they had reported to NTSA some irregular dealings by former officials of Nakili Sacco, which NTSA did not act upon. They had wanted former officials to be restrained from operating in another transport Sacco or company.
8. The First Appellant had requested the Registrar of Societies, on the 29th of August 2016, to deregister Joylife Travellers, which was formed by former officials of Nakili Sacco before they cleared with Nakili. They also complained about not being consulted when their vehicles were moved to Espresso. The First Appellant wrote to the First Respondent on the 3rd of October 2016 asking for the vehicles to be returned to Nakili.

The First Respondent's Case

9. The First Respondent averred that Espresso Ltd presented thirty (30) serviceable vehicles to Likoni Motor Vehicle Inspection Centre at the point of registration

and they, therefore, complied with the law. Minutes of the Transport and Safety Committee were produced to support this.

10. The First Respondent also contended that the law does not impose an obligation on the Authority to consult stakeholders before licensing a new operator.

The Second Respondent's Case

11. The Second Respondent averred that they had been duly licensed by both the NTSA and Nairobi City County to operate outside the Standard Bank Building along Tom Mboya Street. To prove this, the Respondent produced a letter written by the County Secretary, Dr. Ayasi, dated the 30th of September 2016.
12. Engineer Karanja, who is the Director of the Engineering Directorate at the County Government of Nairobi, confirmed that they gave Expresso Ltd the authority to pick and drop passengers on any designated picking and dropping points along Tom Mboya Street. This position was also supported by Eng. Karanja's Assistant, Moses Nderitu.
13. Engineer Karanja confirmed that all dropping and picking points are shared facilities and, therefore, no Sacco can lay claim on any points. He also contended that the Inspectorate Directorate has given instructions to the effect that vehicles should not be packed at any picking or dropping bay for more than five (5) minutes so as to allow optimal sharing of the facilities.
14. It was the Second Respondent's case that their licenses were issued in a procedural manner and that the complaint before the tribunal arises out of fear for competition on the part of the Appellants.
15. The Second Respondent was also of the view that the failure on the part of NTSA to respond to Super Metro's application for route extension has nothing to do with Expresso.

Determination

16. Following the evidence adduced by the parties before the Transport Licensing Appeals Board, the Board has isolated the following key issues to be the ones requiring a determination:
 - a. Whether the Second Respondent had complied with the requirement to have a minimum of 30 vehicles for the purpose of registration.
 - b. Whether the Second Appellant's right had been violated for not receiving a response from NTSA regarding their application for route extension.

- c. Whether Saccos can lay claim on the ownership of specific picking and dropping points.

Whether the Second Respondent had complied with the requirement to have a minimum of 30 vehicles for the purpose of registration.

17. The First Respondent relied on the minutes of the Transport and Safety Committee of NTSA and satisfied the Tribunal that requirements for thirty (30) vehicles had been met.

18. Regarding the claim that vehicles had been moved unlawfully from Nakili Sacco to other Saccos, it is clearly the case that there were governance and administrative problems at Nakili Sacco, a fact that could have prompted some members to move away and associate with others. However, given that this is a civil dispute between two entities, we would be hesitant to give orders regarding the same, as our jurisdiction is limited to instances touching on the licensing decisions of NTSA. However, in the event that it is established clearly that NTSA erred by being part of the unlawful transfer of vehicles or un-procedural recognition of officials, then our jurisdiction can set in. In the present case, this was not established and we shall not, therefore, dwell much on this discussion.

Whether the Second Appellant's right had been violated for not receiving a response from NTSA regarding their application for route extension.

19. It is the case that Article 47 of the Constitution of Kenya 2010 now 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 (2) of the Fair Administrative Action Act (2015) every person has the right to be given written reasons for any administrative action (or in action) that is taken against him.

20. It follows, therefore, that Super Metro has a right to get a response from NTSA regarding their application for route extension.

Whether Saccos can lay claim on the ownership of specific picking and dropping points.

21. This issue was the crux of this case given that the Eastleigh Route Sacco was claiming ownership to the picking and dropping point outside the Standard Bank

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Building. However, Engineer Karanja the Director of the Engineering Directorate at the County Government of Nairobi, as well as Dr. Ayasi, the Country Secretary satisfied the Tribunal with their evidence to the effect that all picking and dropping points are shared facilities. To prove this, they relied on the City of Nairobi (General Nuisance) Bylaws of 2007, which have been adopted by the County Government of Nairobi.

22. Having considered the facts and the law applicable to this case, the Transport Licensing Appeals Board hereby finds that the licenses granted to Expresso Ltd were lawful. However, the Board notes with concern that the First Respondent, NTSA, had not responded to Super Metro's application for route extension and, therefore, makes an order of Mandamus compelling the First Respondent to respond to Super Metro within seven (7) days.

Delivered, dated, and signed in Nairobi by the Transport Licensing Appeals Board on this 7th day of December 2016.

Dick Waweru	Chairman
Prof. Kiarie Mwaura	Member
Nkanata Johnson Gitobu	Member
Aden Noor Ali	Member
Betty Chepng'etichBii	Member