



Republic v Cabinet Secretary, Min. of Interior and Coordination of National Government & 2 others; National Transport and Safety Authority & another (Interested Parties); Okiro (Subject) (Judicial Review E10 of 2022) [2023] KEHC 20745 (KLR) (27 July 2023) (Judgment)

Neutral citation: [2023] KEHC 20745 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
JUDICIAL REVIEW E10 OF 2022
HK CHEMITEI, J
JULY 27, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

CABINET SECRETARY, MIN. OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT 1ST RESPONDENT

CABINET SECRETARY, MIN. OF TRANSPORT AND INFRASTRUCTURE 2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT

AND

**NATIONAL TRANSPORT AND SAFETY AUTHORITY . INTERESTED PARTY
LAW SOCIETY OF KENYA INTERESTED PARTY**

AND

PETER OKIRO SUBJECT

JUDGMENT

1. In the Notice of Motion dated 23rd September 2022 the applicant prays for the following orders;
 - (a) That this court be pleased to issue an order of Certiorari to remove into the high court for quashing and to quash the directive of the respondents made on 30th August 2022 and all subsequent decisions based thereon on the implementation of the Legal Notice no. 6 of 2016 *Traffic (Registration Plates) Rules 2016* on the application of digital registration plates by motor vehicle owners within the next 18 months.



- (b) That this court be pleased to issue an order of Prohibition to prohibit the respondents whether by themselves, their servants, agents, officers, successors and or assigns from implementing the directive issued on 30th August 2022 on implementation of the Legal Notice no. 62 of 2016 [Traffic \(Registration Plates\) Rules 2016](#).
- (c) Costs be provided for.
2. The application is based on the sworn affidavit of the applicant, the statements in support and the grounds on the face of it. It is also noted that this court granted leave to the applicant to bring this application.
 3. The applicant's application is based on the Gazette Notice no 62 of 15th April 2016. The applicant on the contrary did not attach the said gazette but instead he attached a newspaper cutting. It is the 1st interested party who did so vide the replying affidavit of its managing director one George Njao sworn on 28th December 2022.
 4. The gravamen of the applicant's application is that the said notice which introduced new registration number plates series for all motor vehicles in the country was arbitrarily done and without any adequate public participation.
 5. He went on to state that the same was done unilaterally by the Interested parties and without the impute of the public as should be the case based on several articles of the [constitution](#) . He said that the 18 months' notice was punitive and that it was unlawful for the Interested parties to demand that the replacement of the old number plates shall be paid for by the applicants.
 6. Further that to apply the law retrospectively run afoul legal principles namely that the law ought to be applied prospectively. In other words, one should not be punished by being directed to pay for the new number plate yet he had paid for the old one.
 7. He therefore prayed for the application to be allowed.
 8. The 1nd Interested party through the affidavit of George Njao opposed the application stating that all that the Interested parties were doing were fulfilling a legal requirement of ensuring that the new number plates were tamper proof and were not easily manipulated like the old series.
 9. That the action of introducing the same was in tandem with the Vienna Convention on Traffic rules and that this country ought to align itself with the international norms and standards. He therefore prayed for the application to be dismissed.
 10. The applicant in his submissions indicated that the 2nd respondent did file grounds of opposition but the same was not placed on record. I shall therefore assume that the rest of the parties did not oppose the application.
 11. In his submissions the application has extended the arguments he raised in the supporting affidavit and the statement in support. He said that though he supported his application with a newspaper cutting the same was recognised in law and he cited [Attorney General & 6 Others v. Mohamed Balala & 11 Others](#) (2014) eKLR.
 12. His beef with the said rules is that it was directed to already registered vehicles and at the costs of the owners. He said that this amounted to a road side declaration by the Interested party and without giving the populace an opportunity to discuss the merits or otherwise of it.
 13. Having gone through the pleadings herein it is clear that the gazette notice complained of was prepared by Interested party for the consumption of the public. I do not think however that it is appropriate for



the applicant to rely on the newspaper cutting when there was a proper gazette notice. Nevertheless, its introduction by the 1st respondent has saved the day for the applicant otherwise I doubt whether this court would have simply acted on a newspaper cutting which in my view contains people's opinions and or comments.

14. At the same time, looking at the impugned gazette notice i do not see anywhere where it is indicated by the Interested party that the new number plates series ought to have been fitted within 18 months to all motor vehicles. If it is contained in the newspaper cutting, then that remains a mere road side declaration and has no backing of the law. It remains a mere wish.
15. Turning to the merit of the application it is now trite law that the realm of judicial review does not concern itself with the legality or merits of the decision but the process thereof. The court should not sit as an appellate court on an impugned decision. See *Municipal Council of Mombasa v. Republic & Umoja Consultants Ltd* (2002) eKLR.
16. The applicant has submitted also that the action by the Interested parties was contrary to Section 7(2) (a-o) of the *Fair Administrative Act* No.4 of 2015.
17. I have carefully looked at the said gazette and the mandate of the 1st Interested party of regulating road transport and safety network throughout the country and formulating and implementing policies. Although there was no evident of public participation I do not think that is enough to vitiate the directives. The directives are for the common good and security of the road transport system in the nation and to be in tandem with the *Vienna Convention on transport*.
18. In any case there is no time frame given in the gazette for the parties to comply so as to make it unreasonable. As indicated above, any evidence of specific time frame must ensure that the consumers are involved which in this case includes the applicant. The 18 months' period suggested in a newspaper cutting has no force of law and it must be treated that way.
19. The payment of the fees for replacement in my view is not onerous. If one for instance loses a number plate, then it is his responsibility to pay for a new one which in this case shall be the new series. Who else would foot the bill other than the owner? The other tax payers should not be burdened.
20. At the same time this court is satisfied that the applicant as well as the public have been given reasonable notice which is necessary in any new policy or introduction of new law affecting them. There is no time frame given for such replacement and I understand it to be continuous beginning with the new series KDK.
21. In the premises I do not find that lack of public participation herein vitiated the new rules and policy directions taken in respect to new number plate series. I do not see any prejudice suffered by the applicant.
22. The application is dismissed with no order as to costs.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 27TH DAY OF JULY 2023.

H K CHEMITEI

JUDGE

