



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR CASE NO. 102 OF 2013

REPUBLIC.....APPLICANT

VERSUS

KENYA BUREAU OF STANDARDS1ST RESPONDENT

KENYA REVENUE AUTHORITY2ND RESPONDENT

ATTORNEY GENERAL3RD RESPONDENT

EX-PARTE

GLAYS NYAWIRA WANJOHI

JUDGEMENT

By way of the notice of motion application dated 2nd April, 2013 the ex-parte Applicant (Gladys Nyawira Wanjohi) prays for orders as follows:

“(a) An order of CERTIORARI to remove into this Honourable Court and quash the decision of the Kenya Bureau of Standards as communicated by the Director Quality Assurance and Inspection through a letter reference No. KEBS/OP/10/1/67(08) dated 26th February, 2013.

(b) An order of MANDAMUS to compel the Kenya Bureau of Standards to exercise its discretion and approve the registration of motor vehicle registration UAQ 438E in Kenya;

(c) An order of MANDAMUS to compel the Kenya Revenue Authority by itself, the Registrar of Motor Vehicles and all relevant departments to register motor vehicle UAQ 438E and issue it with Kenyan number plates subject only to the payment of registration charges, application for registration, if any and subject to recovery of duty as may be necessary.

(d) Costs of and incidental to this application be provided for.

(e) Such further and other relief that the Honourable Court may deem just and expedient to grant.”

The application is supported by the chamber summons application for leave dated 21st March, 2013 together with a statutory statement and the Applicant's verifying affidavit. The application is also supported by a supplementary affidavit sworn by the Applicant on 5th August, 2013.

According to the statutory statement, the relief is sought upon the following grounds:

“(a) The decision taken by the 1st Respondent in declining to waive the PVOC requirements to allow the registration of the subject motor vehicle amounts to unreasonable non-exercise of discretion. The 1st Respondent, through the National Standards Council has the power to consider the application made by the Applicant and waive the requirements in deserving cases and this is one such case.

(b) The decision was taken maliciously and in bad faith as the Applicant made the application for waiver and registration of the vehicle in February during the most recent waiver period when the 2nd Respondent opened a window for registration of overage vehicles. The waiver period ran from August, 2012 to February, 2013.

(c) The 1st Respondent acted unfairly in arriving at the decision declining to waive the requirement and declining to approve the waiver requested by the Applicant.

(d) The Respondents have a legal obligation to approve, subject to the payment of duty, the registration of motor vehicles that meet the standards set out in legal notices issued under the Standards Act. Legal Notice No. 78 of 2005 empowers the Minister, on advice of the National Standards Council to exempt imports from the requirements of the order if satisfied that it is in natural interest to do so.

(e) The Respondents are subject to the supervisory jurisdiction of this Honourable Court.”

The Kenya Bureau of Standards (KEBS), the Kenya Revenue Authority (KRA) and the Attorney General are the 1st, 2nd and 3rd respondents respectively. The Attorney General did not file any reply to the application. KEBS opposed the application through the replying affidavit of Gordon Onjore sworn on 10th July, 2013. KRA opposed the application by way of an affidavit sworn on 15th July, 2013 by Jimmy W. Githinji, an Assistant Commissioner.

A perusal of the pleadings and documents filed in this matter confirms that the Applicant is the owner of motor vehicle Registration No. UAQ 438E. The motor vehicle is registered in Uganda. In early 2013, she instructed a firm known as Kenmont Logistics Limited to seek the registration of the said motor vehicle in Kenya. By a letter dated 8th February, 2013 the said firm informed her that the vehicle could not be registered in Kenya due to a requirement by KEBS that motor vehicles that were more than eight years old from the date of manufacture could not be registered in Kenya. The Applicant being dissatisfied with this state of affairs wrote a letter to the Managing Director of KEBS on 20th February, 2013 seeking the registration of her vehicle.

The Applicant received a response through a letter dated 26th February, 2013 as follows:

“Ref KEBS/OP/10/1/67(08)

Date: 26/02/2013

Ann Njambi Nganga

P. O. Box 12658 – 00100

NAIROBI

Dear Madam

RE: REQUEST FOR WAIVER OF PVOC TO IMPORT AND REGISTER OVERAGE MOTOR VEHICLE MISTSUBISHI FUSO YOM: 1993

Reference is made to your letter dated 20th February, 2013 on the above captioned subject.

We wish to inform you that your application for waiver of PVOC requirements to allow you bring an overage vehicle has been declined.

You are required to note that vehicles imported by returning residents should comply with the requirements of KS 1515:2000 Kenya Standard Code of Practice for inspection of road vehicles.

Yours faithfully

John W Abong's

DIRECTOR – QUALITY ASSURANCE AND INSPECTION”

The said letter is the subject of these proceedings.

It is not disputed that the Applicant's motor vehicle was manufactured in 1993. It is also not disputed that the Kenya Standard Code of Practice for Inspection of Road Vehicles (KS 1515:2000) as amended in July, 2008 at Clause 2.5 provides that:

“Age Limit – All road vehicles which are more than eight years old from the date of manufacture shall not be allowed for importation.”

This requirement can, however, be waived by the Minister upon the advice of the National Standards Council.

It is the Applicant's case that KEBS acted unreasonably, maliciously and in bad faith by refusing to waive this particular requirement in respect to her motor vehicle. It is further the Applicant's case that she only learned of this requirement after purchasing her vehicle and that at the time she applied for the waiver KEBS had declared a waiver which ran from August, 2012 to February, 2013.

KEBS' case is that the Applicant's motor vehicle could not be registered since the same was almost 20 years old, from the date of manufacture, at the time the Applicant sought registration.

On its part, KRA submitted that the KEBS is the only body mandated to inspect goods that are being imported to Kenya and it can only register the Applicant's vehicle once KEBS approves its importation.

The purview of judicial review was laid down by Lord Diplock in the case of **COUNCIL FOR CIVIL SERVICE UNIONS v MINISTER FOR CIVIL SERVICE [1985] A.C. 374, at 401D** when he stated that:-

“Judicial review has I think developed to a stage today when.....one can conveniently classify under three heads the grounds upon which administrative action is subject to

control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’.....By ‘illegality’ as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to itBy ‘irrationality’ I mean what can now be succinctly referred to as “Wednesbury unreasonableness’.....it applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at itI have described the third head as ‘procedural impropriety’ rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.”

The Applicant has not established that KEBS’ decision was *ultra vires*, illegal, unreasonable or in contravention of the rules of natural justice. KEBS acted as mandated by the law.

Judicial review is about the process to which a person has been subjected to by a public authority. It is not about the merits of the decision by the authority. In **VOLUME 1(1), 4TH EDITION OF HALBURYS LAWS OF ENGLAND** at page 116, Paragraph 59 the learned authors describe the nature and purpose of judicial review as follows:

“Judicial review is the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of inferior courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties.....”

Judicial review is concerned with reviewing not the merits of the decision in respect of which the application for judicial review is made, but the decision making process itself. It is thus different from an ordinary appeal. The purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected: it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question.”

What the Applicant is asking this Court to do is to substitute its opinion for that of KEBS. The law does not allow this Court to do so. The Applicant has failed to demonstrate that in reaching the decision KEBS acted illegally, irrationally or without complying with the rules of natural justice. The application before this Court fails and the same is therefore dismissed. There will be no order as to costs.

Dated, signed and delivered at Nairobi this 21st day of February, 2014

W. K. KORIR,

JUDGE OF THE HIGH COURT