



NO. 02

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

MISC. APPLICATION NO. 19 OF 2014

TRANSLINE SACCO LTD.....PLAINTIFF

VERSUS

THE NATIONAL TRANSPORT AND ROAD SAFETY AUTHORITY.....1ST RESPONDENT

THE KENYA POLICE TRAFFIC COMMANDAT.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. The applicant herein is known as TRANSLINE SACCO LTD. This Sacco comprises fourteen motor vehicle whose registration numbers are cited in the pleadings.
2. This matter was initially filed under certificate of urgency during the court vacation. It could not proceed in Migori High Court where it was filed. The Hon. Judge David Majanja ordered that the Notice of Motion be filed and served upon the parties within 7 days. He declined to order for the stay which was one of the prayers asked for.
3. I have noted that the Respondents were duly served as per the affidavit of service dated 15th September, 2014.
4. The applicant asks for:
 1. *Leave for the applicant to institute judicial review proceedings in the nature of mandamus to compel the 1st Respondent to issue prescribed licenses to the following motor vehicle registration numbers KBZ 026J, KBZ 028J, KBZ 029J, KBZ 955H, KBZ921JM JBZ 069OM JCA 034DM JCA 260GM JBT 246ZM JBZ 666X, KBZ 666Z, KBZ 002Z, KBZ 003Z, KBZ 0653Z.*
 2. *That the LEAVE so granted do operate as an ORDER directing the 1st Respondent to issue short term or such Transport Licensing Board to issue licenses to the applicant pending the hearing and determination of the substantive application for judicial review.*
 3. *That the cost of this application to abide by the substantive application for judicial review.*
5. The grounds of application were given as summarized here below:

1. *The applicant runs a fleet of motor vehicles plying the Kisii-Nairobi route under the SACCO-TRANSLINE SACCO LIMITED. The Sacco currently runs a fleet of 47 motor vehicles.*
2. *The applicant has in a bid to operate under the National Transport and Safety Authority Act No. 33 of 2013 made payments and applications for the prescribed licenses.*
3. *The 1st respondent who is duty bound under the National Transport and Safety Authority Act to consider the applications made by the applicants and either issue a license or require the applicant to submit any further particulars or details or issue such directions has failed or refused to act on the applications.*
4. *The 1st respondent has for no apparent or legal reasons failed to issue the prescribed license or in any other way respond to the Applicants applications in contravention of the national Transport and Safety Authority Act and Article 47 of the Constitution of Kenya.*
5. *The 1st Respondent by refusing, neglecting, ignoring or failing to respond in any way to the Applicant's application is acting without legal basis, unreasonably arbitrarily and illegally.*
6. *The owners of the motor vehicles operating under the applicant are suffering substantial losses as the motor vehicles they acquired on loan, the persons employed as drivers and other have become of uneconomic value. The foresaid owners of the motor vehicles stand to face lawsuits variously for failing to meet their various obligations.*
7. *The Honourable Court has the power to compel any legal person or body reposed with a statutory or constitutional duty to carry out that duty or give reasons for the failure so to do.*
8. *The law requires that Leave of the court be sought and obtained before a substantive application is made.*
9. *The 1st respondent stands to suffer no prejudice or loss if the Applicant's motor vehicles are issued with the prescribed licenses as the Applicant had fully complied with all the legally stipulated requirements.*

6. In their Supporting Affidavit, ERICK KOMBO MOSETI, one of the directors of Transline Sacco Ltd, gives various reasons why the applicant is aggrieved by the action of the 1st Respondent, namely the National Transport and Safety Board. Accordingly he has annexed several documents to his supporting affidavit to buttress his case before this court.

7. The applicant further states he has met the necessary requirements, has made requisite payments to the authorized authority and yet no licenses have been issued to the Fourteen(14) affected motor vehicles.

8. The applicant further states that all three vehicles were purchased under loan arrangements. And therefore continued withholding of the road licenses to that vehicles, affects the Applicant's obligation to repay the loan to the lending institution and the employees' wages and salaries are a serious problem as these can only come from the proceeds when motor vehicles are operating.

9. In the application the applicant relies, inter alia, on article 47 of the Kenya Constitution 2010. In that article, it says: 47

1. *"Every person has the right to administrative action that is, expedition efficient, lawful, reasonable and procedurally fair". In the other words*

"Fair administrative action" must contain the above cited elements.

10. The applicant states that the action of the **NATIONAL TRANSPORT AND SAFETY**

AUTHORITY BOARD in refusing to grant licenses to Transline Sacco ltd, without reasonable explanation is playing unfair game. Article 47(2) says “*if a right or fundamental freedom of person has been or is likely to be adversely affected by administrative action the person has a right to be given written reasons for the action*”. This behavior calls for review of administrative action forthwith.

11. Therefore in the light the reasons adduced by the applicant and in the light of the provisions of the constitution in respect of administration action, I hold that the application herein is allowed in terms of the following prayers:-

1. *The applicant be granted leave to institute judicial review proceedings in the nature of mandamus to compel the 1st Respondent to issue prescribed licenses to all the motor vehicle cited herein.*
2. *That this leave so granted do operate as an order directing the 1st Respondent to issue short term or such Transport Licensing Board to the applicant’s aforesaid motor vehicles pending the hearing and determination of the substantive application for judicial review.0*

12. Orders accordingly.

13. The substantive of motion to be filed within the next 21 days from this date hereof.

Ruling **dated** and **delivered** at **KISII** on the 22nd day of September, 2014.

C.B. NAGILLAH,

JUDGE.

In the presence of:-

Ochwangi holding brief for Minda for the applicant.

No representative for the 1st respondent

No representative for the 2nd respondent

No representative for the 3rd respondent

Edwin Mongare Court Clerk.