

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 144 of 2011

KENYA TRANSPORT ASSOCIATION 1ST PETITIONER

BUZEKI TRANSPORTERS ENTERPRISES LIMITED2ND PETITIONER

ROADTAINERS MOMBASA LIMITED 3RD PETITIONER

PN MASHRU LIMITED 4TH PETITIONER

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

KENYA NATIONAL HIGHWAY AUTHORITY 2ND RESPONDENT

RULING

1. The application dated 13th November 2012, was coming up today for hearing having been certified as urgent. It seeks orders of stay in respect of criminal proceedings in courts all over the country against the petitioners and their members' drivers for infringing the *Traffic Act* and Rules governing axle load regulations. It also seeks to stop the impounding of motor vehicles pending determination of the appeal from the judgment rendered in this matter on 3rd December 2012 dismissing constitutional challenges to that law.

2. The petitioners have lodged an application for stay pending appeal in the Court of Appeal to wit. *Civil Application No. NAI 309 of 2012*. Counsel for the petitioner, Mr Kabahati, submits that the application is scheduled for hearing on 14th January 2012.

3. The only issue is whether I should grant further orders pending the determination of the application in Court of Appeal. In my view, I did pronounce myself on the constitutionality of the applicable Act and regulations and I found them valid. The acts complained of are now a consequence of the enforcement of legal provisions. Though I am satisfied that I have jurisdiction in a proper case to grant relief, I do not think there is a factual basis for doing so in the circumstances.

4. The application is therefore dismissed with no order as to costs.

DATED and **DELIVERED** at **NAIROBI** this 19th day of December 2012.

D.S. MAJANJA
JUDGE