



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)

Misc Appli 292 of 2009

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW  
ORDERS OF PROHITION, MANDAMUS AND CERTIORARI

AND

IN THE MATTER OF THE TRANSPORT LICENSING BOARD

BETWEEN

CITY HOPPER LIMITED..... APPLICANT

V E R S U S

THE TOWN CLERK CITY COUNCIL OF NAIROBI..... 1<sup>ST</sup> RESPONDENT

THE COMMISSIONER OF POLICE..... 2<sup>ND</sup> RESPONDENT

THE TRANSPORT LICENSING BOARD.....3<sup>RD</sup> RESPONDENT

THE ATTORNEY GENERAL..... 4<sup>TH</sup> RESPONDENT

R U L I N G

Before me is a Chamber Summons dated 15<sup>th</sup> May, 2009 filed by M/s S.W. Ndegwa & Company advocate on behalf of the applicant named as **CITY HOPPER LIMITED**. The respondents are named as **THE TOWN CLERK CITY COUNCIL OF NAIROBI (1<sup>st</sup> respondent)**, **THE COMMISSIONER OF POLICE (2<sup>nd</sup> respondent)**, **THE TRANSPORT LICENSING BOARD (3<sup>rd</sup> respondent)**, and **THE ATTORNEY-GENERAL (4<sup>th</sup> respondent)**. The application was filed under Order 53 rule 1, 2 and 3 and 4 of the Civil Procedure Rules and section 72(1) (a) of the Traffic Act (*Cap. 403*). The orders sought are as follows-

1. *That this application be certified as urgent and heard ex-parte in the first instance.*
2. *That the mandatory Notice to the Registrar be dispensed with owing to the urgency of the application.*
3. *That the applicant herein be granted leave to commence judicial review proceedings for orders of certiorari to quash the respondents decision to bar the applicant's buses from entering the Central*

**Business District from Nairobi Eastland pursuant to Legal Notice No. 37/08 known as THE CITY COUNCIL OF NAIROBI (OMNIBUS STATIONS) AMENDMENT BY LAWS 2008.**

**4. That the applicant be granted leave to commence Judicial Review Proceedings for orders of Prohibition to restrain the 2<sup>nd</sup> Respondent from effecting the said notice.**

**5. The grant of leave do operate as a stay of the actions of the respondent to bar the applicant's motor vehicle from entering the Central Business District.**

**6. That the costs of the application be in the cause.**

The application was filed with a **STATEMENT** dated 15<sup>th</sup> May, 2009, as well as a **SUPPORTING AFFIDAVIT**, sworn by **GITHAIGA WERU**, the Operations Manager of the applicant on 15<sup>th</sup> May, 2009.

The grounds of the application are, inter alia, that the applicant has operated the business for 5 years, and that the directive not to enter the Central Business District was discriminatory as other operators have been allowed to operate in the said Central Business District; that the Muthurwa terminus in which the applicant buses were restricted had gaping potholes thus damaging the vehicles; and that the applicant was having difficulties servicing loans and debts due to unfair competition.

At the hearing, Mr. Ndegwa for the applicant, addressed me in support of the application.

Considering the facts placed before me and the submissions of counsel for the applicant, I am of the view that, indeed, the applicant has demonstrated an arguable case. There is something for this court to investigate with regard to the legality of the orders and the Legal Notice being challenged. I will grant leave to file judicial review proceedings. I will also dispense with the requirement of service of a prior notice on the Registrar. The 1<sup>st</sup> prayer for urgency has been overtaken by events, so I will not deal with the same.

I have been asked to grant stay orders. I will not grant stay orders. In my view, the best option is to fast track the main application to be filed. It is prudent, in my view, in the circumstances of this case, to hear all parties and make a final determination after such hearing.

Consequently, I order as follows-

- 1. I dispense with the requirement for service of prior notice on the Registrar.**
- 2. Leave is hereby granted to the applicant to file judicial review proceedings for certiorari and prohibition as requested. The Notice of Motion will be filed within 21 days from today.**
- 3. I decline to grant stay orders.**
- 4. Costs will follow determination of the Notice of Motion.**
- 5. Mention on 15/6/2009.**

Dated and delivered at Nairobi this 20<sup>th</sup> day of May, 2009.

**GEORGE DULU**

**JUDGE.**

In the presence of-

Mr. Ndegwa for applicant

Mr. Abwao for 1<sup>st</sup> respondent

Kevin Court Clerk