



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1229 of 2006

KENATCO TAXIS LIMITED (IN RECEIVERSHIP).....PLAINTIFF

V E R S U S

CITY COUNCIL OF NAIROBIDEFENDANT

R U L I N G

In this application (by chamber summons dated 22nd November, 2006, the main outstanding prayer is number 3. In that prayer the Plaintiff seeks the following order:-

“3. That the Defendant be restrained from...seizing and/or impounding any of the Plaintiff’s motor vehicles operating as car hire or taxi-cabs within the City of Nairobi, and further, from in any way harassing the Plaintiff’s drivers and employees, or in any other way interfering with the Plaintiff’s business of car hire and taxi operator.”

Although it is not so stated, the order is obviously sought pending disposal of the suit, and the parties have proceeded upon that basis. The application is supported by the annexed affidavit of one JAMES ORORA MACHUKA, the Plaintiff’s receiver/manager.

The Defendant has opposed the application as set out in a replying affidavit filed on 22nd June, 2007. That affidavit is sworn an officer of the Defendant, one ENG C. M. CHIURI, the City Engineer. The following grounds emerge there from, *inter alia*:-

1. That the Plaintiff’s permit allowed it to operate its car hire and taxi business on Plot No. 209/5957 along Aga Khan Walk in Nairobi exclusively and nowhere else within the City.
2. That in contravention of the permit the Plaintiff has taken to operating along the streets of Nairobi and outside hotels.
3. That in its mandate to maintain law and order within the City of Nairobi, the Defendant must ensure that the Plaintiff (and any other business operator) operates within the area designated in the permit. Any action taken against the Plaintiff’s motor vehicles has been so taken in furtherance of that mandate.
4. That the Plaintiff cannot be permitted to “cause chaos in the streets of Nairobi, in total disregard of other road users”, by operating its business outside the area designated in the permit.

The Defendant had applied by chamber summons dated 16th May, 2008 for dismissal of the Plaintiff’s

chamber summons dated 22nd November, 2006 for want of prosecution. That application was withdrawn on 17th March, 2009. But it was agreed that the affidavits filed either in support of or in opposition to the application be taken as either opposing or supporting, as the case may be, the chamber summons dated 22nd November 2006, especially on the issue of delay. I have read those affidavits. I have also given due considerations to the submissions of the learned counsels appearing. No authorities were cited.

The Plaintiff has a “single business permit” granted to it by the Defendant. It is an annual licence that is apparently renewed on the same terms. Copies of the permits for the years 2002, 2003, 2004, 2005 and 2006 are annexed to the supporting affidavit. It is common ground that in the present application the crux of the dispute is interpretation of the permit. This will also be the main issue at the hearing of the suit.

The permit authorises the Plaintiff to:-

“engage in the business of car hire and taxi operator”. The permit also provides as follows:-

“The business under this permit shall exclusively be conducted at the address indicated below:-

Plot No. 209/5957.

Road/Street AGA KHAN, 07.”

The Plaintiff, it is clear from the affidavits filed on its behalf, has interpreted the permit as entitling it to ply its taxis at the City’s hotels and on its streets. The Defendant, on the other hand, insists that the Plaintiff must confine its business to Plot No. 209/5957 on Aga Khan Walk.

The Plaintiff has complained that on various dates between 8th March and 18th November, 2006 the Defendant’s agents and servants unlawfully seized and towed away its motor vehicles while they were lawfully carrying on the business of car hire and taxi operators within the City. It is said that some of the vehicles were impounded while they were “lawfully travelling along city streets carrying customers”. The Plaintiff was compelled to pay various “clamping”, “impounding” or “storage” charges to secure release of its motor vehicles. On each occasion the Plaintiff complained in writing through its advocates to the Defendant.

The Plaintiff has pointed out that over and above the permit, it pays the necessary daily parking fees levied by the Defendant when parking its vehicles outside hotels (but within designated parking bays) or in other parking bays provided by the Defendant along city streets.

The Plaintiff has therefore interpreted the Defendant’s action to be illegal and driven purely by malice, and amounting to harassment. It says that the action is greatly and adversely affecting its business.

As already pointed out, the Defendant has insisted that the Plaintiff must confine its business to Plot No. 209/5957 on Aga Khan Walk. It must not do its car hire and taxi-operator businesses anywhere else in the City of Nairobi.

A full and proper interpretation of the permit must of course await trial of the action. What I will say here-below must therefore not be interpreted to be such full and proper interpretation. It is meant only to properly dispose of the present application.

Given the nature of car hire and taxi business, especially the latter, is the stand of the Defendant reasonable? Is it logical to expect that a taxi business could be conducted from one point only and from nowhere else? Where a customer telephones the offices of the Plaintiff and calls for a taxi, say from a hotel or some other place, should not the taxi be driven to the hotel or wherever the customer was and probably wait for the customer at the available taxi rank or parking space? And is it unreasonable that the Plaintiff’s taxis will be seen in the streets of Nairobi going to pick up customers, or delivering customers to their destinations? Regarding hired cars, will not such cars be delivered to customers or driven by the

customers from the Plaintiff's designated premises, and is it unreasonable to expect that such cars will occasionally be seen in the streets of Nairobi?

I am unable to quite understand the stand taken by the Defendant. Is it that the Plaintiff's cars on hire and taxis must not be seen anywhere else in Nairobi but at the Plaintiff's premises as designated in the single business permit? *Prima facie*, I do not think this would be a reasonable interpretation of the permit. But, as I have already stated, a full and proper interpretation of the permit must await trial of the action.

For purposes of the present application I am satisfied that the Plaintiff has established a *prima facie* case with a probability of success. I am also satisfied that the Plaintiff stands to suffer irreparable loss unless the order sought is granted. The kind of disruption of the Plaintiff's business deponed to in the supporting affidavit might do untold damage to the business that may not be compensated for by an award of damages. The aggravation and vexation alone that the Plaintiff must suffer at such disruption, merits protection by way a temporary restraining injunction.

I will in the event allow prayer 3 of the application by chamber summons dated 22nd November, 2006. A temporary injunction shall issue accordingly, the same to remain in place pending disposal of the suit or an order of the court. It is also conditional upon the Plaintiff executing and filing within seven (7) days of delivery of this ruling an appropriate undertaking as to damages. Costs of this application will be in the cause. Those will be the orders of the court.

DATED AT NAIROBI THIS 25TH DAY OF JUNE, 2009

H. P. G. WAWERU

J U D G E

DELIVERED THIS 26TH DAY OF JUNE, 2009