



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

Misc Appli 361 of 2009

IN THE MATTER OF THE TRANSPORT LICENSING ACT CAP 404

AND

IN THE MATTER OF THE TRANSPORT LICENSING BOARD

AND

IN THE MATTER OF LEGAL NOTICE NO. 37

BETWEEN

JOHN BOSCO NDUNGU..... 1ST APPLICANT

FRANCIS NJOROGE WAITHAKA..... 2ND APPLICANT

DAVID KIRAI JESEE..... 3RD APPLICANT

SAMUEL WAINAINA..... 4TH APPLICANT

VERSUS

CHAIRMAN TRANSPORT LICENSING BOARD..... 1ST RESPONDENT

THE COMMISSIONER OF POLICE..... 2ND RESPONDENT

THE HONORABLE ATTORNEY GENERAL..... 3RD RESPONDENT

THE PS MINISTRY OF LOCAL GOVERNMENT..... 4TH RESPONDENT

CITY COUNCIL OF NAIROBI..... 5TH RESPONDENT

R U L I N G

This is a Chamber Summons dated 15th June, 2009 filed by S K Amani & Associates Advocates for the applicants who are named as **JOHN BOSCO NDUNGU, FRANCIS NJOROGE WAITHAKA, DAVID KIRAI JESEE, and SAMUEL WAINAINA**. The Respondents were named as **CHAIRMAN TRANSPORT LICENSING BOARD, THE COMMISSIONER OF POLICE, THE HON.**

ATTORNEY GENERAL, THE PS MINISTRY OF LOCAL GOVERNMENT and CITY COUNCIL OF NAIROBI.

The application was brought under Order LIII Rule 1, 2 and 4 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act (**Cap 21**). The orders sought are as follows that:

- 1. This application be certified as urgent and the same be heard ex-parte in the first instance.***
- 2. The applicants herein be granted leave to apply for orders of certiorari quashing the respondent's decision vide Legal Notice number 37 barring all passenger service vehicles and in particular the Applicants Vehicles registration Number KAN 637V, KAR 180H, KAY 834Q, KBB 062X, KBB 649T, KBE 0403, KAY 901F and KAU 904X from entering the Central Business District.***
- 3. The applicants herein be granted leave to apply for orders of prohibition restraining the Respondents from enforcing the by-laws gazetted and dated 20th March, 2008.***
- 4. The grant of leave to apply for the orders of certiorari and prohibition do operate as a stay/lifting of the ban against motor vehicles registration numbers KAN 637V, KAR 180H, KAY 834Q, KBB 062X, KBB 649T, KBE 0403, KAY 901F and KAU 904X into entering into Central Business District.***
- 5. The costs of this application be in the cause.***

The application was filed with a **SUPPORTING AFFIDAVIT** sworn by **JOHN BOSCO NDUNGU**, the 1st applicant, on 15th June 2009. It was also filed with a **STATEMENT** dated 12th June 2009 and an **AFFIDAVIT VERIFYING FACTS RELIED** on sworn by the same **JOHN BOSCO NDUNGU** on 12th June 2009. The grounds of the application are that the legal notice is prejudicial to the applicants' transport business, that the directive had caused undue hardship and was discriminatory, that the applicants had invested heavily in the transport business sector, that Double M Services, the only bus company having access to the Central Business District was involved in making the decision contrary to principles of natural justice, and lastly that Muthurwa Bus Terminus was neither complete nor could it accommodate all Eastlands Passenger Service Vehicles as it could only hold 400 vehicles.

On the hearing date M/s Amani addressed me. Counsel emphasized that Legal Notice No. 37 of 2008 had subjected the applicants to unfair treatment and caused them to suffer great losses to the extent that they are unable to service the loans they took to purchase the subject motor vehicles.

I have considered the application, documents filed and the submissions that were made before me. In my view, with the facts placed before me, the applicants have demonstrated an arguable case. They appear to be the owners of the subject motor vehicles, which appear to be affected by the Legal Notice. It is a matter which this court has reason to investigate. I will grant leave to file Judicial Review proceedings.

I have been requested to grant stay orders. I observe that the Legal Notice complained of appears to have been gazetted in March 2008, which is more than one year ago. Due to that fact, I am of the view that it is not appropriate to grant stay pending hearing of the Notice of Motion to be filed. I will not grant interim stay.

Consequently, I order as follows: -

- 1. The application is certified as urgent***
- 2. The Applicants are granted leave to file Judicial Review proceedings for certiorari and prohibition. The Notice of Motion will be filed within 14 days from today.***
- 3. I decline to grant stay orders.***

4. *Mention on 15th July, 2009.*

5. *Costs will follow the decision in the Notice of Motion.*

Dated and delivered at Nairobi this 23rd day of June, 2009.

GEORGE DULU

JUDGE.

In the presence of-

Ms. Amani for applicants.