



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

**Petition 337 of 2009**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS  
AND FREEDOMS UNDER SECTIONS 75, 81, 82 & 84 OF THE CONSTITUTION OF KENYA**

**BETWEEN**

**EXPRESS CONNECTIONS LIMITED..... 1<sup>ST</sup> PETITIONER**  
**MICHAEL KANYAGO.....2<sup>ND</sup> PETITIONER**  
**COMMUTERTRAIN SHUTTLE TRANSPORT LTD.....3<sup>rd</sup> PETITIONER**  
**SYLVESTER GITHINJI.....4<sup>th</sup> PETITIONER**  
**STATELINE EXPRESS (K) LTD.....5<sup>th</sup> PETITIONER**  
**FREDRICK WAIGANJO.....6<sup>th</sup> PETITIONER**  
**ELIZABETH WANGARI MWANGI..... 7<sup>th</sup> PETITIONER**  
**EXPRESS LINK LTD..... 8<sup>th</sup> PETITIONER**  
**INTEGRITY EAST AFRICA LTD..... 9<sup>th</sup> PETITIONER**  
**ROSE MBUYA MUGO.....10<sup>th</sup> PETITIONER**  
**SAMUEL KINYANJUI..... 11<sup>th</sup> PETITIONER**  
**JOHN ODHIAMBO..... 12<sup>th</sup> PETITIONER**

**-V E R S U S-**

**THE ATTORNEY GENERAL..... 1<sup>ST</sup> RESPONDENT**  
**THE CITY COUNCIL OF NAIROBI..... 2<sup>ND</sup> RESPONDENT**

**R U L I N G**

A petition was filed on behalf of 12 petitioners on 11<sup>th</sup> June, 2009. It was filed by Kamau Kuria & Kiraitu advocates on behalf of the petitioners. It was filed under section 75, 81,82 & 84 of the Constitution of Kenya. The allegations are with regard to contravention of fundamental rights and freedoms regarding with respect to Legal Notices published restricting or preventing the petitioner's public service commercial motor vehicles from operating or reaching the Central Business District in Nairobi.

In addition to the said petition, there was filed on the same date, a Chamber Summons under Rule 20 and 21 of the Constitution of Kenya (***Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual***) High Court Practice and Procedure Rules 2006. This Chamber Summons is an application for conservatory orders. Prayer 3, seeks that, pending the hearing and determination of the application (***Chamber Summons***), the respondents who are named as **THE ATTORNEY-GENERAL** and **CITY COUNCIL OF NAIROBI** and their servants and agents be restrained from interfering with the petitioners business of transporting customers to Kencom, Ambassador and Gill House bus terminus within the Central Business District as authorized by their TLB licences.

Dr. Kamau for the petitioners addressed me on this prayer 3. Counsel argued that the application was urgent, and that the granting of the prayer was justified pending the serving and hearing of the Chamber Summons inter-partes, as his clients were suffering great financial losses, and there was discrimination as other public service transporters were allowed to operate to the Central Business District, which was discrimination contrary to the Constitution.

Having considered the facts placed before me, I am of the view that the Chamber Summons is urgent. I will certify the same as urgent and fix a date for inter partes hearing.

As for prayer 3, I have considered the surrounding circumstances. The Legal Notice complained of which is L.N. No. 37 of 2008, appears to have been issued more than one year ago. I have not had the opportunity to hear the other parties, and cannot therefore fathom the consequences, if I grant the said prayer for conservancy orders at this stage. I will have to hear all parties involved before I can consider making any conservatory orders.

Consequently, I order as follows-

1. ***The Chamber Summons dated 10<sup>th</sup> June, 2009 is certified as urgent.***
2. ***It will be served on the respondents immediately.***
3. ***Hearing inter partes on 24<sup>th</sup> June, 2009.***
4. ***In the meantime, I decline to grant prayer 3.***

Dated and delivered at Nairobi this 19<sup>th</sup> day of June, 2009.

**George Dulu**

**Judge.**

In the presence of-

Dr. Kamau & Ms. Mwangi for petitioner/applicants

Kevin Court Clerk.