

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Misc. Appli. 124 of 2008

JANE W. KAMAU AND 36 OTHERS APPLICANTS

AND

TRANSPORT LICENSING BOARD 1ST RESPONDENT

THE COMMISSIONER OF POLICE 2ND RESPONDENT

THE HON. ATTORNEY GENERAL 3RD RESPONDENT

MINISTER FOR LOCAL GOVERNMENT 4TH RESPONDENT

RULING

In this Judicial Review application, brought under Order 53 of the Civil Procedure Rules, and Section 8 (2) of the Law Reform Act, the 37 Applicants before this Court seek **leave** to apply for Orders of Certiorari and Prohibition to quash the decision of the Respondents to bar their public service vehicles (hereinafter “matatus”) from entering the Central Business District (CBD) of Nairobi. They say they have paid the license fees, and have licenses to operate within the CBD and that their exclusion is unjust and unfair, and contravenes their rights. They argue that the Respondent’s decision is arbitrary, capricious and selectively applied, and pray that they be granted leave, and Order for stay pending the hearing of their application.

Having perused the application, and heard Counsel, I am satisfied that they have presented an arguable case outlining the fact that the Respondent’s decision is unfair, arbitrary, selectively applied and capricious. The decision or directive appears to have been made without following due process, and on the face of it is unjust and ignores the principle of proportionality and fairness. The decision also ignores the huge inconvenience, agony and suffering of the people, the commuters, who are now having to walk long distances to the CBD. There is credible argument before this Court that this decision is ill-advised and ought, for now, to be suspended until this application can be heard interpartes.

Accordingly, I am persuaded to allow this application to be heard during the Court Vacation; and I hereby grant the **leave** sought and order that such leave do operate as a stay for a limited period of 30 days within which this application is heard. I direct that the Applicants file and serve their substantive application within the next 10 days and be heard interpartes on 24th April, 2008.

Dated and delivered at Nairobi this 26th day of March, 2008.

ALNASHIR VISRAM

JUDGE