



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

Misc Civil Appli 222 of 2008

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
ORDERS OF PROHIBITION, MANDAMUS & CERTIORARI**

AND

IN THE MATTER OF THE TRANSPORT LICENSING ACT CAP 404

AND

IN THE MATTER OF THE TRANSPORT LICENSING BOARD

AND

**IN THE MATTER OF LAW REFORM ACT CAP 26, THE CIVIL PROCEDURE ACT CAP 21
LAWS OF KENYA**

BETWEEN

DUNCAN K. NDICHU.....1ST

APPLICANT

FRANCIS M. MBURE.....2ND

APPLICANT

FRANCIS W. MWANGI.....3RD

APPLICANT

WILLYS OUMA.....4TH

APPLICANT

STEPHEN MAINA.....5TH

APPLICANT

JAMES W. WAITHANJI.....6TH

APPLICANT

CHARLES NJOROGE.....	7 TH
APPLICANT	
PETER NJAU KIIGE.....	8 TH
APPLICANT	
JAMES NJUGUNA MWAURA.....	9 TH
APPLICANT	
PETER NJAU KIIGE.....	10 TH
APPLICANT	
JOSEPH NJIHIA MUCHAU.....	11 TH
APPLICANT	
BENJAMIN G. MWANGI.....	12 TH
APPLICANT	
KARIUKI NJUGUNA.....	13 TH
APPLICANT	
JOSEPHAT CHERERE NJOKI.....	14 TH
APPLICANT	
JAMES GENYO MWANGI.....	15 TH
APPLICANT	
PETER KIIGE NJAU.....	16 TH
APPLICANT	
CHARLES KIUNYU KAMAU.....	17 TH
APPLICANT	
PETER NJOROGE KURIA.....	18 TH
APPLICANT	
MUNGAI KINUTHIA.....	19 TH
APPLICANT	
SAMUEL CHEGE WAINAINA.....	20 TH
APPLICANT	

JAMES WAKAB WAITHANJI.....21ST APPLICANT

AND

TRANSPORT LICENSING BOARD.....1ST RESPONDENT

COMMISSIONER OF POLICE.....2ND RESPONDENT

ATTORNEY GENERAL3RD RESPONDENT

PERMANENT SECRETARY MINISTRY OF LOCAL GOVERNMENT.....4TH

RESPONDENT

AND

CITY COUNCIL OF NAIROBI.....1ST INTERESTED PARTY

KENYA BUS SERVICES LTD.....2ND INTERESTED PARTY

CITY HOPPER.....3ND INTERESTED PARTY

DOUBBLE M AUTO TECH LTD.....4TH INTERESTED PARTY

**PERMANENT SECRETARY MINISTRY OF TRANSPORT.....5TH INTERESTED
PARTY**

REGISTRAR OF MOTOR VEHICLE.....6TH INTERESTED PARTY

RULING

Before me is a Chamber Summons dated 24th April 2008 filed by M/S Mutitu, Thiong'o & Company advocates on behalf of twenty one applicants. The application was brought under Order 53 rules 1, 2, and 4 of the Civil Procedure Rules, the Law Reform Act (Cap 26) and section 3A of the Civil Procedure Act and other enabling provisions of the law. It was filed under certificate of urgency. The application seeks for leave of the court for the applicants to file Judicial Review proceedings for orders of certiorari and prohibition. It also seeks for orders that the leave granted do operate as a stay of actions of the respondents/affected persons. The application was filed with the Statutory STATEMENT OF FACTS and VERIFYING AFFIDAVIT, which affidavit annexes several documents. Notice to the Registrar was filed one day before the filing of the application, as required by law.

Counsel for the applicants, Mr. Ogesa, also made submissions before me. Counsel submitted that the applicants were the owners of several motor vehicles which had been listed on the face of the application. The applicants were barred from having their passenger carrying motor vehicles access the Central Business District Nairobi without notice, while they were actually licenced to carry passengers to the Nairobi Central Business District. Counsel contended that the Legal Notice No.37/2008, which was purportedly issued pursuant to section 72(i) of the Local Government Act was ultra vires the Transport Licencing Act, under which the Licences of the applicants were issued. Counsel submitted that, under the Transport Licencing Act, it was the function of only the constituted Transport Licencing Board to allocate and vary routes for passenger transport motor vehicles. The current licences were valid for 12 months and could not be changed by LN.37/2008.

In addition, counsel argued, section 202 of the Traffic Act provided that any by laws made by a Local Authority should not override any other written law. Counsel submitted further that the City Council of Nairobi must have approved the licences of the applicants, as it was required to be consulted before the issuance of the said licences. Counsel contended that regulation 3(1) of the Legal Notice had usurped the powers of the Transport Licensing Board, and given the same to the Town Clerk of Nairobi, which was illegal. Counsel asked to grant the orders sought.

I have considered the application, documents filed and the submissions of counsel for the applicants. I am of the view that the applicants have demonstrated sufficient interest in the Legal Notice No. 37 of 2008. They have also demonstrated a prima facie arguable case. I will grant them leave as requested.

The applicants have asked that the leave if granted, do operate as a stay. A number of arguments have been put across. Some of the arguments are that the Legal Notice is ultra vires; that the applicants were not given notice or hearing; applicants had suffered and continued to suffer while some favoured passenger motor vehicle operators have had xallowed to operate in the Central Business District. In my

view, these will be issues to be canvassed at the hearing of the main motion, where all the parties will be able to ventilate their position. I will decline to grant stay orders.

Consequently, I order as follows :-

1. I certify the Chamber Summons as urgent.
2. I grant leave to the applicants to file Judicial Review proceedings for certiorari and prohibition as requested. The main motion will be filed within 21 days from today.
3. I decline to grant stay orders.
4. Costs in the Cause.

It is so ordered.

Dated and delivered at Nairobi this 30th April 2008.

George Dulu

Judge

In the presence of –

Ms. Masaka – holding brief for Mr. Mutitu for applicants.

Mwangi - court clerk.