



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

Misc. Civ. Appli. 130 of 2008

REPUBLIC

VERUS

**TRANSPORT LICENSING BOARD 1ST
RESPONDENT**

**THE COMMISSIONER OF POLICE 2ND
RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL 3RD
RESPONDENT**

PERMANENT SECRETARY

**MINISTRY OF LOCAL GOVERNMENT 4TH
RESPONDENT**

EX-PARTE

**MIKE MUSA MUNGA 1ST
APPLICANT/RESPONDENT**

**JAMES NYARANGI 2ND
APPLICANT/RESPONDENT**

**MAUREEN NGUMI 3RD
APPLICANT/RESPONDENT**

**HILDA INDAKWA 4TH
APPLICANT/RESPONDENT**

**ANDREW MUTHEE 5TH
APPLICANT/RESPONDENT**

PETER KARIUKI 6TH

APPLICANT/RESPONDENT

**SAMWEL MWAURA 7TH
APPLICANT/RESPONDENT**

**ANDREW BWOGE 8TH
APPLICANT/RESPONDENT**

AND

**THE CITY COUNCIL OF NAIROBI 1ST INTERESTED
PARTY/APPLICANT**

**THE KENYA BUS SERVICE LTD 2ND AFFECTED/INTERESTED
PARTY**

**THE CITY HOPPER LTD 3RD AFFECTED/INTERESTED
PARTY**

**THE DOUBLE AUTO TECH LTD 4TH AFFECTED/INTERESTED
PARTY**

THE PERMANENT SECRETARY

**MINISTRY OF TRANSPORT 5TH AFFECTED/INTERESTED
PARTY**

THE REGISTRAR OF

**MOTOR VEHICLE AFFECTED/INTERESTED
PARTY**

RULING

I have considered the arguments of the Applicant, 1st Interested Party Counsel, and the arguments of the 1st to 4th Respondents' Counsel and 5th and 6th Interested Party including the arguments of the 3rd Interested Party Counsel concerning the Application to vacate or set aside the exparte orders of the 27th March 2008 made by the then Vacation Judge.

Counsel for the Applicant/Respondents has declined to respond to the arguments of the applicant Interested Party and the other two Counsel.

It is not controverted that the decision to reorganise parking and routes in the City of Nairobi, is the subject matter of the Bylaws entitled the City of Nairobi (Omnibus Stations) Amendment Bylaws 2008 which were not in turn, disclosed or availed to the Vacation Judge when he gave the exparte order.

Pursuant to s 69 of the Interpretation and General Provisions Act Cap 2, the publication of the Bylaws is a notice to all. The Applicants respondents are therefore deemed to have been aware of the Bylaws upon their publication on 20th March 2008.

It is also clear to the Court that on the issue that the Applicants/Respondents had not been notified - this was also a concealment of a material fact in that there was a public notice of the making of the Bylaws on 6th October, 2006 and objection to them had been invited within 12 days of the Notice.

I therefore rule that on a prima facie basis, there was a serious nondisclosure of material facts which could have materially affected the granting of the order.

On the issue of public interest I reiterate what I observed on a tentative basis in ***HCMS 133/2008 R v PERMANENT SECRETARY MINISTRY OF LOCAL GOVERNMENT ex-parte Immaculate Transporters & 18 others*** that in traffic matters there cannot be greater public interest than the smooth flow of traffic, order and discipline.

On the issue of the alleged discrimination I rule on a tentative basis that there cannot be discrimination in law unless the difference in treatment is not based on a legitimate purpose. In this case the differentiation in treatment is apparently based on the need to decongest the City by having few operators and defined routes.

For the above reasons I vacate the order granted on 27th March 2007 in so far as it ordered that leave operates as stay, but I leave the order for leave intact. I award costs to the Applicant 1st the Respondents and 3rd Interested Party to the extent of participation.

It is so ordered 14th day of May 2008.

J.G. NYAMU

JUDGE