



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Misc. Civ. Appli. 216 of 2008**

1. JESSE GICHURU MWANGI .....1<sup>ST</sup> APPLICANT
2. SIMON GICHERU GITAU .....2<sup>ND</sup> APPLICANT
3. JOHN NDEGWA TUMBUTI .....3<sup>RD</sup> APPLICANT
4. PHILIP GATHURU MUIGAI .....4<sup>TH</sup> APPLICANT
5. STEPHEN MAINA .....5<sup>TH</sup> APPLICANT
6. PETER NJUKI NJERU .....6<sup>TH</sup> APPLICANT
7. MAINA MUGWE .....7<sup>TH</sup> APPLICANT
8. WILFRED KAHUKI.....8<sup>TH</sup> APPLICANT
9. BERNARD M. MUCHOKI .....9<sup>TH</sup> APPLICANT
10. JOHN N. MUIRURI .....10<sup>TH</sup> APPLICANT
11. BENSON NJEGE .....11<sup>TH</sup> APPLICANT
12. STEPHEN MAINA MBEERE .....12<sup>TH</sup> APPLICANT
13. JAMES NYABUTI .....13<sup>TH</sup> APPLICANT
14. RICHARD IREGI WANJIRA .....14<sup>TH</sup> APPLICANT
15. ZEBBY ORIO MWAURA .....15<sup>TH</sup> APPLICANT
16. JOSEPH MACHARIA .....16<sup>TH</sup> APPLICANT
17. STEPHEN LEPOSU.....17<sup>TH</sup> APPLICANT
18. GRACE WANJIKU NYAMBURA .....18<sup>TH</sup> APPLICANT
19. DAVID MUGURO MWANGI .....19<sup>TH</sup> APPLICANT

20. MARY M. KINYUA .....20<sup>TH</sup> APPLICANT
21. JAMES GACHANJA .....21<sup>ST</sup> APPLICANT
22. THOMAS MUIRURI.....22<sup>ND</sup> APPLICANT
23. ROBERT MUGIRE.....23<sup>RD</sup> APPLICANT
24. JOSEPH MACHAIR NYAMBURA.....24<sup>TH</sup> APPLICANT
25. HENRY NGUI.....25<sup>TH</sup> APPLICANT
26. NJUGUNA KARERI.....26<sup>TH</sup> APPLICANT
27. JOHN NJOGU.....27<sup>TH</sup> APPLICANT
28. FRANCIS THIGA.....28<sup>TH</sup> APPLICANT
29. FRANCIS THIGA.....29<sup>TH</sup> APPLICANT
30. DAVID CHEGE.....30<sup>TH</sup> APPLICANT
31. PETER GACHIE MUTURI.....31<sup>ST</sup> APPLICANT
32. JOSEPH KURIA MWANGI.....32<sup>ND</sup> APPLICANT
33. JACKSON WANYOIKE GITAU.....33<sup>RD</sup> APPLICANT
34. JACKSON NGENYE MWANGI.....34<sup>TH</sup> APPLICANT
35. JOHN MWANGI MAINA.....35<sup>TH</sup> APPLICANT
36. GABRIEL KAHARA.....36<sup>TH</sup> APPLICANT
37. JAMES GITHINJI.....37<sup>TH</sup> APPLICANT
38. JOSEPH IRUNGU MWANGI.....38<sup>TH</sup> APPLICANT
39. SIMON MACHARIA NJOROGE.....39<sup>TH</sup> APPLICANT

**AND**

**PERMANENT SECRETARY, MINISTRY**

- OF LOCAL GOVERNMENT.....1<sup>ST</sup> RESPONDENT**
- CITY COUNCIL OF NAIROBI.....2<sup>ND</sup> RESPONDENT**
- TRANSPORT LICENSING BOARD.....3<sup>RD</sup> RESPONDENT**
- THE COMMISSIONER OF POLICE.....4<sup>TH</sup> RESPONDENT**

**RULING**

Before me is a Chamber Summons dated 22/4/2008 filed by Kipsang & Mutai Advocates on behalf of the applicants, who are 39 in number. The application was filed under certificate of urgency. It was filed together with a statutory STATEMENT and VERIFYING AFFIDAVIT. The application seeks leave to file Judicial Review proceedings for orders of certiorari, and prohibition. It also seeks for orders that leave, if granted do operate as a stay of the orders made under Legal Notice No. 37 of 2008.

Counsel, for the applicants, Mr. Mutai, made submissions before me in support of the application. Counsel submitted that Legal Notice No. 37 of 2008 prohibited the passenger carrying vehicles of the applicants from accessing the Central Business District of Nairobi. Counsel argued that the applicant had current licences to operate up to the Central Business District, but the Legal Notice required them to terminate their route at Muthurwa. Counsel contended that the order was made contrary to the principles of natural justice, as the applicants had paid for their current licences and the order was made without any notice to the applicants. They were, in effect, condemned unheard. In addition, some other bus companies, whose names were listed in the application had been given favourable treatment by being allowed to operate to the Central Business District. Counsel argued that the order had made the applicants suffer business losses as passengers shunned their vehicles due to the fact that the passengers would be required to pay an additional 20/= to get to the Central Business District.

Counsel further argued that the Legal Notice was issued under the Traffic Act, while the applicants were licenced under the Transport Licensing Act. Counsel argued that the said Legal Notice was ultra vires the enabling legislation. There was both procedural and substantive ultra vires. Counsel also emphasized that in similar Judicial Review applications 123 of 98; 130/08; 133/08; and 112/08 – Judges of the High Court had granted stay orders – which gave an advantage to other similarly affected public passenger transport operators. Counsel added that applicants had bank loans for their vehicles which they could now not service because of the Legal Notice and the financiers were likely exercise their rights of foreclosure, thus cutting the applicant's source of livelihood.

Lastly, counsel argued that the Muthurwa vehicle terminus was small and could not accommodate all the vehicles from Eastlands, and commuters and vehicle workers were exposed to muggers and robbers.

I have considered the application, documents filed and submissions of counsel for the applicants. Counsel has, indeed, made forceful submissions.

Having considered the same, I am of the view that the applicants have demonstrated a sufficient interest in the matter, as their commercial motor vehicles and businesses are alleged to be affected by the Legal Notice. They have also demonstrated a prima facie arguable case. I will grant them the leave to file Judicial Review proceedings as requested.

On stay, counsel has referred me to a number of cases where the High Court has granted stay orders. This being a court of parallel jurisdiction, I am not bound by the decisions of my brother and sister Judges. Those decisions are of persuasive effect. I am not persuaded to follow these decisions at this ex-parte application stage, as I have not had the opportunity of hearing the other side. In addition, the Minister having made the Legal Notice in March, more than a month ago, the balance of convenience will require that both sides are heard in the main application, before appropriate orders of court are made. I will decline to grant stay orders.

Consequently, I order as follows –

1. I certify the application as urgent.
2. I grant leave to the applicants to file Judicial Review proceedings for the orders as sought in the application. The main motion will be filed within 21 days from today.

3. I decline to grant stay orders.

4. Costs in the cause.

Dated, and delivered on 2<sup>nd</sup> May 2008 at Nairobi.

**George Dulu**

**Judge**

**In the presence of –**

Mr. Mutai for applicants

Mwangi – court clerk