



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc Civ Case 525 of 2006**

(JUDICIAL REVIEW)

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

AND

IN THE MATTER OF THE TRAFFIC ACT, CAP 403

AND

IN THE MATTER OF SECTION 55, 56 & 106

OF THE TRAFFIC ACT

AND

IN THE MATTER OF THE TRANSPORT LICENSING

ACT, CAP 404

AND

IN THE MATTER OF THE TRANSPORT LICENSING BOARD

AND APPLICATION BY THE EXPARATE APPLICANTS

BEING

**ABRAHAM MIGWI MURIITHI1ST
APPLICANT**

**SIMON MATHAI GITHOMI2ND
APPLICANT**

GERALD MAINA MACHARIA3RD
APPLICANT

ROBERT MAINA WAMBUU.....4TH
APPLICANT

DAVID NJOKA MWANGI.....5TH
APPLICANT

MAXERL N. WAMAI6TH
APPLICANT

VERSUS

THE TRANSPORT LICENSING BOARD1ST
RESPONDENT

THE REGISTRAR OF MOTOR VEHICLES2ND
RESPONDENT

THE COMMISSIONER OF POLICE.....3RD
RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 4TH
RESPONDENT

AND

THE GIGIRI POLICE STATION DTO.....1ST
AFFECTED/INTERESTED PARTY

THE MUTHAIGA POLICE STATION DTO2ND
AFFECTED/INTERESTED PARTY

THE NAIROBI AREA POLICE STATION DTO.....3RD
AFFECTED/INTERESTED PARTY

THE PERMANENT SECRETARY MINISTRY OF TRANSPORT..4TH
AFFECTED/INTERESTED PARTY

MINISTER FOR TRANSPORT5TH AFFECTED/INTERESTED
PARTY

NIC BANK.....6TH AFFECTED/INTERESTED
PARTY

JAMES NJUGUAN WAINAINA.....7TH AFFECTED/INTERESTED
PARTY

RULING

(1) This is an application to apply for leave to apply for Judicial Review made under Order 53 rule 1 of the Civil Procedure Rules. There are Githomi (3) Gerald Maina Macharia (4) Robert Maina Wambuu

(5) David Njoka Mwangi (6) Maxrel N. Wamai and (7) (Bernard Wainaina Ndirangu.

(2) Named as Respondents are: (1) The Transport Licensing Board (2) The Registrar of Motor Vehicles (3) The Commissioner of Police and (4) The Honourable Attorney General.

Then named as interested parties are: (1) The Gigiri Police Station DTO (2) The Muthaiga Police Station DTO (3) The Nairobi Area Police Station DTO (4) The Permanent Secretary Ministry of Transport (5) Minister for Transport (6) NIC Bank Ltd. and (7) James Njuguna Wainaina.

(3) The Applicants seek leave to apply for an order of certiorari:

(a) To remove to this Honourable Court, and be quashed the decision made by the Transport Licensing Board (“**the TLB**”) on the 7th September 2006 - is Nairobi suspending the respective road transport licenses issued to the Applicants.

(b) To remove to this Honourable Court and be quashed the letters addressed to the public service vehicles owned by the Applicants written by the TLB also dated the 7th September 2006.

(c) Leave to apply for an order of prohibition to prohibit the Registrar of Motor Vehicles and the Commissioner of Police from acting on the decision made and the letter issued by the TLB on the 7th September 2006.

(d) Leave to apply for an order of mandamus to compel the Commissioner of Police to direct the DTOs of Gigiri Police Station, Muthaiga Police Station and Nairobi Area Police Station to return to the Applicants the number plates removed by them from the Applicant’s vehicles Registration Numbers KAV 143K, KAU 119D, KAR 178H , KAR 509W, KAT 260J and KAP 831F.

(e) That the grant of leave do operate as a stay of the decision of the TLB contained in the letter of the 7th September 2006 and of the directive by the TLB to the Police Officers to remove and detain the number plates belonging to the Applicants’ vehicles.

(4) The grounds upon which the application is made are that the decision was not made according to law and was made in breach of the rules of natural justice in that the Applicants’ licenses were suspended without the Applicants being afforded an opportunity to be heard before the decision was taken. They also allege that the decision was discriminatory in intent and effect. The detailed complaints are set out in the supporting affidavits sworn by the Applicants and the Statement of Facts respectively dated the 18 September 2006.

(5) The letter complained of dated the 7th September 2006 (that to the Second Applicant is dated the 6th September 2006) was addressed to each Applicant by Mr. Hassan A.M. ole Kamwaro, Chairman of the Transport Licensing Board. It is written on the letterhead of the Kenya Revenue Authority (Road Transport Department). It reads:

“RE:SUSPENSION OF LICENSE

During a crackdown mounted by officers from Kenya Police, the Transport Licensing Board, Kenya Revenue Authority officers and the Motor Vehicle Inspection Unit in Muthaiga on 30th August 2006 to monitor compliance with road safety regulations, vehicle number KAV 143K which belongs to you was Impounded as it was tested and found to have failed to fully comply with road safety regulations.

While sitting in Nairobi on 7th September 2006. The Transport Licensing Board suspended the license(s) of this vehicle for Three (3) Months with eject from the date of this letter. The following conditions are attached to the suspension of the license; -

- You we be expected to surrender the TLB license for the vehicle and the PSV badges for the conductor and the driver to the Police station.
- You will be expected to ensure that this vehicle does not operate on any road in this county during the suspension period. More severe action will be taken against you if this vehicle is found operating while still under suspension.
- You will be expected to fully comply with all the provisions of legal notice number 161 of and 3rd October 2003 (including noting standard speed governor and safety belts).
- You will be expected to present the vehicle to Motor Vehicle Inspection Unit for re-inspection and certification at the end of the suspension period and obtain a certificate of compliance.
- The driver and the conductor of the suspended vehicle are also under suspension for the same period and should not be involved In any public transport business during the suspension period.

You and be expected to apply to the Chairman Transport Licensing Board for consideration of lifting of the suspension at the expiry of suspension period.

Please note that the Transport Licensing Board will publicize this decision on the Local Newspaper. This suspension is made pursuant to section 13 of the transport Licensing Act Cap 404 Laws of Kenya.

Please comply.

Hassan A. M. Ole Kamwaro MBS

CHAIRMAN

TRANSPORT LICENSING BOARD”

The letter was copied to (1) the Permanent Secretary, Ministry of Transport (2) The Commissioner of Police (3) DTOs at various Police Stations and (4) The Registrar of Motor Vehicles.

(6) It was in the course of giving effect to this letter that the Police ordered a crackdown on matatus that netted the vehicles belonging to these Applicants. As I have already said, application for leave to apply for Judicial Review is being made on the basis that the Respondents and particularly the TLB and the Commissioner of illegally. It is alleged that the TLB purported to exercise powers it does not have under the Transport Licensing Act. The Applicants also say that the TLB has no power to direct the Police to do what they did in relation to the Applicants' vehicles.

(7) According to Mr. Ole Kamwaro, the suspension was ordered pursuant to Section 13 of the Transport Licensing Act which states –

“13. (1) A licence of any class may be revoked or suspended by the Licensing Authority on the ground that any of the conditions of the licence have not been complied with or that the authorized vehicle has not been used for a period of three months”

It seems to me that Section 13(1) of the Act only gives the Licensing Authority the power to remove or suspend a license. In the present case, it would appear on the material before me that the Licensing Authority has not only suspended the Applicants' licenses but also that it has gone further and committed acts of vandalism by instructing the Police to remove number plates and TLB badges from the offending vehicles. Whether that is a lawful exercise of the power given to the Licensing Authority under Section 13(1) of the Act is a matter the Applicants are entitled to challenge.

(8) The letter which Mr. Ole Kamwaro sent to the Applicants though dated the 6th September 2006 or,

as the case may be, the 7th September 2006, was received by each of the Applicants on different dates. Abraham Migwi Muriithi, the First Applicant, received it on the 14th September 2006. Simon Githomi, the Second Applicant, also received it on the 14th September 2006. Gerald Maina Macharia, the Third Applicant, received it on the 13th September 2006. So did Robert Maina Wambuu, the Fourth Applicant. David Njoka Mwangi, the Fifth Applicant, received the letter on the 8th September 2006 while Maxerl N. Wamai, the Sixth Applicant, received it on the 7th September 2006. Finally, Bernard Wainaina Ndirangu, the Seventh Applicant, received it on the 14th September 2006.

(9) It is alleged that the Licensing Authority committed the acts complained of by the Applicants without giving them the opportunity of being heard. They were condemned unheard. That is a clear breach of a fundamental rule of natural justice. The Authority acted oppressively and trampled upon the rights of the Applicants. It must be brought to heel. Accordingly, leave be and is hereby granted to the Applicants to apply for Judicial Review for the reliefs of orders set out in paragraphs 3,4,5 and 6 of the Chamber Summons dated and filed on the 18th September 2006.

(10) The Applicants also seek orders in terms of prayers Numbers 7 and 8 of the application that the leave so granted should also operate as a stay. In view of the provisions of Section 19(1) of the Transport Licensing Act [Cap.404], and regulation 28 of the Transport Licensing Regulations, which give the Applicants a right of appeal to the Transport Licensing Appeal Tribunal which right the Applicants have not exercised nor exhausted, I decline to order that the leave hereby granted do operate as a stay of the decision complained of or otherwise howsoever. Finally, the costs of the application will be in the main cause. Orders accordingly.

Dated and delivered Nairobi this twenty ninth day of September 2006.

P. K. Kihara Kariuki

JUDGE