REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Case 183 of 2005

NAKURU MOLOLINE SERVICES LTD…….....…….……PLAINTIFF

VERSUS

LEONARD NJOROGE MWANGI…….....…….…....1ST DEFENDANT

JOHN M. NJOROGE…….....…….…..…2ND DEFENDANT

E. N. KIONDO…….....……..3RD DEFENDANT

EDWARD MAINA WAITHUNGURI…….....……..…..4TH DEFENDANT

WILLY GUCHU PETER…….....….……..…..5TH DEFENDANT

RULING

This is an application by the plaintiff/applicant seeking an interlocutory injunction to restrain the defendants their servants and/or agents from using the plaintiff's stickers on the matatu vehicles or from using the designated booking office area allocated to the plaintiff by the Municipal Council of Nakuru. The plaintiff also sought to prohibit the defendants from interfering with the plaintiffs' business operations in any manner whatsoever. The application was supported by an affidavit sworn by Joseph Njoroge Kariuki, the Chairman and one of the directors of Nakuru Mololine Services Ltd, the applicant. The applicant's principal business is transportation of passengers using a fleet of vans popularly known as "***Matatus***" which ply Nakuru-Nairobi, Nakuru-Kisumu and Nakuru-Eldoret routes. All the applicant's motor vehicles and those of its shareholders have stickers bearing the name "**MOLO LINE SERVICES LTD.**"

According to the plaint, the defendants are not shareholders of the plaintiff but the defendants applied to the plaintiff to be allowed to operate their vehicles on hire basis along side the plaintiff's vehicles and those of its shareholders. A copy of the respondent's letters of application referred to as "**Declaration**" and the applicant's response were annexed to the plaintiff's application.

Mr. Joseph Njoroge Kariuki stated in his affidavit that the applicant had been allocated a passenger

booking office in a designated area by the Municipal Council of Nakuru in consideration of some agreed charges. Mr. Kariuki further deposed that the respondents were causing chaos and disruption of the applicant's business operations and it was desirable that they ceased relating with the applicant. He stated that the respondents were operating in total breach of the rules and regulations of the applicant and the respondents were further accused of working in cahoots to defeat the operations of the applicant by maligning the applicant and calling it a cartel company. Mr. Kariuki further deposed that the respondents had gone to numerous Government offices and maliciously alleged criminality against the applicant. He also stated that the respondents had been inciting the applicant's employees and in particular drivers to go on strike so as to paralyse the applicant's operations and subject it to financial loss. The applicant therefore urged the court to restrain the respondents from interfering with the applicant's affairs and in particular using the applicant's name stickers on the respondents' vehicles.

The respondents filed a replying affidavit which was sworn by Leonard Njoroge Mwangi, the first respondent for and on behalf of all the others. He stated that the applicant was a company that was formed with fraudulent objectives of extorting money from "***matatu"*** owners who had lawfully been allocated the Nakuru-Nairobi route and other directions by the Transport Licensing Board. Mr. Mwangi deposed that the applicant and other sister companies known as Mololine Services Limited, and Mololine Joy Sacco Savings and Credit Society Limited were operating as a cartel in the said extortion exercise and said that the Government of Kenya had categorically banned extortionist cartel companies, stage clerks, touts and route managers from obtaining money from "***matatu"*** owners under the pretext of registered companies working at matatu and bus parks. He annexed to his affidavit a Public Notice which had been published in newspapers by the Permanent Secretary, Ministry of Transport and communications.

The respondents denied that they were causing chaos as alleged and stated to the contrary, it was the applicants' goons, touts and employees who were harassing vehicle owners demanding hefty amounts of money while misrepresenting that they were offering services to vehicle owners. The plaintiff was charging each vehicle owner Kshs.200/- per trip for each vehicle departing from Nakuru to Nairobi whereas the defendants were paying to the Nakuru Municipal Council monthly parking fees for using the Public stages. On the other end of Nairobi, the applicant's sister company, Mololine Services Ltd was charging the respondents and other "***matatu"*** owners Kshs.300/- per vehicle per trip for carrying passengers from a public parking, Mr. Mwangi deposed. The respondents complained that the applicant had unlawfully constructed a small office at the matatu stage where the respondent's vehicles were supposed to pick passengers from and their vehicles had been banned from using the stage for refusing to pay the amounts demanded by the applicant.

The applicants swore a further affidavit in response to the respondent's replying affidavit and denied having blocked the respondents from using Nakuru-Nairobi route but averred that the respondents had voluntarily removed themselves from the applicant's booking office at Nakuru and were operating under other names and had applied to the Municipal Council of Nakuru to be allocated a booking office for their vehicles. The applicant further denied that it was part of a cartel that was extorting money from vehicle owners as alleged by the respondents and said that the other two companies were separate and distinct entities on their own.

I have carefully considered the application before me, the affidavits that were sworn by the parties and the submissions by counsel for the parties.

The applicable principles in considering an application for an interlocutory injunction are well known. They were set down in the celebrated decision of ***GIELLA VS CASSMAN BROWN & CO. LTD*** [1973] E.A. 358 and are as follows:-

(a) An applicant has to show that he has a ***prima facie*** case with a likelihood of success.

(b) He has to establish that he stands to suffer irreparable loss unless the orders sought are granted.

(c) If the court is in doubt, it will determine the matter on a balance of convenience.

In considering the first principle aforesaid the starting point is to examine the relationship between the applicant and the respondents. The applicant is a limited liability company whose main objective as per its Memorandum of Association is to carry on the business of transport of passengers, goods and livestock and all types of merchandise for reward. According to records from the Department of Registrar-General, as at 18th June, 2005 the company had 14 shareholders. The company and its shareholders own a few Nissan vans (matatus) that bear the name "**Molo Line Services Ltd"** but it has, on certain considerations, allowed many other matatu owners to have stickers on their vehicles bearing the aforesaid name. Whenever any matatu owner wishes to have his vehicle join the fleet that bears the stickers, "**Molo Line Services Ltd"** he is required to execute a certain standard document headed "**DECLARATION"** that sets forth some terms and conditions. The applicant thereafter issues to the matatu owner a standard letter stating ***inter alia*** that his vehicle has been admitted on hire by the company to serve on commission basis. The said letter also sets out some terms of admittance. Each of the matatu owners applies to the Transport Licensing Board for a Road Service Identity Certificate (also known as Route Certificate) at a fees of Kshs.2000/- per year and is allocated a given route.

All respondents herein were authorised by the Transport Licensing Board to operate their vehicles along Nairobi, Naivasha, Nakuru road and back. Each of the respondents were also being charged by the Municipal Council of Nakuru Kshs.1,200/- as parking charges per month.

The respondents alleged that the applicant was charging them Kshs.200/- per vehicle per trip for picking passengers from Nakuru to Nairobi and from Nairobi to Nakuru, the applicant's sister company, Mololine Service Limited was charging them Kshs.300/- per vehicle for every trip. That was not denied by the applicants even though they seemed to argue that the two companies aforesaid were different and separate legal entities. However, there is sufficient evidence to prove that the two companies have the same shareholders and/or directors.

From the annextures to the affidavits on record, the respondents and other matatu owners had written to the chairman of the Transport Licensing Board complaining about the aforesaid payments which they were being forced to make to the applicants in default of which their vehicles would not be allowed to operate. They were also complaining that vehicle owners were being forced to pay between Kshs.50,000/- and 60,000/- before they were allowed to operate on the said route but that specific allegation was denied by the applicant through it chairman, Joseph N. Kariuki.

The said chairman, in his letter to the chairman of the Transport Licensing Board denied that his company was extorting money from the respondents and other matatu owners but stated that his company was charging commission for the services which it rendered to the vehicle owners. He also admitted that they had suspended some matatu owners affiliated to them but subsequent to a letter dated 3rd June, 2005 by the Transport Licensing Board, the applicant had reinstated the suspended members. It would appear that the applicant decided to file this suit and application soon after the respondents complained about the applicant's conduct to the chairman of the Transport Licensing Board.

There is evidence that the applicant is extorting money from the respondents and other matatu owners who are affiliated to it by carrying stickers bearing the applicant's name.

On 11th April, 2004, the Permanent Secretary in the Ministry of Transport and Communications published a Public Notice which stated as follows:-

*"**MINISTRY OF TRANSPORT AND COMMUNICATIONS***

PUBLIC NOTICE

MANAGEMENT OF MATATU STAGES AND BUS PARKS

(a) An inter-ministerial meeting was held at the Ministry of Transport and Communications on 5/4/04 to review management of Matatu Stages and Bus Parks. The following were noted:-

- ***Management of some matatu stages and bus parks was still under illegal organisations who are extorting money from matatu operators and commuters. These bodies currently operate as stage clerks and route managers.***

- ***Commuters and vehicle owners have been subjected to harassment and insecurity by illegal groups who interfere with management of Public Service Vehicle Stages.***

- ***Although local authorities are empowered by law to manage their matatu stages and bus parks, many authorities are not currently doing so effectively.***

(b) It was resolved as follows:-

- ***The local authorities should take over management of matatu stages and bus parks with immediate effect.***

- ***Where local authorities are not able to undertake the above function, they should competitively tender for private firms to manage the matatu stages and bus parks on their behalf.***

- ***Local authorities should use part of the money received to improve matatu stages and bus parks under their jurisdiction.***

- ***All cartels, stage clerks, touts and other illegal groups that have been operating in stages should leave with immediate effect.***

- ***Public service and commercial vehicle operators seeking use of matatu stages and bus parks will pay local authorities for use of the facilities. It is illegal to make any payment to cartels or Saccos or stage clerks for use of stages or routes.***

- ***Those seeking allocation of routes should apply only to the Transport Licesing Board and not to cartels or route managers. Only TLB has powers to allocate routes.***

- ***All local authorities should make proper arrangements to allocate and manage stages. They should arrange for vehicle owners to pay on quarterly or monthly basis for use of matatu stages. Such payments will be made at the local authorities offices and not at the matatus stages or bus parks.***

- ***Operations of matatu Saccos at Matatu Stages should cease immediately. They can, however, conduct their operations in designated offices away from the stages/parks. Membership and contributions to Saccos will be voluntary.***

It should be noted that this decision does not affect booking offices for PSV Companies involved in long distance operations. These can continue providing services in their current premises, but they are not allowed to collect money at any matatu stages or bus parks.

PERMANENT SECRETARY

MINISTRY OF TRANSPORT AND COMMUNICATIONS"

I am certain that the above quoted Public Notice is well within the knowledge of Nakuru Municipal Council and the applicant. However, the local authority and the applicant are in breach of some of the provisions therein and it is important that they strictly adhere to the same. For example, the applicant is extorting money from the respondents and other matatu operators by charging them Kshs.200/- per trip

yet they pick passengers from matatu stages while they have already paid to the local authority Kshs.1,200/- monthly parking fees. The same can be said of the Kshs.300/- that the respondents are charged at Nairobi by a company that operates in cahoots with the applicant. The applicant is therefore illegally collecting money at a matatu stage contrary to the said notice and with full knowledge of the Nakuru Municipal Council. The Council ought to be managing all the matatu stages in the town and where it is not able, it should competitively tender for private firms to do so. It is also evident there is no lawful vehicle hire contract between the applicant and the respondent.

These are a few highlights to the fact that the structural operation and relationship between the applicant and the respondents is illegal and unenforceable in law. In ***HEPTULLA V NOOR MOHAMED*** [1984] K.L.R. 580 the Court of Appeal held that no court ought to enforce an illegal contract where the illegality is brought to its notice and if the person invoking the aid of the court is himself implicated in the illegality. That being the position, no prima facie case exists and the orders sought by the applicant cannot be granted as that would amount to sanctioning an illegal contract.

The applicant's counsel told the court that the respondents had on their own volition severed their relationship with the applicant but they were still using the applicant's stickers on their vehicles. I cannot comment on that as there is no evidence before the court to that effect.

In conclusion, I would like to state that it would be in the interest of justice for both the Transport Licensing Board and the Nakuru Municipal council and other local authorities to strictly enforce the said transport regulations that were published by the Permanent Secretary of the Ministry of Transport and Communications so that matatu owners can operate their vehicles more profitably by checking on unnecessary and unlawful levies that are being charged upon them. The Transport Licensing Act Cap 404 gives wide powers to the Transport Licensing Board for protection of public interest in transport related issues and I hope the board will be vigilant.

The plaintiff's application is dismissed with costs.

DATED, SIGNED AND DELIVERED at Nakuru this 21st day of October, 2005.

D. MUSINGA

JUDGE

21/10/2005

Ruling delivered in the presence of Mrs Simiyu for the plaintiffs/applicants and Mr. P. K. Njoroge for the Respondents.

D. MUSINGA

JUDGE

21/10/2005