REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL SUIT NO. 128 OF 2004

CROSSLAND SERVICES LTD……PLAINTIFF

VERSUS

MUNICIPAL COUNCIL OF NAKURU……DEFENDANT

RULING

The Applicant, Crossland Services Limited, by an amended chamber summons made under the provisions of **Order XXXIX Rules 2, 2 A(1), 3(1) and 9 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act** sought the following orders:-

> ***(i) Pending the hearing and determination of the suit file herein this Court be pleased to issue an injunction restraining theRespondent by itself, its agents or servants and officers from interfering, meddling with or dealing in any manner with the Applicant's business and business premises located at Nakuru Municipality/Block 5/95 Section 1 along Mburu Gichua road zone three and inclusive of the reserved and paid for parking bay at the frontage of plot number Nakuru Municipality/Block 5/92 with a maximum of four parking spaces set out in the Respondents letter of approval dated the 21st of July 2000.***
>
> ***(ii) Costs of the Application be borne by the Respondent.***

The Application is supported by the annexed affidavits of James Mwangi Wachanga and the grounds stated on the body of the application.

The Application is opposed. The Respondent has filed grounds of opposition and a replying affidavit sworn by James Kuria, a licencing officer of the Respondent. The Respondent has also filed grounds of opposition to the Applicants claim. The Respondent has stated that the Applicant's claim is without basis; that the Applicant has not demonstrated that it is entitled to the orders sought; that the Applicants claim is premature and the should not be made at this time where there are legislative changes and finally that the Applicants application is frivolous, vexatious and an abuse of the due process of the Court.

In his submissions before Court, Mr Karanja, Learned Counsel for the Applicants has argued that the Respondent did not have the powers to revoke the licence issued to the Applicants especially when it touched on the livelihood of the Applicants.The Applicants have further argued that the Respondent cannot decide to revoke the Applicants licence on the guise that they would re-locate them to another place. It was the Applicant's argument that the Applicants should not purport to make decisions touching on the livelihood of the Applicants without following the rules of natural justice. The Applicants faulted the decision of the Respondent as being whimsical because no minutes of the council were annexed to the replying affidavit to prove that indeed a decision had been made to relocate the Applicants from their current location.

The Applicants further argued that the building which comprises that booking office of the public service motor vehicles is owned by the Applicants. The Applicants have submitted that the Respondent has issued a licence to the Applicants to operate transport business both inside and outside the building. The Applicants state that they have paid the licence fees to the Respondent to operate the said transport business upto the 31st of December 2004. The Applicants have further submitted that since the licence was first issued in the year 2000 by the Respondent to them, they have complied with the conditions attached thereto as a consequence of which the licence has been renewed annually since then to date.

The Applicants further submitted that despite the Respondent seeking to remove them from their business location,the said licence issued to them has not been revoked. The Applicants have further argued that the licence issued to them by the Respondent entitled them to be allocated parking in front of the said business premises to enable them conduct their business of operating long distance passenger service. The Applicants have further submitted that since they started operating their transport business, they have not operated from the council maintained bus terminal but on their premises. The Applicants have argued that because of the above reasons they have established a prima facie case and would suffer irreparable damages which may not likely be compensated by an award of damages. The Applicants urged this Court to allow their application so as not to give the Respondents the opportunity to trample on their rights. In support of their application, the Applicants referred this Court to several decided cases.

Mr Mbeche, Learned Counsel for the Respondent vehemently opposed the application. He submitted that the Respondents was in the process of reorganising the disharmony that was there in the matatu industry. It was the Respondents argument that the Applicants being members of the chaotic matatu industry have to be organised to bring sanity back to the passenger service vehicle industry. The Respondent further submitted that it were within its statutory right to reorganise the matatu industry within its area of jurisdiction. The Respondent has further submitted that the Applicants have jumped the gun and come to Court before waiting to see how the Respondent proposed to reorganise them. The Respondent further submitted that it was not true that the Applicants had their registered owners in the said premises, if their memorandum and articles of association is anything to go by.

The Respondent further submitted that the licence to operate transport business was not issued to the Applicant but rather to James Mwangi Wachanga. It was the Respondents submission that the two were not synonymous with each other. The Respondent has further argued that when a licence is issued, it is at the will of the issuer. In the instant case, the Respondent has argued that it did not intend to take away the Applicants right to do business but rather sought to organise the passenger service transport business commonly known the “the matatu industry.” The Respondent argued that it was motived by the fact that it is seeking to make Nakuru a better town. The Respondent further argued that if the temporary injunction granted were to be vacated, the Applicants would be shown where they would be based. The Respondent submitted that a specific licence can always be revoked for the common good of the community at large. The Respondent urged this Court to dismiss the Application with costs.

I have read the Applicants’ application together with the annexed affidavit thereto. I have also read the statement of grounds of opposition and the replying affidavit filed by the Respondent. I have also considered the rival arguments by the counsel for the Applicant and the counsel for the Respondent. The issue for determination by this Court is whether the licence issued by the Respondent to the Applicants can be revoked or varied as to result in the relocation of the Applicants from their business premises. The other issue for determination is whether the Applicants have satisfied the conditions for the grant of injunction as laid down in the case of **Giella –versus- Cassman Brown [1973] E. A. 358** and restated variously in other decided cases.

In the affidavit in support of the application, James Mwangi Wachanga, a director of the Applicant, depones that the Applicant is the owner of **L.R. Nakuru Municipality/Block 5/92 Section 1 Zone 3** along Mburu Gichua road where it carries out its operations and business. The Applicant depones that it did apply to the Respondent to be granted a licence to carry out its Passenger Service Vehicle premises in the said premises including the frontage of the building in the year 2000. The said licence has been renewed from year to year since then to date. The current licence issued to the Applicants is due to expire on the 31st of December 2004. The Applicants complain that theRespondent without consulting them

have ordered them to relocate their business from the said premises and the parking space in front of the said business.

The Applicants contend that they cannot be removed or have their licence revoked without being consulted and further they see no reason why they should be relocated yet they have always complied with the by-laws of the Respondent. On their part the Respondent contends that it is motivated by the common good. It wants to re-organise the way the matatu industry is being run within its jurisdiction. The Respondent contend that it has the mandate to ignore the licence issued to the Applicant if it will result in the community within its jurisdiction benefitting.

I have considered the above opposing submission. In my opinion when a licence is issued by a local authority, like the Respondent, to a business concern, like the Applicant, certain rights are presumed to arise from the issuance of the said licence. One such right is that a party issued the said licence may not be interfered in the conduct of the business for which the licence was issued if the said party has not breached the conditions that were attached to the issuance of the said licence. Secondly the party issued with the said licence expects that it will conduct its business until the expiry of the period which the said licence was issued.

Where a licence is issued for the purposes of conducting a trade an aspect of livelihood of the holder of the licence is involved. It becomes an issue of a human right to work. If the Respondent would want to alter the terms of the issuance of the licence, like in the instant case, it would be required to apply the principles of natural justice, that is, it has to notify the Applicants of its intention to ulter the terms and conditions of the said licence.

Further the Respondent is required to give the Applicants a reasonable period before the said ultered conditions can come into effect.

In the instant case the Respondent did not do any of the above. Instead in its submission the Respondent argued that it has the statutory duty to manage the matatu industry and reorganise the bus terminii within its area of jurisdiction. While I do acknowledge the fact that the Respondent has a statutory duty to organise traffic in its area of jurisdiction, including the bus terminii, the Respondent is mandated to exercise its statutory duty in accordance with the law. The Respondent cannot capriciously wake up one day and seek to disrupt the likelihood of law abiding businessmen whom it had issued a licence to conduct the said business.

This Court is alive to the fact that a licence once issued can be revoked by the issuer. But it is the view of the Court that where the issuance of the said licence touches on the conduct of a trade, then there is a presumption that the person issued with the said licence will operate the said business or trade in so far as it abides by the terms and conditions of the issuance of the said licence. An example of an instance where the issuance of licence is in a way guaranteed if the licencee abides by the terms and conditions of its issue is the annual practicing certificates issued by professional bodies like the Law Society of Kenya and that the bodies in charge of Accountants, Engineers and the Medical Practitioners. Once an individual has fulfilled the conditions of the issuance of such a practicing certificate, renewal of the said certificate annually, is as it were, automatic, unless the individual if found guilty of professional misconduct.

It is therefore the finding of this Court that while the Respondent is within its mandate in seeking to change the bylaws governing the regulation of Public Service Vehicles within its jurisdiction, it cannot give effect to the said changes without following the rules of natural justice and further giving reasonable notice to those affected so that they may prepare themselves to abide by the new by-laws. In the circumstances of this case, I do find that the Applicants have established a prima facie case. In **Giella – vs- Cassman Brown [1973] E. A. 358** it was held by the Court of Appeal at page 360 E that;

> ***"The conditions for the grant of an interlocutory injunction***
>
> ***are now, I think, well settled in East Africa. First, an Applicant***

must show a prima facie with a probability of success. Secondly,

an interlocutory injunction will not normally be granted unless

the Applicant might otherwise suffer irreparable injury, which

would not adequately be compensated by an award of damages.

Thirdly, if the Court is in doubt, it will decide an application on

the balance of convinience (E. A. Industries –versus- Trufoods [1972] E. A. 420)"

The Applicants have also established that they would suffer irreparable injury which would not be likely to be compensated by an award of damages as they would loose their means of earning a living. The Applicants' application is therefore granted in terms of prayer (1) of their Application as stated at the beginning of this ruling pending the hearing and determination of the suit filed by the Applicants. The Applicants shall also have the costs of the application.

DATED at NAKURU this 20th day of September, 2004.

L. KIMARU

AG. JUDGE