



**Super Metro Sacco Limited v National Transport Safety Authority &
2 others (Judicial Review Miscellaneous Application E032 of 2025)
[2025] KEHC 3553 (KLR) (Judicial Review) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3553 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E032 OF 2025
RE ABURILI, J
MARCH 21, 2025**

BETWEEN

SUPER METRO SACCO LIMITED APPLICANT

AND

THE NATIONAL TRANSPORT SAFETY AUTHORITY 1ST RESPONDENT

THE NATIONAL POLICE SERVICE 2ND RESPONDENT

**THE TRAFFIC COMMANDANT NATIONAL POLICE SERVICE 3RD
RESPONDENT**

RULING

1. The applicant Super Metro Sacco Limited is a Transport Operator Sacco. It has approached this court by way of Chamber summons dated 19/3/2025 and filed on 20/3/2025 at 13/04/2017 under certificate of urgency seeks leave of this court to apply for Judicial Review orders of certiorari, mandamus and prohibition against the decision/actions of the National Transport and Safety Authority (NTSA) made on 18/3/2025 suspending operations of the applicant as a Public Service (PSV) operator under the [National Transport and Safety Authority Act](#) (Operation of Public Service vehicles Regulations, 2014).
2. The applicant also seeks that the leave so granted do operate as stay of the suspension of the operating licenses of the applicant's motor vehicles, Super Metro Buses and its members who operate Public Service Vehicles (PSV) pending the order of certiorari. The applicant also prays for costs of the application.



3. The application is brought under the provision of Order 53 Rule 1(1)(2) and (4) of the Civil Procedure Rules, the [Law Reform Act](#) and all other enabling provisions of the law.
4. I have heard Mr. Akhulia Advocate for the applicant, ex parte in the first instance, on whether the application is urgent and whether the leave sought is warranted. Counsel for the applicant has submitted that the matter is urgent because the 1st Respondent issued a blanket suspension of the applicant's operating licences which suspension has affected 593 buses as a result of which the applicant's Sacco vehicles cannot operate.
5. It is asserted that the Sacco employs over 2000 people in the operations of the buses, all these people and their families depend on the vehicles' income for their livelihoods.
6. It is further argued that over 300 vehicles operating under the Super Metro banner are under various Asset Financing Bank loan facilities being serviced daily and with the ban, the vehicles will be repossessed by the Financiers. Counsel submitted that 148 of those vehicles are under National Bank financing facility.
7. It was submitted that there are no Rules for appeal to the Transport Licensing Appeal Board hence the application herein under certificate of urgency. Counsel submitted that the application is not frivolous, that they shall abide by any directions of this court.
8. The application is supported by the affidavit sworn by Peter Mukuria, the applicant's director, the statutory statement and annexures thereto which documentation I have perused and understood.
9. The multifaceted question that I must resolve is whether the application is urgent and if so, is it merited and if merited, should stay follow?
10. From the appearance and submissions by Mr. Akhulia Counsel for the applicant, the application is urgent and therefore it is suitable to be certified as urgent. It is certified urgent, noting that the suspension of operating licenses for the subject PSV motor vehicles took effect immediately the decision was communicated to the applicant Sacco that operates nearly 600 buses and who have employees and Bank loans to service.
11. As to whether the application for leave to apply is merited, and if so, whether leave if granted should operate as stay of implementation of the decision of the 1st Respondent NTSA, the applicant laments that on 18/3/2025, a decision was made by the 1st Respondent to suspend its members' operators' licences without according the applicant the opportunity to be heard.
12. The applicant however concedes that vide Notice to Show Cause of Traffic Violation dated 10/2/2025, the Director General of the NTSA notified the applicant of various violations by various of its members PSV Vehicles and drivers and scheduled a meeting on 14/2/2025 at 11.00 am at the NTSA Headquarters; 316 Upper Hill Chambers (ground floor).
13. That the aforesaid meeting was held after the applicant complied with the contents of the letter dated 10/2/2025 by addressing the issues or violations raised by the 1st Respondent to their satisfaction, as per the applicant's letter dated 7/3/2025.
14. That the decision of 18/3/2025 concern matters fatal accidents, which were not brought to the applicant's attention prior to the meeting and that the said new issues being used to suspend the applicant's operations; which decision the applicant is aggrieved by as it was never accorded a chance to be heard on those alleged fatalities and accidents which did not relate to the issues in the earlier letter. That is in brief, the complaint by the applicant PSV Transport Sacco.



15. The question is, does this court have jurisdiction to entertain this application, though *ex parte*, in the first instance and therefore should I grant leave to apply as sought? First and foremost, the prayers for leave in respect of Judicial Review orders of certiorari, prohibition and mandamus are all lumped together in one prayer, yet each of the Judicial Review orders serve different purposes. Certiorari cannot prohibit and neither can it compel performance of a public duty and neither can mandamus prohibit or quash the decision. Similarly, mandamus cannot quash a decision and neither can it prohibit.
16. It is therefore not possible for this court to grant leave to apply for mandamus, prohibition and certiorari without the applicant disclosing in its pleadings the purpose to be served by certiorari, prohibition or mandamus. I do not consider the lumping together in one paragraph of all those prayers to be a procedural technicality with a statement that follows those prayers stating...“against the administrative actions of the 1st Respondent dated 18/3/2025...” I would on that ground alone decline to grant leave to apply and dismiss the chamber summons.
17. However, there is much more in terms of jurisdiction. This court as a Judicial Review Division of the High Court exercises jurisdiction conferred on it by *the Constitution* and more specifically, Article 165(6) & (7) of *the Constitution*. Matters fair administrative action are derived from the Bill of rights under Article 47 of *the Constitution*. The Judicial authority exercised by this court is derived from the people of Kenya as stipulated in Articles 1 (3) and 159 of *the Constitution*.
18. The court also derives its jurisdiction from Statutes and Judicial precedents which are binding on the court as pronounced by superior courts.
19. Under Article 159(2) of *the Constitution*, in exercising Judicial authority, the courts and tribunals shall be guided by the following principles-
 - (a) ..
 - (b) ..
 - (c) Alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted subject to clause (3)
 - (e) The purpose and principles of this Constitution shall be protected and promoted...
20. The 1st Respondent, the National Transport and Safety Authority is established under Section 3 of the *National Transport and Safety Authority Act* No. 33 of 2012. The powers of the Authority include under Section 34, power to revoke or suspend the license where Act where the Licensee fails to:
 - a. Comply with a condition for the issuance of the licence or
 - b. Fails to operate the motor vehicle with respect to which the licence is issued for a period of three months during the period for which the licence is issued.
 - (2) The Authority shall, where it revokes or suspends a licence and at the request of the Licensee inform the Licensee in writing, the reasons for such revocation or suspension;
 - (3) ..
 - (4) ..
21. Section 38 of the NTSA Act provides for appeals against the decision of the Authority and under section 38(1)(c) of the Act, where a licensee, is aggrieved by the revocation or suspension thereof, may, within the time and in the manner prescribed appeal to the Appeals Board established under Section 39 of the Act.



22. Section 39 of the NTSA Act establishes the Transport Licencing Appeal Board and provides for its composition. Under Section 39(5), the Board may, on appeal, affirm or reverse the decision of the Authority, or make such other order as the Board considers necessary and fit. under section 39 (6), where the NTLAB (Appeals Board) has received an appeal under this Section, it shall consider that appeals and, if it determines that the grounds of appeal are frivolous or vexatious or do not disclose sufficient reason for interfering with the decision of the Authority, may summarily reject the appeal.
23. I have reproduced the above provisions of the law to demonstrate that there is an established procedure and avenue for challenging decisions of the 1st Respondent herein NTSA and that procedure and avenue in law is by way of an appeal to the Transport Licencing Appeal Board established under Section 39 of the NTSA Act.
24. Further, Rule 13 of the (NTSA) (Transport Network Companies, Owners, drivers and passengers Regulations) provide for suspension of licenses of transport network companies and the remedy at Regulation 23 if aggrieved is an appeal to the Appeals Board.
25. The NTSA (Operation of Public Service Vehicles) Regulation, 2014 at Regulation 14 provides that a person aggrieved by the decision of the Authority taken under these Regulations may within 14 days of receiving the decision appeal to the Appeals Board.
26. There are also a myriad of decisions rendered by the TLAB available on Kenyalaw.org.portal that no person can claim that the TLAB is inoperative or that it cannot give an effective remedy. The Appeal Board has, in fact, given very well-reasoned decisions in favour of motor vehicle operators, from my reading of the many of their decisions posted on the Kenya law platform and even where disputes or appeals have been presented to the Board prematurely, it has not hesitated to decline jurisdiction.
27. In this case, the decision sought to be challenged is an administrative decision and the law has provided for alternative mechanisms for remedying the situation, which alternative mechanism has the full blessings of *the Constitution* at Article 159(2)(c) of *the Constitution*.
28. Additionally, the *Fair Administrative Action Act* enacted in 2015 to implement Article 47 of *the Constitution* which Article guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair, espouses at Section 9 of the said *Fair Administrative Action Act* as follows, and in very prohibitory terms:
 - 9(1) ...
 - SUBPARA (2)

The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
 - (3) The High Court or a subordinate court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that the applicant shall first exhaust such remedy before instituting proceedings under subsection (1)
 - (4) Notwithstanding subsection (3), The High Court or a subordinate court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.
29. The demand/requirement for exhaustion of alternative remedy provided for in the applicable statute has taken route in Kenya such that it cannot be ignored. Courts have repeatedly pronounced themselves on this requirement and therefore any party, before rushing to court, is expected to meticulously comb



through the parent enabling statutes to comprehend the procedure applicable in lodging application or appeals for resolution of disputes, so that they do not find themselves in the situation where they have to waste their precious time, money and the precious Judicial time ventilating their grievances in the wrong forum only for their claims to be found to be wanting an account of flouting the doctrine of exhaustion of remedies, which is a hallowed principle of law now judicially noticed.

30. The provision I have reproduced above, from the *Fair Administrative Action Act* mandate exhaustion of alternative dispute resolution mechanisms before invoking the jurisdiction of this court. And where there are exceptional circumstances, and on application for exemption, the court may consider such application or prayer for exemption on its merit.
31. In this case, there is no pleading relating to any exceptional circumstances and there are no such exceptional circumstances or application for exemption from the obligation to exhaust the internal dispute resolution mechanisms which are through an appeal to the Transport Licencing Appeal Board established under the NTSA Act.
32. In this County of Kenya, there are so many statutes that I know of, which contain similar provision of appeal mechanisms from decisions of authorities such as the 1st Respondent herein and from which, so much has been litigated upon in this court and beyond that one is spoilt for choice when looking for any judicial precedent and pronouncements. Such statutes include:
 1. *Tax Procedures Act* – Appeals from the Commissioner to the Tax Appeals Tribunal established under the *Tax Appeals Tribunal Act*.
 2. *Retirement Benefits Act* – Appeals from Retirement Benefits Authority to the Retirement Benefits Appeals Tribunal.
 3. Cooperative *Societies Act*- Appeals from decisions of the Cooperative Societies to the Cooperative Tribunal.
 4. *Water Act*- Appeals from the decisions made by the Cabinet Secretary responsible for Water or the Water Resources Authority, Water Services Regulatory Board to the Water Appeals Board.
 5. *Political Parties Act*- Appeals arising among members of political parties, and appeals from decisions of the Registrar of Political Parties Political Parties to the Political Parties Disputes Tribunal
33. Therefore, albeit the existence of an alternative remedy does not completely oust the jurisdiction of the court in Judicial Review, a remedy by way of judicial review is not to be made available where an alternative remedy exists, since judicial review is a collateral challenge and not an appeal.
34. Accordingly, where the legislature has provided an internal alternative appeal procedure, it will only be very rare that courts will permit the collateral process of judicial review to be used to attack an appealable administrative decision. In this case, the appeal process is provided for quite clearly, under the NTSA Act. The appeal process set out, it has not been shown by way of an application for exemption, to be less convenient or that the Licencing Appeal Board cannot deal with the injustice of which the applicant complains to this court to correct.
35. This court by virtue of Article 165(6) & (7) of *the Constitution* exercises supervisory jurisdiction over persons, bodies, authorities or Tribunals and subordinate courts exercising judicial or quasi-judicial function. However, in the exercise of such supervisory jurisdiction, the court cannot exercise appellate jurisdiction by usurping the functions and powers of those bodies established by statute to specifically deal with appeals arising from the decisions made by those bodies or tribunals.



36. This hallowed principle of exhaustion of remedies was espoused in age-old locus classicus case of Speaker of the National Assembly vs Njenga Karume C.A Nai 92/1992 where the Court of Appeal pronounced itself that where there is a clear procedure for the redress of any particular grievance presented by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.
37. Those alternative procedures, I hasten to add, are the multi-door approaches available to every person who is aggrieved by administrative decisions, to access justice in this Country and unless it is demonstrated to the satisfaction of the court as stipulated in Section 9(4) of the *Fair Administrative Action Act*, that there are exceptional circumstances for exempting exhaustion of the remedies/procedure as legislated or that there is no effective remedy and on application, this court will not only be slow to interfere with those procedures set out in law, but it will resist usurping jurisdiction and or judicial or quasi-judicial functions of those bodies.
38. In the instant case, the jurisdiction of this court to entertain the Judicial Review application from the decision of the NTSA is restricted by statute. Paragraph 723 of the Halsbury's Laws of England Volume 10 cited in Eliud Wafula Maelo vs Ministry of Agriculture & 3 others [2016] eKLR, the Court of Appeal stated:
- “The Jurisdiction of the High Court in particular matters or instances can be ousted or restricted by statute. In Halsbury's Laws of England, Volume 10, at paragraph 319, the learned authors state: “The subject's right of access to the courts may be taken away or restricted by statute”.... Paragraph 723 states: “where a Tribunal with exclusive jurisdiction has been specified by statute to deal with claims arising under the statute, the county courts jurisdiction to deal with those claims is ousted, for where an Act creates an obligation to and enforces the performance of it in a specific manner only, the general rule is that performance cannot be enforced in any other manner”
39. The Supreme Court In the Matter of the Interim Independent Electoral Commission [2011] eKLR stated that “[29] Assumption of jurisdiction by courts in Kenya is a subject regulated by *the Constitution*, by statute law and by principles laid out in judicial precedent.”
40. In this case, there is absolutely no reason for the applicant avoiding the procedure and remedy provided for under the NTSA Act. No acceptable and justifiable explanation has been proffered for not filing an appeal to the Transport Licencing Appeals Board as stipulated in law, challenging the decision of the National Transport and Safety Authority to suspend the applicant's Transport Operators Licenses.
41. In Secretary, County Public Service Board & Another v Hulbhai Gedi Abdille [2017] eKLR, the Court of Appeal considered the doctrine of exhaustion and stated:
- “Time and again, it has been said that where there exist other sufficient and adequate avenue or forum to resolve a dispute, a party ought to pursue that avenue or forum and not invoke the court process if the dispute could very well and effectively be dealt with in that other forum. Such a party ought to seek redress under the other regime.”
42. Therefore, whereas this Court as the High Court of Kenya enjoys unlimited jurisdiction under Article 165(3) of *the Constitution*, that jurisdiction is not exercised in a vacuum. A party who wishes to bypass the established procedure for resolution of disputes is expected to justify the avoidance of that other established route. It is only by the applicant exhausting the appeal process provided for under the NTSA Act that the dispute will be ripe for this court to receive, hear and determine on merit.



43. In *Ndiara Enterprises Ltd vs Nairobi City County Government*, the Court of Appeal agreed with my determination on exhaustion of remedies and stated, inter alia:

...cognizant of the clear procedure for redress provided under the Act, the learned Judge refused to admit jurisdiction in determining the application on the basis that where a clear and specific procedure for redress of a grievance is provided, then that procedure should be strictly followed...

“We see no reason to warrant interference with those findings as in our view, they are based on should law and evidence. The record does not reflect any attempt by the appellant to first resolve its grievances against the respondent under the procedure provided for redress under the PPA or *Fair Administrative Action Act*...

It is clear that the appellant could only approach the High Court on appeal against the decision of the National Liason Committee. Though the High Court can exempt a party from following such clear and procedure for redress of grievances before approaching it in the noble interest of justice, the learned Judge rightly found that the appellant had failed to prove there were exceptional circumstances in its case to warrant such exception. Indeed, there are no apparent exceptional circumstances to justify such exception and which exception was also not sought. The High Court’s power to exercise its jurisdiction under Article 165 of *the Constitution* was therefore limited or restricted by statute in this instance as found by the Judge....

Ultimately, we agree with the findings of the learned Judge that the orders sought by the appellant were untenable in the circumstances. The appeal must therefore fail as it is without merit.”

44. See also *Kenya Revenue Authority & 2 Others vs Darasa Investments Ltd* [2018] eKLR, *Patel & 2 Others vs Agriculture and Food Authority & Another* [2024] eKLR Kisumu.
45. For all the above reasons, I find that the applicant has not made out a case for this court to assume jurisdiction and grant leave to apply for Judicial Review orders sought. The application dated 19/3/2025 is hereby found to be prematurely filed before this court.
46. It is hereby dismissed for want of jurisdiction with no orders as to costs.
47. This file is closed.

DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 21ST DAY OF MARCH, 2025

R.E. ABURILI

JUDGE

