



Bolt Operations OU v Transport Licensing Appeals Board; National Transport Authority & 3 others (Interested Parties) (Judicial Review Application E197 of 2023) [2025] KEHC 6009 (KLR) (6 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6009 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW APPLICATION E197 OF 2023**

RE ABURILI, J

MAY 6, 2025

BETWEEN

BOLT OPERATIONS OU APPLICANT

AND

THE TRANSPORT LICENSING APPEALS BOARD RESPONDENT

AND

NATIONAL TRANSPORT AUTHORITY INTERESTED PARTY

ERIC GITUMA MBAABU INTERESTED PARTY

WILBERFOCE NGIGE MARLEY INTERESTED PARTY

JOHN MARK NEDRITU INTERESTED PARTY

JUDGMENT

1. Pursuant to leave granted on 6th December, 2023, the Exparte applicant filed Notice of Motion dated 8th December 2023, seeking Judicial review orders in the following terms:
 - a. An order of certiorari to bring to this court for purposes of quashing, and to be quashed the entirety of proceedings before the Transport Licensing Appeals Board in TLAB Appeal No. E021 of 2023 Eric Gituma Mbaabu and Others v NTSA and Bolt Operations OU.
 - b. An order of prohibition to prohibit the Transport Licensing Appeals Board from hearing, determining or otherwise dealing with the appeal TLAB Appeal No. E021 of 2023 Eric Gituma Mbaabu and Others v NTSA and Bolt Operations OU;
 - c. An order for costs.



2. The Exparte applicants' case is that vide memorandum of appeal dated 7th November, 2023, the 2nd to 4th Interested parties expressed that they were aggrieved by the 1st interested party the National Transport & Safety Authority's decision to renew the license for the exparte applicant or its affiliate entity in October 2023. The 'appeal' was lodged to the Transport Licencing Appeals Board (TLAB), the respondent herein on 6th November, 2023 vide Appeal No. E021 of 2023.
3. The exparte applicant asserts that there was no decision capable of being appealed from to the TLAB hence the latter assumed original jurisdiction reserved for the NTSA.
4. The 2nd to 4th and Interested parties filed a replying affidavit sworn by Wilberforce Marley Ngige on 17th March, 2025 deposing that the application is incompetent and should be dismissed with costs.
5. According to the participating Interested Parties, they are aware that the Applicant herein, Bolt Operations OU, is a transport company based in Estonia, with operations offices within the Republic of Kenya.
6. That under the EU Regulations the Applicant is designated as a Transport Company. Similarly, that the applicant is designated as a Transport Network company within the Republic of Kenya.
7. That the Applicant herein first set- up shop in the country circa 2017 through e-hailing. That it is a matter of public notoriety that the arrival of e-hailing, companies exponentially altered the operational environment of the taxi service sector within the republic of Kenya but that the arrival of these mode of transportation found a legal and regulatory vacuum.
8. That as a result, the industry degenerated into chaos, abuse and impunity on the part of the applicant and other operators who wielded the strength of huge capital backing. That this state of affairs exposed the drivers to toxic operational environment, exploitation and poor working conditions.
9. That following numerous appeals and public memoranda to various authorities, the Cabinet Secretary for Transport, with concurrence of the National Assembly enacted the National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations 2022
10. That the regulations provided minimum compliance requirements for not only transport network companies, but also drivers, motor vehicle owners and passengers, with the ultimate objective of ensuring sanity, order and more importantly safety of both passengers and drivers while using e-hailing taxi services.
11. That it is a mandatory requirement for the Transport companies to comply with the rules before they are issued with an operational license.
12. That following the enactment of the said Regulations, the 1st Interested Party issued the Applicant with an operating license for the year 2022.
13. That the Interested Parties herein were surprised that the issuance of the license was done without any ascertainment by the Respondent that the Applicant had complied with the regulations.
14. That drivers trusted that the applicant would comply with the rules in the course of time and that in 2023, the interested parties were shocked to learn that the applicant's license had been renewed in October and that it was done 'covertly' and with utmost obscurity as the 1st Interested Party never took any steps to ascertain whether the Applicant had complied with the regulations.
15. That upon learning of the intention of the said license renewal, the interested parties raised objections vide letters dated 19th September 2023 and 26th October 2023 (Annexed as WNM 1& 2 respectively).



16. That later, they learnt that the 1st interested party had issued the applicant with operational license without considering the objections by drivers, and so the interested parties proceeded to lodge an appeal against the said renewal before the Transport Licensing Appeals Board.
17. That the said Board as established under section 39 of the National Transport Safety Authority Act has jurisdiction to entertain appeals in respect of decisions of the 1st Interested Party in respect of non-compliance with the regulations passed under the National Transport and Safety Regulations.

Submissions

18. Parties filed written submissions to canvass the application. The Exparte applicant filed written submissions dated 20th February 2025 arguing that the decision of 6th November, 2023 by the TLAB was ultra vires since there was no decision made by the NTSA capable of being appealed from and that under section 38 of the NTSA Act, the appellant must be a person aggrieved by the decision of the Authority on an application for the grant or Variation of a Licence and is aggrieved by the decision of the Authority or the appellant being a licensee is aggrieved by the revocation or suspension of a license.. According to the Exparte applicant, the decision the Board's jurisdiction is strictly appellate and not original. Further, that under section 39 of the Act, the Appeals Board has jurisdiction to, before admitting the appeal to hearing, determine whether the appeal is frivolous or vexatious or discloses no sufficient reason for interfering with the decision of the Authority.
19. That in this case, the appeal lodged did not set out the actual decision of the Authority and that the prayers on appeal are in the nature of seeking to invoke original jurisdiction of the TLAB. Reliance was placed on R V TLAB & 2 Others Exparte MNGN Sacco Ltd [2017] where the Court reiterated the appellate jurisdiction of the TLAB. Further reliance was placed on R v Attorney General & 7 Others Exparte Risen Company Limited [2017] where the Court stated that TLAB can only hear an appeal from a decision made by NTSA and that one cannot invoke the jurisdiction of the Tribunal before a decision is made by NTSA.
20. The 2nd, 3rd and 4th Interested parties filed submissions dated 17th March 2025. They argue that on Jurisdiction of Transport Licensing Appeals Board, and whether the said Jurisdiction was properly invoked, they rely on section 38 of the NTSA Act which provides for the jurisdiction of the TLAB as read with Regulation 23 of the National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations, which provides that any person aggrieved by the decision of the authority under the regulations may appeal to the Board.
21. More specifically, with regard to the decisions of the Authority under the National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations, regulation 23 provides that any person aggrieved by the decision of the authority under the regulations may appeal to the Board. They therefore argue that the Regulation 23 expands the scope of who can appeal to the TLAB to include any person aggrieved by the decision of the Authority and not limited to those three categories of persons stated under section 38 of the Act.
22. The interested parties argue that it is not in dispute that the 1st Interested Party issued the Applicant with an operational license in October 2023, following expiry of the license issued in 2022, pursuant to which the Applicant commenced operations for the year 2023/2024. Further, that it is also not in dispute that the applicants among other persons were aggrieved by the decision of the Respondent.
23. it was also argued that as evident in the annexures, the applicants through their associations raised objections to the issuance of a license to the applicant in the letters dated 19th September 2023 and 26th October 2023.



24. In light of these facts, it is their submission that there can be no better fit of a complaint to be handled by the 1st Respondent tribunal than the one presented by the 2nd to 4th Interested Parties.
25. They also submitted that the applicant has not exhausted alternative dispute resolution mechanisms before approaching Court.
26. They rely on the Court of Appeals dicta in the cases of Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others [2015] KECA 304 (KLR) and Peter Ngoge vs Speaker of National Assembly [2007]e KLR, where the Court affirmed the competence of various dispute resolution mechanisms to deal with matters over whose jurisdiction they are assigned by law. They argue that the applicant should first have raised the question of jurisdiction before the TLAB before coming to this court to challenge that jurisdiction.
27. It was also submitted that there was no complete decision or action laid before this court that demonstrates unfairness, illegality, irrationality or conduct that is ultra vires and that instead, this court was being invited to usurp the merit jurisdiction of the Tribunal and to make a finding on the merits and competence of the matters before it.
28. The 2nd to 4th interested parties argue that the applicants are inviting this court to make a determination as to whether the suit before the Tribunal is competent for compliance with the regulations and provisions of the *National Transport and Safety Authority Act*, which is a merit issue hence this court has no jurisdiction to determine that issue.
29. On what orders this court should make, the 2nd to 4th interested parties urge this court to dismiss the application with costs

Analysis and Determination

30. I have considered the judicial review application, the grounds, verifying affidavit and the response by the 2nd to 4th Interested parties. I have also considered the submissions filed by each of the participating parties and the statutory and caselaw cited.
31. The main issues for determination are:
 - d. Whether the statutory mandate of the NTSA to licence transport operators is a ‘decision’ Capable of being appealed from; put differently, whether there was any decision made by NTSA IN October 2023, capable of being appealed from
 - e. Whether the TLAB had jurisdiction to receive and consider an ‘appeal’ by the 2nd to 4th Interested parties, in the absence of a decision made by the 1st interested party.
 - f. Whether the applicants had another remedy to exhaust before approaching this Court.
 - g. What orders should this court make and who should bear costs of the application
32. The applicant laments that there was no decision made by the Authority, capable of being appealed from to the Transport Licensing Appeals Board (TLAB) and that the Appeals Board has no original jurisdiction to hear an appeal directly from the operators without the operators first approaching the Authority. That the Appeals Board only hears appeals from decisions of the Authority. That in this case, there was no decision hence the Appeals Board had no appeal before it for consideration.
33. The 2nd to 4th interested parties on the other hand contend that they were aggrieved by the decision by NTSA to issue a license the applicant and that they were therefore justified in appealing to the TLAB.



34. As to whether the statutory mandate of the NTSA to licence transport operators is a ‘decision which in itself is appealable to the Appeals Board,’ differently put, whether the renewal of an operator’s license by the National Transport and Safety Authority (NTSA) amounts to a “decision” capable of being appealed against to the Transport Licensing Appeals Board (TLAB) by an interested party (i.e., a third party who is not the licensee) and in this case the *exparte* applicant, the answer to this question can only be found in the legal framework.
35. Section 2 of the *Fair Administrative Action Act* defines a ‘decision’ as:
- “decision” means any administrative or quasi-judicial decision made, proposed to be made, or required to be made, as the case may be;
36. The Act further in the same section 2 defines “failure”, in relation to the taking of a decision, to include a refusal to take the decision.
37. Section 39 of the *National Transport and Safety Authority Act* (Cap. 404) establishes the Transport Licensing Appeals Board and outlines its composition, functions, and procedural aspects. While the Act does not provide a specific legal definition of the term “decision,” it is understood in this context to refer to formal determinations made by the National Transport and Safety Authority (NTSA) regarding matters such as the grant, variation, suspension or revocation of licenses.
38. Section 38 of the Act postulates that a person who is aggrieved by the NTSA’s decision on an application, objection or license status may appeal to the Appeals Board. This implies that a “decision” encompasses any official action taken by the NTSA that affects an individual’s or entity’s rights or obligations under the Act.
39. In judicial interpretations, a “decision” is considered a formal judgment or ruling made by a competent authority. For instance, in *Republic v Director, National Transport & Safety Authority* [2021] KEHC 12721 (KLR), the court emphasized that statutory powers must be exercised reasonably and not arbitrarily, highlighting the importance of formal decisions in administrative processes.
40. Therefore, under Section 39, a “decision” refers to any formal determination made by the NTSA that can be appealed to the Transport Licensing Appeals Board, encompassing actions related to licensing and regulatory matters within the transport sector.
41. On the jurisdiction of the TLAB, Section 39(5) of the National Transport and Safety Act provides that:
- “An appeal shall lie to the Board from any decision of the Authority.”
42. This provision vests appellate jurisdiction in the TLAB only over “decisions” made by the NTSA.
43. A “decision” must therefore be specific, deliberate and determinative of a dispute or application. It must also be adverse to the party seeking to appeal.
44. Section 2 of the *Fair Administrative Action Act*, 2015 must be read together with Sections 4 and 5 which require that any administrative action that adversely affects rights must be preceded by notice, reasons and an opportunity to be heard. This implies that an appealable “decision” must arise from a process where an individual’s interests were considered and adversely affected.
45. A license renewal by NTSA is a positive administrative act mandated by the statute undertaken BY NTSA at the request of the licensee, and in this case, the *exparte* applicant, and is issued based on satisfaction of the statutory conditions. Therefore, unless parties are heard on an objection to licensing



or refusal to issue a license, the act of issuing a licence to a licensee is not inherently an adverse or contested determination.

46. It follows, therefore, that if an interested third party (such as a competitor or member of the public) and therefore, the 2nd to 4th interested parties hereto believed that the ex parte applicant licensee did not meet the renewal conditions, the proper procedure was to lodge a complaint or objection with the NTSA, serve the complaint upon the alleged offending licensee and allow the NTSA to consider and determine the complaint after hearing both parties. Only after this process results in a determination by NTSA.e.g., a decision to ignore or overrule the objection, would there be a “decision” capable of being appealed. This process, in my humble view, maintains the proper jurisdictional order of the NTSA which has original jurisdiction to hear and determine any disputes or objections, while the TLAB has appellate jurisdiction only.
47. In *Republic v NTSA & Another ex parte Munyi* [2020] eKLR, the High Court emphasized that only determinations made by NTSA after evaluating specific facts or disputes are subject to appeal or review.
48. In *Migori County Transport Sacco Ltd v NTSA* [2021] eKLR, the court found that procedural fairness, including a hearing and decision, is required before a party can appeal to TLAB.
49. In the instant case, the 2nd to 4th interested parties and others, as an Organisation of online drivers wrote to NTSA on 26th October, 2023 claiming that they were opposed to the renewal of a licence in favour of the ex parte applicant because of its violation of Transport Network Companies, Drivers, Passengers and vehicle Owners Regulations, 2022.
50. That objection also referred to their earlier letter dated 24th October 2023 in which car drivers and owners highlighted several issues on alleged noncompliance by the ex parte applicant to the Referenced Regulations. The letters in question or objections were never copied to or served upon the ex parte applicant to respond thereto.
51. It is therefore surprising that the Transport Licencing Appeals Board upon receiving the Appeal, assumed jurisdiction to hear the appeal by issuing a Notice of hearing dated 15th November 2023 and 30th November, 2023 respectively, calling upon the 2nd to 4th Interested parties and the ex parte applicant’s counsel to appear for hearing of Appeal case No. TLAB /E021/2023 at Mombasa Law Courts. This was being done without any evidence that there was any decision made NTSA, capable of being appealed from to the Appeals Board.
52. I reiterate that there is no decision and none was annexed to the appeal and neither have the 2nd to 4th interested parties filed into this Court in their reply, any decision which they claim was made in October 2023 by NTSA and which they were challenging before the Appeals Board.
53. It is also not evident whether the objection was made after or before renewal of the licence in favour of the ex parte applicant as the appeal states that the objection was to the decision made in October 2023 while the objection letter does not state when the renewal of the licence was made by NTSA.
54. Assuming that the objection came after the licence had been renewed, it was expected that the issue would then be an application to the NTSA for revocation of the licence and not an objection to renewal. On the other hand, if the objection was against renewal, it was important to have the aggrieved persons serve the ex parte applicant with the complaint before such renewal and seek a hearing before the NTSA. In both instances, both parties deserved a hearing before a decision could be made.
55. Thus, in my humble view, the renewal of an operator’s license, absent any prior formal objection served on the licensee for a hearing, does not constitute a “decision” of the NTSA that is appealable to the TLAB by an interested part, noting that issuance of licences is the statutory mandate of NTSA.



56. Secondly, the TLAB cannot exercise original jurisdiction or become the first forum to hear complaints about whether a license should have been renewed. An aggrieved party must first engage NTSA's internal mechanisms. The absence of such a prior determination means TLAB lacks jurisdiction. If the interested party wishes to challenge the renewal, they must first lodge a complaint with NTSA for consideration inter partes, supported by evidence of non-compliance. If NTSA declines to act or issues a decision unsatisfactory to the complainant, an appeal to the TLAB may then be properly instituted.
57. As to whether the Transport Licensing Appeals Board has Jurisdiction to hear an appeal against a renewal of a License by the NTSA, the exparte applicant contests the jurisdiction of the TLAB, arguing that there was no adverse decision by the NTSA capable of being appealed, and therefore the TLAB is being improperly invited to exercise original jurisdiction, which it does not possess.
58. I agree wholly with the above position by the applicant and reiterate that Section 4(1) of the of the *National Transport and Safety Authority Act* (NTSA Act), 2012 establishes the NTSA as the regulatory body mandated with licensing, registering, and regulating operators. Section 39(1) of the Act, on the other hand, establishes the Transport Licensing Appeals Board (TLAB). Under Section 39(5), "An appeal shall lie to the Board from any decision of the Authority." This provision limits the jurisdiction of the TLAB to hearing appeals such that it can only act after a decision has been made by the NTSA.
59. Additionally, section 4(3) of the *Fair Administrative Action Act*, 2015 requires that any administrative action that affects legal rights or interests must be preceded by adequate notice, disclosure of reasons, and an opportunity to be heard. Section 9(2) of the same Act on the other hand provides that:
- "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 appeal or review and all remedies available under any other written law are first exhausted."
60. This provision reinforces the doctrine that there must be exhaustion of administrative remedies before appeal or review.
61. I reiterate that a renewal of a license by the NTSA is an affirmative administrative act that grants continued authority to operate. It is not, in and of itself, an adverse decision against the interested parties appealing before the Appeals Board. As such, there is no "decision" within the meaning of Section 39(5) of the NTSA Act that can be said to have been made against the interested parties, for the Appeals Board to be vested with appellate jurisdiction to entertain an appeal.
62. Further, the NTSA is not shown to have received or determined any objection or complaint raised by the appellant before the license renewal in favour of the exparte applicant.
63. Back to the Jurisdiction of the TLAB, the TLAB, being a statutory body, must act within the confines of its enabling statute. It does not have original jurisdiction to consider matters not first determined by the NTSA. The Board's function is appellate, and it cannot substitute itself for the NTSA by reviewing facts or legality of a license renewal unless and until NTSA has made a specific decision on a dispute or complaint.
64. This interpretation is consistent with the decision in *Republic v National Transport & Safety Authority & Another Ex parte Munyi* [2020] eKLR, where the High Court emphasized that the NTSA must first render a decision before it can be subject to review or appeal.
65. If the Interested parties herein believed the applicant did not meet the conditions for renewal, the appropriate procedure would have been to lodge an objection or complaint with the NTSA, prompting a formal review and hearing with the applicant being accorded an opportunity to be heard



- as well. If the NTSA then proceeded to ignore or reject the objection, such a decision (express or implied) would be appealable to the TLAB. That is when procedural fairness would have been achieved as required by law.
66. The other challenge, however, for the 2nd to 4th interested parties is whether they are the persons envisaged in section 38 of the Act as argued by their counsel. This aspect of these proceedings was not argued exhaustively by both parties and because it is an issue that has been raised in other similar proceedings pending before this court, in a substantive way, I will reserve my finding.
67. It is therefore my finding and holding that the Transport Licensing Appeals Board lacks jurisdiction to hear an appeal where there is no prior decision of the NTSA made pursuant to a complaint or objection and that in this case, there was no decision and or appeal capable of being determined on merit by the Appeals Board. I further hold that the NTSA's act of renewing a license absent evidence of any pending objection cannot be construed as a "decision" appealable under Section 39(5) of the NTSA Act.
68. Accordingly, the interested party's objection to the jurisdiction of the TLAB is well-founded.
69. The 2nd to 4th interested have in their response and submissions used the same weapon used by the applicant to argue that the applicant did not exhaust the internal mechanisms before TLAB by raising a preliminary objection to jurisdiction of TLAB before approaching this Court.
70. I have considered the argument and I am not persuaded that it holds any substance. The fact that the TLAB assumed jurisdiction of the dispute that it did not have jurisdiction to hear and determine is, in itself, a ground for the applicant to seek judicial review. The applicant cannot be told to wait until a decision is made by a body that has assumed jurisdiction it is devoid of, for that body to determine whether it has jurisdiction, before the applicant can challenge that jurisdiction. Furthermore, as stated above, the TLAB had already assumed the jurisdiction over the appeal and was ready to hear the appeal on its merits. Jurisdiction is everything without which a court of law acts in vain.
71. I therefore find that there was no other mechanism for resolution of the dispute for the applicant herein who was challenging the jurisdiction of TLAB and that this matter is properly before this Court. I further find that the applicant did not have to wait until the TLAB made any decision in the appeal which it did not have jurisdiction to hear and determine before the applicant could challenge the jurisdiction of the TLAB.
72. In the end, I find that the application by the applicant dated 8th December, 2023 is merited. I allow it as prayed and make the following orders:
- a. An order of certiorari is hereby issued to bring to this court for purposes of quashing, and to be quashed the entire proceedings in the name of an appeal before the Transport Licensing Appeals Board in TLAB Appeal No. E021 of 2023 Eric Gituma Mbaabu and Others v NTSA and Bolt Operations OU.
 - b. An order of prohibition is hereby issued prohibiting the Transport Licensing Appeals Board from hearing, determining or otherwise dealing with the appeal TLAB Appeal No. E021 of 2023 Eric Gituma Mbaabu and Others v NTSA and Bolt Operations OU;
 - c. Each party to bear their own costs of the application.
73. This file is closed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF MAY, 2025

R.E. ABURILI



JUDGE

