



Kiarie v National Transport & Safety Authority & 4 others (Judicial Review E005 of 2022) [2024] KEHC 6337 (KLR) (17 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6337 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
JUDICIAL REVIEW E005 OF 2022**

A MSHILA, J

MAY 17, 2024

BETWEEN

SIMON THUO KIARIE APPLICANT

AND

NATIONAL TRANSPORT & SAFETY AUTHORITY 1ST RESPONDENT

STARLINE SHUTTLE LIMITED 2ND RESPONDENT

THE TRAFFIC COMMANDANT NAIROBI 3RD RESPONDENT

**THE COUNTY TRAFFIC COMMANDANT KIAMBU COUNTY 4TH
RESPONDENT**

THE HON. ATTORNEY GENERAL 5TH RESPONDENT

RULING

Background

1. The Applicant filed the application under a Certificate of Urgency and Notice of Motion on the 28th March, 2022 premised under the provisions of Section 4(3) (a) (b) (c) (d) (e) (f) & (g) 7, 8,10 &11 of the *Fair Administrative Actions Act* No.4 of 2015 Section 4(1)(e) of the *National Transport and Safety Authority Act* No.33 of 2012 Section 10 of the *Public Officer Ethic Act* Cap 183 Laws of Kenya and all other enabling provisions of the law. The Applicant sought an order for stay of the revocation of the decision to revoke the Applicant’s Licence and Drivers Badge; the Applicant now seeks the following orders:-
 - a. Spent
 - b. That a temporary interdict do issue that pending the hearing and determination of this application the 3rd and 4th Respondents facilitate the Applicant operate Motor Vehicle



Registration No. KBC 693Z under the suspended/revoked “RSL” license No. B206673A and/or PSV Drivers badge both of which should expire on 07/02/2023.

- c. That the decision/action of the 1st and/or 2nd respondents herein of suspending/revoking the Road Service License (RSL) for Motor Vehicle Registration No. KBC 693Z and drivers badge be set aside and the matter be remitted to the administrators with directions.
 - i. That the Road Service License (RSL) for Motor Vehicle Registration No. KBC 693Z and drivers badge for the applicant be forthwith reinstated.
 - ii. That the 2nd respondent who is an agent of the NTSA (the 1st respondent herein) be reviewed as to its capacity, propriety and legality.
 - d. That the 1st, 2nd and/or 5th Respondents jointly or in the alternative pay to the Applicant herein aggravated damages included in General damages for their infringement/denial/violation of the Applicants constitutional and/or legal right to a fair Administrative Action that is expeditious, efficient, lawful, reasonable and procedurally fair under Article 47 and/or Section 4 of the *Fair Administrative Actions Act* No. 4 of 2015, the rule of law under Article 10(2) (a) of the *Constitution* of Kenya 2010.
 - e. That the 1st and 2nd Respondent pays to the Applicant special damages of Kshs. 3,500/= (albeit contestable) for loss of user on daily basis of the motor vehicle registration no. KBC 693Z from 20/03/2022 to the time the impugned action is remedied.
 - f. That the 1st and the 2nd Respondent pays to the Applicant exemplary damages to vindicate the rule of law.
 - g. That the 3rd, 4th & 5th the Respondents jointly on in the alternative ensure compliance.
2. The applicant is based on the grounds stated on the face of the application.
 3. Simon Thuo Kiarie swore his supporting affidavit. He deposed that on 20/3/2022 the 1st and/or the 2nd Respondents without notice arbitrarily suspended and/or revoked his Road Service License. He alleged violation of his right to Fair Administrative Action as well as his right to equal protection and benefit of the law. For those reasons the applicant urged this Honorable Court to allow the Notice of Motion dated the 28th March, 2022 and to grant the prayers sought.
 4. In response to the application the 1st Respondent raised a Preliminary Objection dated 27th October, 2023 on the following grounds;-
 - a. That the applicant has not exhausted the internal appeal mechanism to the Transport Licensing Appeal Board established under Section 38 and 39 of the *National Transport and Safety Authority Act*.
 - b. That the applicant has not made any application to be exempted from such exhaustion of internal appeal mechanism
 5. The court was urged to dismiss the application herein with costs to the 1st respondent.
 6. Simon Thuo Kiarie filed his response to the Preliminary Objection dated 27/10/2023. He deposed that being a person vis a vis a body corporate he has recourse in a court of law as he would be a stranger in the Transport Licensing Appeals Board. The Court was urged to find that it has jurisdiction to hear and determine the instant application and to dismiss the Preliminary Objection with costs to the applicant.
 7. The application was canvassed by way of written submissions.



Applicant's Submissions

8. The Applicant submits that the 2nd Respondent acting as an agent of the 1st respondent arbitrarily withdrew his motor vehicle Road Service License. That his enquiry was met with rude remarks and no response was given to him upon his oral request. He submitted that the 1st and/or the 2nd Respondents have denied him an opportunity to acquire and own a motor vehicle as he was forced to sell off his motor vehicle. He urged the court to find that he has suffered aggravated damages and that the respondents should be ordered to pay punitive exemplary damages.

1st Respondent's Submissions

9. The 1st Respondent submits that the Court does not have jurisdiction to handle the matter. Reliance was placed in the case of *Owners of Motor Vessels 'Lilian' vs Caltex Oil (K) Ltd* (1989) KLR. The applicant being a licensee, if aggrieved by the decision by the 1st Respondent should file an appeal before the Transport Licensing Appeals Board. Reliance was placed in the case of *Safe Rider Vehicle Technologies & 2 others vs National Transport & Safety Authority (NTSA)* (2017) eKLR. The application was said to be an abuse of the court process as such the Court was urged to dismiss the same for want of jurisdiction.
10. Further, that the jurisdiction of this court has been prematurely invoked; that the first port of call is the Transport Licensing Appeals Board and that the Applicant had not presented his grievance to this Board and had therefore not exhausted the internal appeals mechanism.
11. For those reasons the 1st Respondent's prayer is that the Applicant's Notice of Motion be found to be premature and the same ought to be struck out with costs.

Issues For Determination

12. After considering the application and the rival submissions by the parties, this Court has framed the following issues for determination;
 - i. Whether the application dated 28th March, 2022 is premature as the Applicant has not exhausted the dispute resolution mechanisms provided for by statute;
 - ii. Whether the NTSA's decision to revoke the Applicants RSL Licence No.B206673A and /or PSV Drivers badge is illegal.

Analysis

Whether the application dated 28th March, 2022 is premature as the Applicant has not exhausted the dispute resolution mechanisms provided for by statute;

13. In this instance, the applicable law is found at Section 38 (1)(c) of the *National Transport and Safety Authority Act*; this section bestows on the Authority the right to resolve disputes; the section reads as follows;

“Pursuant to Article 88 (4) (e) of the *Constitution*, the commission shall be responsible for the settlement of electoral disputes, including disputes relating or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results.”

14. The 1st Respondent's objection was that the applicant failed to follow this procedure; instead of first directing his complaint to the Appeals Board in accordance with the law, the Applicant instead



- proceeded to institute judicial review proceedings in the High Court being this instant application; it was the 1st Respondent's contention that these proceedings were premature and should therefore be dismissed;
15. This Court states that judicial review proceedings are discretionary and should only be issued where there is no other alternative remedy that is more efficient or suitable; in essence, although the availability of other remedies is no bar to seeking the judicial review remedies, it should however be sought as a matter of last resort.
 16. In this instance the Applicant alleges that the 1st and/or 2nd Respondents made adverse orders against the rules of fairness and natural justice; and contends that pursuant to Article 165 (6) of the Constitution, this court has a duty to determine whether this body acted properly and within its powers;
 17. This court reiterates that judicial review remedies are discretionary and the discretion of the court must be exercised judicially on the basis of evidence and sound legal principles;
 18. Section 107 of the Evidence Act provides;

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
 19. Section 38 of the NTSA Act bestows a right upon the Applicant to lodge his complaint thereat; it is this courts considered view that the Applicant being aggrieved by the Respondents decision ought to have referred his complaint to the first port of call as provided under Section 38 of the National Transport and Safety Authority Act.
 20. There is no evidence placed before this court by the applicant to demonstrate that he had lodged a complaint with the Appeals Board relating to the revoked RSL Licence No.B206673A and /or PSV Drivers badge; there is also no evidence to demonstrate that the 1st Respondent's Appellate Board failed to allocate him with a case number; and that the Appeals Board failed to give him audience in the form of a hearing relating to the revocation ;
 21. The Applicant must demonstrate that there was no more appropriate remedy and that he has exhausted the available dispute resolution mechanisms before lodging his application before this court; this court makes reference to the case of Jaldesa Tuke Dabelo vs IEBC & Anor [2015] eKLR the Court of Appeal stated as follows;

“It has often been stated that rules of procedure are handmaidens of justice: where there is clear procedure for redress of any grievance prescribed by an Act of Parliament, that procedure should be strictly followed ...”
 22. In the case of Republic vs Susan Kihika & 2 Others Exparte George Mwaura Njenga [2014] eKLR; where the jurisdiction of the court was challenged by the Respondents as the dispute resolution mechanism set out in the Political Parties Act had not been fully exhausted; this court upheld the Preliminary Objection and struck out the application for having been brought prematurely.
 23. The Applicant being aggrieved by the decision in revoking his RSL Licence No.B206673A and /or PSV Drivers badge should have first utilized and exhausted the statutory mandated process of the 1st Respondent's before filing the instant application;
 24. In light of the above, this court finds the application to be premature.



Whether the 1st Respondent's decision to revoke the RSL Licence No. B206673A and /or PSV Drivers badge was illegal

25. The right to be heard is anchored in statute; Article 47 of the *Constitution* 2010 provides for procedural fairness; that the ingredient of fairness is the extending of an opportunity to a person to be heard; at Article 47(2) it provides that the decision maker must give written reasons to the person affected by the decision as to why the decision was rendered;
26. The decision-making process can be rendered illegal and unlawful for failure to comply with Sections 4(3)(a)(b)(e): 4(4)(a)(b) and (c) of the *Fair Administrative Action Act*; that prior and adequate notice must be given to a person likely to be affected by the decision; that failure to comply can render the decision unlawful;
27. At this juncture this court having found that the Applicant had not exhausted the dispute resolution mechanisms provided by statute and the application being found to be premature; it therefore follows that this court has no jurisdiction to entertain the application any further; this court will not belabour itself in addressing this issue any further.

Findings And Determination

28. For the reasons stated above this court makes the following findings;
- i. This Court finds that this is not a suitable case in which this court should exercise its discretion in granting the orders sought by the Applicant; the proper forum and the first port of call ought to have been the 1st Respondent's Transport Licensing Appeal Board.
 - ii. Accordingly, the Applicant's Notice of Motion dated 28th March, 2022 seeking the orders of fair administrative action is found to be premature and is hereby struck out.
 - iii. Each party shall bear their own costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 17TH DAY MAY, 2024.

A. MSHILA

JUDGE

In the presence of;

Mourice – C/A

Ruling read in the absence of parties.

