



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

PETITION NO. 94 OF 2016

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOM OF THE INDIVIDUAL UNDER
CHAPTER 4 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF ARTICLE 27 AND ARTICLE 40 OF THE
CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA
(PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS)**

PRACTICE AND PROCEDURE RULES, 2013.

AND

**IN THE MATTER OF THE EVICTION OF PUBLIC SERVICE
VEHICLES OPERATED BY MEMBERS OF THE PETITIONER FROM MFANGANO STREET**

BETWEEN

TRANSAFARIS SACCO LIMITED.....APPLICANT

AND

NAIROBI COUNTY GOVERNMENT.....RESPONDENT

SIMBA COUNTYLINK LIMITED.....INTERESTED PARTY

JUDGEMENT

Introduction

1. The petitioner herein, **Transafaris SACCO Limited**, is described as a Savings and Credit Co-

operative Society, registered as such under the ***Co-operative Societies Act*** Chapter 490 of the Laws of Kenya and duly licenced by the National Transport and Safety Authority (NTSA) and other relevant Government Agencies to operate *matatu* services to various destinations within the Country.

2. The Respondent, **Nairobi County Government**, is described in the petition as a County Government established as such Article 176 of the Constitution with the mandate (under schedule 4 of the Constitution) to *inter alia* regulate county transport, including traffic and parking.

3. The Interested Party, **Simba Countylink Limited**, is a Savings and Credit Co-operative Society, registered as such under the ***Co-operative Societies Act***, Chapter 490 of the Laws of Kenya.

4. It was pleaded by the petitioner that by a letter dated 11th January, 2016, the Petitioner submitted an application to the Nairobi County Government (“the County”) wherein it requested to be allotted a loading zone and/or a picking and dropping slot along Mfangano Street, Nairobi and that the County, after conducting the requisite due diligence (and having been satisfied that indeed the said slot was available for allocation) allotted to the petitioner a picking and dropping slot by a letter dated 14th January, 2016 and instructed the Chief Officer-Security, Compliance & Disaster Management to ensure orderly operations.

5. According to the petitioner, in granting the said slot, the County through its letter dated 14th January, 2016 made it clear to the petitioner that a loading zone was not available for allotment and that it could only be allotted a picking and dropping slot pursuant to the provisions of sections 12 and 13 of the ***Use of Matatu Termini by Law of 2007*** on a “first come first served basis.” Subsequently, the Petitioner established a place of business along the aforesaid street by acquiring an office and employing its staff and averred that it had been paying the requisite parking and other charges to the county as required by the said bylaws.

6. The petitioner however averred that in blatant disregard of the express provisions of the law and its own letter dated 14th January, 2016, the county clandestinely and surreptitiously granted to the interested party a loading zone on the same slot that it had allotted to the petitioner and that the respondent and some agents of the interested party proceeded to issue a verbal eviction order directing the petitioner to vacate the said slot by close of business on 10th March 2016 or face unspecified consequences.

7. It was the petitioner’s case that this action was discriminatory for the reason that:

a. It was the first entity to make the said application to the respondent for the allotment of the said slot.

b. The respondent made it clear to the petitioner that the said slot was not available for allotment to any person as a loading zone and that the same could only be allotted as a picking and dropping slot on a first come first served basis.

c. Contrary to its earlier directive, the respondent allotted the same slot to the interested party without involving the petitioner who had been legally allotted the said slot.

8. The Petitioner contended that its fundamental rights as set out in the Constitution had been infringed on and the High Court had power to grant such remedy as stipulated under the Constitution of Kenya.

9. The said averments were supported by a supporting affidavit by which the said pleadings were verified.

10. Accordingly, the petitioner sought the following orders:

1. A declaration that the Petitioner’s right to equal protection of law as guaranteed Article 27 of the Constitution 2010 has been contravened by the County Government of Nairobi.

2. A declaration that the County Government of Nairobi's decision to constructively evict the petitioner from the picking and dropping zones along Mfangano Street and proceeding to allocate the same slot of Simba County Link Limited is discriminatory and contravenes the petitioner's right to equal protection of the law as guaranteed by the Constitution 2010.

3. An order be granted to restrain the respondent or any of their agents, employees, proxies or person acting under their instructions or any person/agency whatsoever from harassing and/or evicting public service vehicles belonging to the members of the petitioner from Mfangano Street.

4. That honourable court do issue such orders and give such directions as it may deem fit to meet the ends of justice.

5. The costs of the petition be awarded to the petitioner.

11. The petition was not opposed as the Respondent only responded to the application for injunction but not the petition itself.

12. Similarly apart from the 2nd interested party herein, **Rev. John Mbugua**, none of the other parties filed any submissions. In his submissions, the 2nd interested party urged this Court to affirm its decision in **Judicial Review No. 111 of 2016 – Republic vs. Nairobi City County Government & Others Ex Parte South B Matatu Owners Sacco**. In that case, this Court issued an order of *mandamus* directed to the Respondent herein compelling it either by itself or in conjunction with the Kenya Police and the National Transport and Safety Authority to take the necessary legal steps geared towards directing the operators plying South B route to carry out operations in the Hakati Road Terminus Near Country Bus Station and not from the stage alongside Gedi Street located between Gill House and Agro House and Afya Centre.

13. I agree that based on the material placed before me in this petition, the petitioner has not satisfied me that the reliefs sought herein ought to be granted as the petition was not prosecuted by the petitioner.

14. Accordingly, whereas I decline to grant the orders sought herein I reiterate the orders issued in the said Judicial Review No. 111 of 2016 as reproduced hereinabove.

15. There will be no order as to costs.

16. Orders accordingly.

Dated at Nairobi this 23rd day of January, 2017

G V ODUNGA

JUDGE

Delivered in the presence of:

Rev. Mbugua, the 2nd interested party

CA Mwangi