



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO.37 OF 2012**

**BETWEEN**

**KENYA TAXI CABS ASSOCIATION (*suing through its registered officials*)**

**PETER WAWERU MBURU.....1<sup>ST</sup> PETITIONER**

**LABAN MAINA.....2<sup>ND</sup> PETITIONER**

**PETER KURIA WANJAMA.....3<sup>RD</sup> PETITIONER**

**LAWRENCE MAINA KIMANI.....4<sup>TH</sup> PETITIONER**

**JOB NIOK.....5<sup>TH</sup> PETITIONER**

**AND**

**THE CITY COUNCIL OF NAIROBI.....RESPONDENT**

**RULING**

1. The background to the Application dated 18<sup>th</sup> March 2015 is that on 7<sup>th</sup> March 2015, this Court adopted a Consent Order crafted by the Parties in the following terms;

***“1. That Application dated 25<sup>th</sup> February 2014 is stood over for hearing on 4<sup>th</sup> April 2014.***

***2. That Respondents and Interested Party to file their responses within 7 days and Petitioners to file a rejoinder within 7 days for hearing on 4<sup>th</sup> April 2014.***

***3. That in the interim an order do issue pending hearing inter partes, in the following terms;***

***(i) That the Respondents be restrained from charging or levying the daily car park fee/seasonal car park fee from the members of the Petitioner Society who have paid and produce evidence of payment of the 2014 Single Business Permit for Taxi Operations with effect from 11<sup>th</sup> March 2014.***

***(ii) The Petitioner’s advocates shall furnish the Respondent’s advocates with a list of the members by Monday 10<sup>th</sup> March 2014 at 12 noon.***

4. ***That any party is at liberty to apply.***”

2. The present complaint by the Petitioners is that despite the above Consent Order, on 18<sup>th</sup> March 2015, the Respondent’s agents and/or employees clamped some taxi motor vehicles that were protected by the said order on the ground that the owners had not obtained Single Business Permits for the year 2014. They were also allegedly forced to pay huge amounts of money for the clamps to be removed.

3. In his Affidavit sworn on 18<sup>th</sup> March 2015, Peter Waweru Mburu, the 1<sup>st</sup> Petitioner, therefore deponed in addition that the Association he represents tried to impress upon the Respondent ***“to accept payments for the Single Business Permit ... but the Respondent has blatantly refused to accede to this request.”*** That it is therefore imperative that this Court should estop the Respondent from levying daily car park fees/seasonal car park fees on the members of the Association. The specific prayers now sought are;

“(1) ....

***(2) That the Respondent be restrained from charging daily parking fees to the members of the Petitioner pending the hearing and determination of this Application.***

***(3) That the Respondent be compelled to issue Single Business Permits to the members of the Petitioners who are willing and ready to pay the fees chargeable for the same, and to renew the said on an annual basis as required by its by-laws.***

***(4) That any money that has already been paid to the Respondent for the removal of the clamps of the Petitioner’s member’s vehicles be utilized as part of the Single Business Permit or in the alternative, the money be refunded to the Persons who paid the same.***

***(5) That the Respondents bear the cost of this Application.”***

4. In response, the Respondent filed a Replying Affidavit on 25<sup>th</sup> March 2015 sworn by Ms. Betty Kerubo Nyambati.

5. In the said Affidavit, Ms. Nyambati deponed that the Petitioners had by a Petition herein filed on 7<sup>th</sup> February 2012 challenged the constitutionality of the **Nairobi County Government Finance Act, 2013** on increased parking fees etc. They later sought leave to amend the Petition but have neither done so nor set it down for hearing. Instead they filed an Application on 25<sup>th</sup> February 2014 seeking orders to restrain the Respondent from charging and/or levying daily parking fees from the Association’s members who had paid for a years’ Single Business Permit. That a Consent Order in the terms above was recorded and in compliance thereof, the Association provided a list of 734 members who had allegedly paid the 2014 Single Business Permit but on a scrutiny of the list, the Respondent discovered that only 8 members had actually done so. That being the case, it was her deposition that all the other members were not covered by the Order hence the decision to clamp their vehicles.

6. Ms. Nyambati therefore urged the Court to dismiss the Application as it would be unconscionable, unfair and unacceptable that the Association’s members would expect that the Respondent should allow them to conduct a business without a permit and also not pay parking fees.

7. I have reflected upon the above issues and I must express my displeasure at the fact that it is obvious that the Petitioners have no intention of prosecuting their Petition and are instead intent on pursuing favourable interim orders.

8. Secondly, the Consent Order recorded 7<sup>th</sup> March 2014 is clear and requires no more than an interpretation based on its terms. Order No.(i) only covered members of the Association ***“who have paid and produce evidence of payment of the 2014 Single Business Permit for Taxi operations with effect from 11<sup>th</sup> March 2014”***. The said order was to be supplemented by order No.(ii) regarding the list of members of the Association who had paid for the Permit and not merely a list of all members who had not

done so.

9. According to the Respondent, and there is no answer to its contention, only 8 members of the association had met the requirements of order No.(i) and that the rest were outside its protection.

10. I have no option but to agree with Ms. Nyambati because the presumption by the Petitioners that the Consent Order covered all its members is both blatantly a lie and erroneous but is also an attempt at abusing the Court order to cover persons who were never intended to be covered by it.

11. Thirdly, the Application before me is an attempt at amending the Consent Order without applying the principle that a Consent Order is akin to a contract and can only be vitiated by either party to it in the same way that a normal contract would be vitiated – See **Kenya Commercial Bank Ltd vs Benjoh Amalgamated Ltd & Anor, Nbi C.A No.276/1997.**

12. Lastly, because the present proceedings have been before this Court for far too long, I shall make the following orders;

- i. Because the Application dated 18<sup>th</sup> March 2015 is an abuse of Court process, it is hereby struck off.
- ii. The Petition dated 7<sup>th</sup> February 2012 shall hereby be set down for hearing on a priority basis.
- iii. Pending the hearing of the Petition, Parties shall strictly comply and abide by the terms of the Consent Order dated 7<sup>th</sup> March 2014.
- iv. Cost of the present Application shall be paid by the Petitioners.

13. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF SEPTEMBER, 2015**

**ISAAC LENAOLA**

**JUDGE**

**In the presence of:**

Kazungu – Court clerk

Miss Lunyolo holding brief for Miss Nyambati for Respondent

Mr. Obare holding brief for Mr. Mungai for Petitioner

**Order**

Ruling duly delivered.

**ISAAC LENAOLA**

**JUDGE**

**Further Order**

Mention on 17/9/2015

**ISAAC LENAOLA**

**JUDGE**