



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc Appli 336 of 2009

KENYA BUS SERVICE MANAGEMENT LTD.....APPLICANT

versus

TRANSPORT LICENSING BOARD NAIROBI AREA.....1ST RESPONDENT

HEADQUARTERS POLICE STATION (DTO).....2ND RESPONDENT

COMMISSIONER OF POLICE.....3RD RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....4TH RESPONDENT

DIRECTOR OF MOTOR VEHICLE INSPECTION.....5TH RESPONDENT

CITY COUNCIL OF NAIROBI.....6TH RESPONDENT

RULING

The Chamber Summons dated 11th June 2009 was filed by Kenya Bus Services KBS Management Ltd. against the Transport Licensing Board (TLB) Nairobi Area, Milimani, Traffic Headquarters Police Station DTO, Commissioner of Police, The Hon the Attorney General, Director of Motor Vehicles Inspection and City Council of Nairobi in which it seeks leave to commence Judicial Review Proceedings for the following orders:-

- 2) That leave be granted to seek an order of prohibition to issue prohibiting the Respondents or any person acting under their behest from demanding, directing ordering or insisting upon the Applicant's franchised buses of 29 seater passenger capacity or such higher capacity to cease operating within the Nairobi City Council Central Business District via Kencom Bus stage as long as such buses are duly licenced by the Transport Licencing Board to so operate and are otherwise in compliance with all the relevant public service Passenger Transport Rules and Regulations;
- 3) That leave be granted to seek an order of certiorati to issue to quash the 1st Respondents decision effected on 25th May 2009 and implemented by the 2nd and 6th Respondents and officers of the 3rd Respondent or any person acting under their behest from demanding, directing or insisting upon or ordering that the Applicant's franchised buses of 29 seater passenger capacity or such higher capacity operating within the NCBD via Kencom Bus stage as long as such buses are duly licensed by the TLB to so operate and or are in compliance with all relevant passenger transport rules and regulations;

4) That leave so granted do operate as stay of 1st – 5th Respondents retention of the number plates of the Applicant's franchised buses from which they were unlawfully removed, and as a stay of the 1st Respondent's decision effected on 25th May 2009 and implemented by the 2nd and 6th Respondents officers and officers of the 3rd Respondent or any other person acting under that behest from demanding, directing, insisting upon, or ordering that the Applicants' franchised buses of 29 seater passenger capacity or such higher licensed capacity cease operating within the NCBD via Kencom Bus stage.

The Chamber Summons is supported by a statement of facts dated 10th June 2009 and an undated affidavit of the Edwin Mukabana, the managing director of the Applicant. The Application was opposed and Mr. Njogu, Counsel from the Attorney General's Office urged a preliminary objection that there is no decision capable of being quashed, and that an order of certiorari cannot issue.

The Applicants case is that they operate franchised buses in the City of Nairobi. The buses are all licensed to operate within the NCBD, and they were issued with a TLB Licences which will expire on 31st January 2010. That on 25th May 2009 the drivers of the buses were impounded by 2nd and 3rd Respondents. That officers of the 6th Respondents were also overseeing the impounding. That the buses were towed to Nairobi Area while others diverted from the NCBD. The Applicant avers that the buses were in mechanically fit conditions, did not contravene any Traffic Laws and the inspection reports which were exhausted confirm that they are roadworthy. That they had not been informed of any change in policy and as such a unilateral decision could cause great financial loss to the Applicant. That the decision by the 2nd Respondent was made for an improper purpose because the minister for the Metropolitan unveiled a 'smartbus' which is 52 passenger seater as the bus suitable for the NBCD. That the TLB has not revoked the Applicant's licences and the act is done in bad faith. In addition to the above the officers of the 3rd Respondent have been changing the drivers of the buses with TLB violations.

I have considered the Chamber Summons, the affidavit in support and all the annexures, the statement and the Respondents grounds of opposition. At this stage, what the Applicant has to establish is that they have an arguable case.

The facts as presented by the Applicant are not disputed. I think that the issue raised by the Respondent at this stage that there is no decision capable of being quashed is premature. Proof of an existing decision should be conversed in the Notice of Motion as provided by Civil Procedure Rules.

The Applicant has referred to specific actions taken by the Respondents against their buses although they are licensed to operate in the NCBD. The facts not having been contraverted, represent the factual truth and I find that they do raise issues of whether the Respondents actions legal bearing in mind the fact that the Applicants buses are licensed. The other issue is whether the Applicants are entitled to be heard on such a decision being taken to remove them from operation when they have valid licences. Even on these points alone, I find that an arguable case has been disclosed. I therefore order that:-

- 1) leave be and is hereby granted in terms of prayers 2 and 3 of the Chamber Summons;
- 2) leave so granted do operate as stay in terms of prayer 4;
- 3) Notice of Motion be filed and served within 14 days; hereof in default above orders will lapse automatically.
- 4) Once Notice of Motion is filed and served the matter be listed for mention for the court to give directions;
- 5) Costs to abide the Notice of Motion.

Dated and delivered this 3rd day of July 2009.

R.P.V. WENDOH

JUDGE

Present

Mr. Kinyanjui for the Applicant

Mr. Njogu for the Respondent

Muturi: Court Clerk