



REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
JUDICIAL REVIEW APPLICATION NO E007 OF 2024

REPUBLIC.....APPLICANT

- VS -

THE MOTOR VEHICLE EXAMINER (NTSA-THIKA).....1ST RESPONDENT

AND

THE ATTORNEY GENERAL2ND RESPONDENT

AND

FEISAL HUSSEIN SWALEH.....EX-PARTE APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTION..... INTERESTED PARTY

RULING

[1] Before this court is an ex-parte Chamber Summons dated 30th September, 2024 seeking the following orders:

1. Spent.
2. That the Applicant be granted leave to institute Judicial Review proceedings by way of an order of Certiorari to bring to this Court and quash the certificate of examination and test of vehicle (VT B 248521) dated 9th April, 2024 in respect of KDM 065M Isuzu FVZ.
3. That the Applicant be granted leave to institute Judicial Review proceedings by way of an order of Prohibition directed to the Chief Magistrate Court sitting at Thika in Traffic case number MCTR/E893/2024 and Senior Principal Magistrate Court sitting at Baricho in traffic case number MCTR/E079/2024 from hearing

and determining the matters until the Judicial Review Application is concluded.

4. That the Applicant be granted leave to institute Judicial Review proceedings by way of an order of Mandamus directed to the Motor vehicle examiner NTSA Thika ordering him to reaffix the identification plates in respect of KDM 065M Isuzu FVZ or return it to the owner.
5. That the leave so granted do operate as a stay of proceedings in Thika Chief Magistrate's traffic case number MCTR/E893/2024 and Baricho Senior Principal Magistrate's traffic case number MCTR/E079/2024 pending hearing and determination of the Judicial Review Application.
6. That costs of this application be provided for.

[2] **The application is based on the grounds on the face of the application and the Supporting Affidavit of the ex-parte applicant.** The applicant's case is that he is the registered owner of KDM 065M Isuzu FVZ. The vehicle at the time of the road side inspection was fully compliant in all aspects and a certificate of compliance in form of an inspection report had been issued with the validity of up to 15/05/2024. That the 1st Respondent in total disregard of the valid inspection report and up to date and correct data from the NTSA's tims portal unlawfully and maliciously indicated that the inspection certificate had expired a fact he knew was false.

[3] The applicant avers that the 1st Respondent in total disregard of the valid inspection report and up to date and correct data from the NTSA's tims portal unlawfully and maliciously removed the identification plates of the said motor vehicle. Further, premised on the non-factual certificate of examination and test of vehicle dated 9/04/2024, a cash bail of Kenya Shillings Ten Thousand was paid which led to commencement of Baricho Senior Principal Magistrate's traffic case number MCTR/E079/2024. He was later on charged with permitting use of motor vehicle without identification plates.

[4] Lastly, he avers that the Constitution of Kenya gives me a right to fair administrative action and not allowing me to be subjected to flagrant abuse of court emanating from illegal and unlawful decision by NTSA officers out there to solicit for bribes.

[5] **The 1st, 2nd and the Interested Party on their part, through the Attorney General filed grounds of opposition, in the following terms –**

[6] They aver that the entire suit should be dismissed as per the mandatory legal provisions of Section 6 of the Civil Procedure Act. THAT the Application is erroneous as drafted it ought to be an Application of Stay of Proceedings veiled as a Judicial Review Application.

[7] Further, that Judicial Review cannot be used to restrain or stop statutory bodies or public officers from lawful exercise of Power within their statutory mandates. The Application is fatally defective as it offends the mandatory provisions of Section 9 (2) of the Fair Administrative Actions Act No.4 of 2015.

[8] Lastly, they aver that the Application is fatally defective as it offends the mandatory provisions of Section 38 of The National Transport and Safety Authority Act NO. 33 OF 2012.

Submissions

[9] The application was canvassed through filing of written submissions.

Ex-parte applicant submissions

[10] The applicant submits that a cursory perusal of the vehicle inspection report dated 15/05/2023 marked as F.H.S 2 it clearly states that the validity period runs from 15/05/2023 to 15/05/2024 whereas the certificate of examination and test of vehicle (VT B 248521) dated 9/04/2024 marked as F.H.S 3) under remarks states that the inspection certificate is expired hence the instant application to bring to this Honourable Court and quash the said decision and the resultant consequences.

[11] The applicant submits that the instant application does not fall under the ambit of section 6 of the Civil Procedure Act. Further, the impugned decision to indicating that the inspection certificate has expired yet the same is valid was not expected thus non-existent of internal mechanism for appeal or review unlike in the decision on whether to issue or not issue a driving license. Lastly, section 38 is particular on license issuance and not the impugned decision.

1st and 2nd Respondents submissions

[12] They submit that upon conducting a roadside inspection, the 1st Respondent determined that the suit vehicle had not been passed for annual inspection as per the

NTSA records and therefore. The vehicle was unfit to be used on the road and in violation of the above provision. The same was recorded and a certificate of examination and test of vehicle (VT B 248521) was issued by the 1st Respondent to the Applicant and to the Traffic police Sagana for further police action. The said documents should not be quashed as they are valid and the 1st Respondents puts reliance in them in the ongoing proceedings in Thika Chief Magistrate's traffic case number MCTR/E079/2024 and Baricho Senior Principal Magistrate's traffic case number MCTR/E079/2024.

[13] They submit that the vehicle only had a pre-registration inspection certificate which is issued to the vehicle chassis prior to registration for the purpose of confirmation of particulars in comparison with entry documents and manufacture's specifications. Following pre-registration inspection, the vehicle body is fabricated, either as a truck or a bus, and the vehicle is then subjected to an annual inspection. They submit that the annual inspection had not been done for the subject vehicle at the time of examination and test.

Interested Party submissions

[14] They submit that the interested party having made a decision to Charge and the Applicant being accorded a fair trial under Article 50[2] of the Constitution of Kenya 2010, it is only prudent that he mounts his defense in response to the charges before Courts.

[15] They have to show that the decision to charge was reached by the interested party misdirecting itself in law or in exercise of its discretionary powers, they were influenced by taking into consideration extraneous or irrelevant factors or by disregarding relevant consideration.

[16] They submit that irrationality imputes unreasonableness which the applicants have not demonstrated in all the two Traffic Case in both Thika and Baricho to have this Court issue an Order of Prohibition or Mandamus as the procedure follows, the applicant shall be granted a fair hearing in both cases.

Issue

[17] Whether this application for leave to file judicial review proceedings has merit.

Analysis

[18] The applicant is charged with the offence of permitting the use of a Motor Vehicle on the Road without identification plates contrary to Section 12(1) as read with Section 12(2) of the Traffic Act Laws of Kenya. The 1st respondent being authorized and appointed Motor Vehicle Examiner [NTSA] under Section 3(3) of the Traffic Act arrested and instituted two traffic offences in MTCR E-893/2024 and MTCR E-079/2024.

[19] The Applicant seek leave to institute Judicial Review proceedings by way of an order of Prohibition directed to the Chief Magistrate Court sitting at Thika in Traffic case number MCTR/E893/2024 and Senior Principal Magistrate Court sitting at Baricho in traffic case number MCTR/E079/2024 from hearing and determining the matters until the Judicial Review Application is concluded.

[20] In considering, the application before this court for leave to file judicial review, the court is guided by the test in *Meixner & Anor v AG* [2005] 2 KLR 189 **that an application for leave has to demonstrate an arguable case for the grant of the judicial review orders sought.** In *Ol Keju Ronkai Limited & Another v National Environmental Tribunal* [2009] EKLR, Osiemo, J. similarly observed that:

“At leave stage all the Applicant has to do is place before the court materials to demonstrate that he has a prima facie and arguable case. The test as to whether leave should be granted to an Applicant for judicial review is whether, without examining the matter in any depth there is an arguable case that the reliefs might be granted on the hearing of the substantive application.”

[21] The applicant’s case is the vehicle at the time of the road side inspection was fully compliant in all aspects and a certificate of compliance in form of an inspection report had been issued with the validity of up to 15/05/2024. That the 1st Respondent in total disregard of the valid inspection report and up to date and correct data from the NTSA’s tims portal unlawfully and maliciously indicated that the inspection certificate had expired a fact he knew was false. He avers that the Constitution of Kenya gives me a right to fair administrative action.

[22] The interested party submits that having made a decision to Charge and the Applicant being accorded a fair trial under Article 50 [2] of the Constitution of Kenya 2010, it is only prudent that he mounts his defense in response to the charges before Courts. Further, the 1st and 2nd Respondents submits that the annual inspection had not been done for the subject vehicle at the time of examination and test.

[23] The applicant has demonstrated that vehicle inspection report dated 15/05/2023 marked as F.H.S 2 shows that the validity period runs from 15/05/2023 to 15/05/2024 whereas the certificate of examination and test of vehicle (VT B 248521) dated 9/04/2024 marked as F.H.S 3) under remarks states that the inspection certificate is expired.

[24] The 1st and 2nd Respondents submit that the entire suit should be dismissed as per the mandatory legal provisions of Section 6 of the Civil Procedure Act since two suits have been filed against the applicant.

[25] The two criminal cases against the applicant are clearly not the suits contemplated under section 6 of the Civil Procedure Act as the courts have no jurisdiction to grant the relief sought in this case. The two traffic cases would appear to be outside the mandate of the section 38 of the NTSA Act which requires an appeal to the appeals Board as they criminal proceedings before the traffic courts already outside the internal mechanism, and the impugned decision here appears to be the decision to charge.

[26] However, on the evidence of the applicant that the vehicle had a vehicle inspection report dated 15/05/2023 marked as F.H.S 2 indicating that that the validity period runs from 15/05/2023 to 15/05/2024, has an arguable case for fair administrative action emanating from the motor vehicle inspection report.

[27] An arguable case does not mean a case that must succeed at the trial and therefore, the applicant is entitled to file the application for judicial review proceedings to determine the reasonableness of the action taken by the Respondents in view of the vehicle inspection report subject of the suit.

ORDERS

[28] Accordingly, for the reasons set out above, the Court finds merit in the application for leave to file judicial review proceedings and it is granted as prayed.

[29] The substantive Notice of Motion shall be filed within 21 days in accordance with the Rules.

[30] The costs of the application for leave shall abide the outcome of the judicial review application.

Orders accordingly.

DATED AND DELIVERED THIS 7TH DAY OF OCTOBER 2025.

EDWARD M. MURIITHI
JUDGE

APPEARANCES:

Applicant in person.

Mr. J.M. Kiongo for the AG.

Mr. Mamba for the DPP/Interested Party.