



Republic v Transport Licensing Appeals Board; Bolt Operations OU (Exparte); National Transport & Safety Authority & another (Interested Parties) (Judicial Review Application E167 of 2023) [2025] KEHC 6998 (KLR) (Judicial Review) (27 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6998 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW APPLICATION E167 OF 2023

RE ABURILI, J

MAY 27, 2025

IN THE MATTER OF: AN APPLICATION BY BOLT OPERATIONS OU

FOR JUDICIAL REVIEW ORDER FOR CERTIORARI;

&

IN THE MATTER OF: THE NATIONAL TRANSPORT SAFETY AUTHORITY ACT, 2012

BETWEEN

REPUBLIC APPLICANT

AND

TRANSPORT LICENSING APPEALS BOARD RESPONDENT

AND

BOLT OPERATIONS OU EXPARTE

AND

NATIONAL TRANSPORT & SAFETY AUTHORITY INTERESTED PARTY

KENNEDY WAINAINA MBUGUA INTERESTED PARTY

JUDGMENT

1. The Notice of Motion dated 8th November, 2023 seeks judicial review order of certiorari to bring to this court for purposes of quashing, and to be quashed the decision of the Transport Licensing Appeals Board made on 31st October 2023 in TLAB Appeal No. E010 of 2023 Kennedy Wainaina Mbugua-vs-National Transport & Safety Authority and Bolt Operations OU;



2. The ex parte applicant also seeks for costs of the application.
3. The applications predicated on the grounds contained in the statutory statement and verifying affidavit sworn by Kerubo Ombati the Legal Director, Africa on 31/10/2023 all in support of the chamber summons for leave to apply dated 31st October, 2023.
4. The ex parte applicant's case is that an appeal dated 18th May 2023 was filed before the Transport Licensing Appeals Board by the 2nd interested, which Memorandum of Appeal expressly indicated that the appeal was from the decision of the 1st interested party made on 18th May 2023 at Nakuru County. It also indicated that the appellant was aggrieved by the decision of the 1st interested party made on 17th May 2023, as shown by the annexed Memorandum of Appeal.
5. According to the ex parte applicant, the appeal did not exhibit the decision said to have been made by the 1st respondent on 18th May 2023.
6. The applicant then raised a preliminary objection on 7th June 2023 challenging the jurisdiction of the Appeals Tribunal on account that there was no decision on the 1st interested party over which the Appeals Tribunal would be empowered to exercise appellate jurisdiction.
7. That on the 20th of July 2023, the board directed that the preliminary objection as well as the appeal filed by the 2nd interested party be heard and determined together pursuant to which the applicant filed a reply on 4th July 2023 in which it reiterated the challenge on jurisdiction as well as the limits of the board with respect to the prayers sought and pleading made by the 2nd interested party.
8. The 2nd interest party was also allowed to file a statement which he did on 31st May 2023. The parties then filed their respective written submissions that were highlighted before the Appeals Tribunal and the Tribunal reserved the delivery of its ruling initially for 2nd October 2023 by which date it was not ready, so it was deferred to 26th October 2023. The judgment was subsequently delivered on 31st October 2023 at 11am.
9. It is that judgment which the applicant herein was aggrieved by that led to the filing of these proceedings. The applicant asserts that the Appeals Tribunal acted without jurisdiction in purporting to take cognizance over an appeal from a decision pleaded to be made on 18th May 2023 yet no such decision was presented to the board. Further, that the Appeals Tribunal acted ultra vires in determining that the basis of the appeal before it was the licensing relation ship between the parties as opposed to a decision made by the 1st interested party on 18th May 2023.
10. The Appeals Board is accused of usurping the statutory mandate of the regulator-The National Transport & Safety Authority in directing the filing of a compliance matrix with the tribunal within 48 hours. Further, that the Appeals Tribunal in its decision made on 31st October 2023 unreasonably and with bias recast the appeal pleaded as being from a decision made on 18th May 2023 to alleged non-compliance with the law (over which the Tribunal has no original jurisdiction) and an appeal against the decision to licence the applicant, which was not eAuthority's decision to license the applicant Eexpressly indicated on the memorandum of appeal filed by the 2nd interested party.
11. Opposing the application, the 2nd interested party filed a replying affidavit sworn on 1st July 2024 by Kennedy Wainaina Mbugua deposing that he was aggrieved by the decision of the Authority to license the applicant as a transport network service provider having not met or breached the requirements set out in the NTSA (Transport Network Companies, Owners, Drivers and Passengers) Regulations, 2022. That the Board's effort to find out from the applicant if it had a physical office in Kenya or if it had complied with the requirements of questioned in the appeal proved futile.



12. That the applicant's appeal was regarding the applicant's non-compliance with the law and more importantly, its non-responsiveness and failure to put in place safety systems for passengers and drivers and their privacy; that the applicant acted capriciously by deactivating the 2nd interested party. That the respondent downed its tools on jurisdiction and advised the 2nd interested party to seek a remedy from the Data protection Commissioner which he did and a decision was made on 17th June 2024 against the applicant for breach of data privacy of the 2nd interested party.
13. The application was canvassed by way of written submissions with brief oral highlights by the applicant's counsel while the 2nd interested party, the only party who responded to the application, relied entirely on the filed submissions.
14. The highlights reiterated the applicant's case, citing case and statutory law which shall consider in my determination below.

Analysis and determination.

15. I have considered the application, the opposition thereto and the submissions both in writing and orally. The main issue for determination is whether the respondent had jurisdiction to entertain what the interested party claims to be an appeal and whether there was any decision of the Authority capable of being determined by the respondent Licensing Appeals Board.
16. The NTSA is established under section 3 of the NTSA Act. The functions of the Authority are provided for under section 4 of the Act and among those functions are:
 4. In the performance of its functions under subsection (1), the Authority shall—(a) register and license motor vehicles;
17. According to the applicant, there was no decision of the 1st interested party Authority capable of being appealed against to the Appeals Board. On the other hand, the 2nd interested party maintains that he challenged the applicant's breach of his data privacy and non-compliance with the law, and the 1st interested party Authority licensing the applicant to operate yet it has deactivated the 2nd interested party and had no registered office in Kenya.
18. The applicant raised a preliminary objection to the jurisdiction of the respondent to determine an appeal which was based on no decision of the Authority. The Appeals Board dismissed the preliminary objection and heard the appeal on its merit, finding the applicant culpable and even awarding the 2nd interested party damages in the sum of Kshs 1,008,000.
19. It is that decision that the applicant is challenging before this court but from the statutory statement and the verifying affidavit, the applicant challenges only the jurisdiction of the Appeals Board, to hear and determine an appeal which in its view, was nonexistent.
20. The jurisdiction of the Transport Licensing Appeals Board, over the administrative actions of the National Transport Safety Authority, is set out in section 38 of the *National Transport and Safety Authority Act*, 2012. This section provides for appeals against decisions of Authority as follows:

“ A person who—

 - a) being an applicant for the grant or variation of a license, is aggrieved by the decision of the Authority on the application;



- b) having made an objection to any such application as aforesaid, being an objection which the Authority is bound to take into consideration, is aggrieved by the decision of the Authority thereon; or
- c) being the licensee, is aggrieved by the revocation or suspension thereof, may within the time and in the manner prescribed appeal to the Appeals Board established under section 39.”

- 21. Section 38 the [National Transport and Safety Authority Act](#), 2012 sets out the elements that have to be satisfied in order to confer jurisdiction of a matter on the Appeals Board. In essence, it provides that TLAB can only assume jurisdiction when NTSA has made a licensing decision.
- 22. It follows that before hearing or determining any matter, the Appeals Board must be sure that it is seized of jurisdiction to do so.
- 23. In the present case, and from the decision of the Appeals Board which is impugned, the Board was of the view that it had jurisdiction as stipulate din section 38 of the Act as read with Regulation 23 of the NTSA (Transport network Companies, owners, Drivers and Passengers) Regulations, 2022 which provides that a person aggrieved by any decision of the Authority under these Regulations may appeal to the Appeals Board.
- 24. Further, that the applicant did not contest the fact that it was licensed by the Authority, which issue the 2nd interested party was challenging on account of breach of the requirements of the law. On the part of the applicant, it contended and maintains to date that there was no decision made by the Authority, capable of being appealed against to the Appeals Board.
- 25. The question is, was the question of licensing the applicant by NTSA an issue before the Appeals Board? Secondly, was there any decision made on 17th May 2023 at Nakuru by the NTSA capable of being appealed from?
- 26. I have read the Appeal filed by the 2nd interested party.
- 27. It states as follows, inter alia:

....From the decision of the National transport and Safety Authority (NTSA) dated 18th May 2023 at Nakuru County.

Take Notice that the appellant being aggrieved by the decision of the NTSA in its decision on 17th May 2023 at Nakuru County now appeals to the Transport Licensing Appeal Board (TLAB) against the said decision on the following grounds:

- 1. The Bolt Company has breach driver’s privacy
- 2. That impersonation of drivers account
- 3. That Bolt Company has risk drivers to jail tern due to fraud impersonation and Log in using my account thus infringing my rights to privacy
- 4. That Bolt Company has harassed drivers during login account
- 5. That drivers have lost trust with bolt company and want NTSA to suspend the operator’s licence with immediate effect
- 6. That Bolt has not complied with NTSA Guidelines Gazette 2022 by the Ministry of Transport and Infrastructure thus we want its operation licence to be suspended by NTSA



7. That Bolt has risk drivers to cyber crime and fraud and against the DATA Protection Act.

Reasons: Wherefore the appellant prays that the appeal be allowed:

NTSA to revoke working permits of bolt in Nakuru County due to lack of compliance and drivers protection Bolt to restore all drivers account details which have been tampered with by the staffs working under it To refund all the amount that was cashed out from the drivers platforms dated 17th may 1023 Compensation to the driver for breaching the drivers privacy risking him to fraud That bolt should give clear details of their staff working under them since they have no physical office in Nakuru County and other part of the Country which is against the Regulations Dated 18th May 2023

28. From the appeal herein above, there is no evidence that there was any of the issues raised in the appeal, being brought to the attention of NTSA for action and that NTSA either made a decision on the same or declined to make a decision on the same, prompting the 2nd interested party to file an appeal to the Respondent herein.
29. What emerges quite clearly is that the 2nd interested party was complaining against the applicant and in the grounds of appeal, he was even asking NTSA to suspend its operator's license. There is no evidence that the NTSA's jurisdiction was invoked to hear the compliant against the applicant so that it could make a decision capable of being appealed against to the respondent.
30. The Transport Licensing Appeals Board (TLAB) primarily functions as an appellate body, meaning it primarily hears appeals against decisions made by the National Transport and Safety Authority (NTSA) regarding transport licensing. It does not have the original jurisdiction to directly hear complaints or make first-instance decisions on transport licensing matters.
31. Its main role is to review decisions made by the NTSA, not to make initial decisions. This means that it primarily hears appeals from individuals or entities who are dissatisfied with NTSA's decisions regarding transport licenses. The TLAB does not have the authority to initiate or directly decide on transport licensing matters. It cannot, for example, directly grant or deny transport licenses.
32. The TLAB may hear appeals related to license applications, renewals, or suspensions, but it doesn't have the power to make the initial decisions on these matters.
33. On the other hand, the NTSA is the primary body responsible for making initial decisions regarding transport licensing. The TLAB's role is to review these decisions and potentially overturn or modify them if deemed necessary.
34. In my view, all the Regulations cited by the respondent speak to the work f NTSA where it may be moved by a party or on its own motion for example, Regulation 13 (1) (b) which gives power to the Authority to suspend or cancel the license of a transport network company for failure to comply with the Regulations. There is no evidence that the Authority was ever moved to hear those complaints raised by the 2nd interested party before the Appeals Board.
35. It follows that the respondent assumed original jurisdiction to hear complains raised by the 2nd interested party against the applicant, not against the Authority. Even assuming the decision being challenged was that of licensing of the applicant, which I find was not, the complainant was expected to file a complaint with NTSA on that aspect of licensing, upon which the NTSA would summon the applicant and give both parties a hearing before a decision to deregister or suspend the applicant's licence could be reached.



36. The first time that the applicant was being accused of the issues raised in the memorandum of appeal was before the Appeals Board.
37. There is nowhere in the impugned judgment that the TLAB was addressing itself as an appellate body, it was basically hearing a dispute between the applicant network operator and the 2nd interested party. That is unacceptable.
38. It is for that reason that I find and hold that the Appeals Board had no jurisdiction to hear and determine complaints raised by the 2nd interested party. Those complaints could have been raised first before NTSA who upon hearing the parties, would make a decision capable of being appealed to the Appeals Board. The memorandum clearly asked that NTSA should suspend the license of the applicant. Additionally, the 2nd interested party was lamenting that the applicant had breached NTSA Guidelines. That being the case, only the NTSA could hear the complaints and make a decision which could be appealed against to the Appeals Board.
39. Where a tribunal makes a decision without jurisdiction, this court can call that decision into this court, in exercise of its supervisory jurisdiction under Article 165(6) & (7) of the Constitution and quash that decision.
40. In this case, I am satisfied that the Appeals Board exceeded its jurisdiction and acted without jurisdiction in hearing and determining an appeal in exercise of its original jurisdiction, outside the provisions of section 38 of the NTSA as read with Regulation 23 of the 2022 Regulations. The above provisions which it relied on do not confer on the Appeals Board any original jurisdiction to hear the complaints which would first have been considered by the NTSA.
41. Accordingly, I find that the applicant's Notice of Motion is merited. Certiorari is hereby issued calling into this court for purposes of quashing and I hereby quash the decision of the respondent rendered on 31st October, 2023.
42. As the respondent is a public body which acted without jurisdiction, I order that each party bear their own costs of these proceedings.
43. This file is closed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF MAY, 2025

R.E. ABURILI

JUDGE

