



**Republic v Transport Licensing Appeals Board; National Transport & Safety Authority & 14 others (Interested Parties); Uber BV (Ex parte Applicant) (Judicial Review Application E071 of 2023) [2025] KEHC 9417 (KLR) (Judicial Review) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9417 (KLR)

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

**JUDICIAL REVIEW APPLICATION E071 OF 2023**

**RE ABURILI, J**

**JUNE 30, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE TRANSPORT LICENSING APPEALS BOARD ..... RESPONDENT**

**AND**

**NATIONAL TRANSPORT & SAFETY AUTHORITY ..... INTERESTED PARTY**

**BOLT OPERATIONS OUFCOMPANY ..... INTERESTED PARTY**

**LITTLE LIMITED ..... INTERESTED PARTY**

**YEGO MOBILITY ..... INTERESTED PARTY**

**PTG LIMITED ..... INTERESTED PARTY**

**MARAMOJA TRANSPORT LIMITED ..... INTERESTED PARTY**

**FARASI CABS LIMITED ..... INTERESTED PARTY**

**HAVENET LIMITED ..... INTERESTED PARTY**

**AN NISA TAXI LIMITED ..... INTERESTED PARTY**

**H CAB LIMITED ..... INTERESTED PARTY**

**TMNK ENTERPRISES LIMITED ..... INTERESTED PARTY**

**AMICABRE TRAVEL SERVICES ..... INTERESTED PARTY**

**J-RIDE LIMITED ..... INTERESTED PARTY**

**MOVE ON TELECOMS LIMITED ..... INTERESTED PARTY**



**RIDEHAIL TRANSPORT ASSOCIATION ..... INTERESTED PARTY**

**AND**

**UBER BV ..... EX PARTE APPLICANT**

### **JUDGMENT**

1. This Judgment determines the exparte applicant's substantive Notice of Motion dated 15<sup>th</sup> June 2023 filed pursuant to the leave granted on 9<sup>th</sup> June 2023. The Motion is brought under the provisions of Order 53 Rule 3 of the Civil Procedure Rules. The exparte applicant seeks an order of Prohibition against the Respondent preventing the Transport Licensing Appeals Board from hearing, determining, entertaining or dealing with the proceedings filed in TLAB Appeal No.E011 of 2023-Ridehail Transport Association v National Transport Safety Authority & 14 Others.
2. The application also seeks an order of Certiorari quashing in entirety the proceedings before the Respondent in TLAB Appeal No.E011 of 2023-Ridehail Transport Association v National Transport Safety Authority & 14 Others. The ex parte Applicant also seeks costs of the application.
3. The application is verified by the affidavit of Imran Mahmood Manji and a statutory statement dated 8<sup>th</sup> June 2023.
4. It is the ex parte Applicant's case that these judicial review proceedings arise out of an appeal dated 29<sup>th</sup> May 2023 filed before the Respondent by Ridehail Transport Association, the 15<sup>th</sup> Interested Party described as a body of persons under Section 10 of the *Societies Act*.
5. The Appeal is said to be premised on the allegation that the ex parte Applicant as well as the 2<sup>nd</sup> to 14<sup>th</sup> Interested Parties are in violation of the National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations,2022.
6. According to the ex parte Applicant, the Appeal seeks 5 reliefs before the Respondent and these are; That all the transport application operators in Kenya who had not applied for licensing as required by Legal Notice No. 120 by the time of filing the appeal be declared illegal to operate in Kenya; That the NTSA ensures the switch off all the applicant companies in (i) above; That all licenses awarded by NTSA to transport applications' operators who are not registered with the data commissioner as a Data Controller or Data Processor and/or do not have a registered office in Kenya and/or do not have tax compliance certification, be declared null and void; That all NTSA licenses of application operators that are deducting more than the maximum stipulated 18% of total ride revenue be withdrawn immediately and their operations be switched off and; That all the contracts between transport network companies, drivers and vehicle owners include the input of the registered drivers' representative associations and later be subjected to validation by the labour commissioner in Kenya.
7. The ex parte Applicant states that the Respondent has powers to hear and determine appeals from the decisions of the 1<sup>st</sup> Interested Party and the conditions under which an aggrieved person or entity may appeal against the decision of the 1<sup>st</sup> Interested Party to grant license to a Transport Network Company are provided under section 38(1) of the NTSA Act.
8. It is also the ex parte Applicant's case that the 15<sup>th</sup> Interested Party and its officials failed to object to the decision by the 1<sup>st</sup> Interested Party as is required under section 38 of the Act and that as such, the Respondent's decision to entertain the Appeal is without jurisdiction, illegal, irrational and unreasonable.



9. The ex parte Applicant also argues that a society registered under the *Societies Act* is not a legal person with capacity to sue or to be sued and therefore the Respondent having not only admitted the Appeal for hearing and even further serving parties with a Mention Notice is akin to assuming jurisdiction and presiding over a defective appeal.
10. According to the ex parte Applicant, it has no knowledge of the purported decision dated 18<sup>th</sup> September 2022 nor has the alleged decision been annexed in support of the Appeal. This, it is stated, violates Article 50 of *the Constitution*.
11. The ex parte Applicant further states that it has also challenged the Respondent's right to entertain appeals of the nature filed by the 15<sup>th</sup> Interested Party herein vide JR E063 of 2023-Republic vs. Transport Licensing Appeals Board & Others ex parte Uber B.V. and that this court in its order of 25<sup>th</sup> May 2023 granted stay of the appeals that had been instituted before the Respondent yet the Board has continued to entertain the Appeal filed.
12. It is averred that the Appeal dated 29<sup>th</sup> May 2023 is an attempt to circumvent the stay orders issued by the court and that if the appeal is allowed to proceed, there is a real risk and likelihood of conflicting decisions being arrived at.
13. In response to the application, the 15<sup>th</sup> Interested Party Ridehail Transport Association filed a replying affidavit sworn 29<sup>th</sup> June 2023 by Zakaria Mwangi Johana. It is contended in deposition that it is a collective of legally registered driver and vehicle owner representative bodies in Kenya who advocate for a fair and equitable rideshare industry that provides drivers and vehicle owners with a meaningful voice in their work by ensuring that they receive fair remuneration and benefits.
14. The 15<sup>th</sup> Interested Party's case is that upon reading of the NTSA Act there is no scope for persons other than a licensee or applicant for a license to raise a complaint to the 1<sup>st</sup> Interested Party under Section 38 (1) of the Act.
15. It is stated that there were several complaints made to the 1<sup>st</sup> Interested Party, which complaints followed attempts to negotiate with the Transport Network Companies (TNCs) such as the Applicant and the 2<sup>nd</sup> to 14<sup>th</sup> Interested Parties with regard to issues which had arisen of compliance with National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations 2022.
16. Further, that the 15<sup>th</sup> Interested Party is said to have drafted a template agreement because they understood that the Regulations required Transport Network Companies (TNC) to submit such a template. However, that when the Applicant together with other TNC's failed to respond to their proposals, they organized a protest march to the 1<sup>st</sup> Interested Party's offices where they submitted a list of their grievances and demands for redress. These grievances, according to the 15<sup>th</sup> Interested Party, were neither acknowledge nor addressed.
17. According to the 15<sup>th</sup> Interested Party, on 15<sup>th</sup> April 2023 the 1<sup>st</sup> Interested Party issued a public notice where it stated that any person aggrieved by its decision to license the companies listed therein should challenge the same before the Respondent. It is stated that the members of the 15<sup>th</sup> Interested Party understood that the 1<sup>st</sup> Interested Party was no longer going to entertain any further discussions or objections on the matter hence reference to the tribunal.
18. The 15<sup>th</sup> Interested Party argues that in any event, the appeal to the Respondent was made by virtue of Regulation 23 and not Section 38(1) of the NTSA Act. On the allegation that the 15<sup>th</sup> Interested Party lacks legal capacity to sue or be sued, it is urged that the same is incorrect.



19. It is also contended that the Applicant fails to understand that the 1<sup>st</sup> Interested Party was required to ensure implementation and compliance with the Regulations within 90 days of the coming into force of the Regulations which 90-day period lapsed on or about 18<sup>th</sup> September 2022 and that as such, the failure to ensure full compliance was in itself a decision not to implement the said Regulations.
20. The 15<sup>th</sup> Interested Party states that if the court were to grant the orders sought, the Court would be usurping the powers of the Transport Licensing Appeals Board, donated by Regulation 23 rendering the provision to have no effect.
21. According to the 15<sup>th</sup> Interested Party, the Applicant is attempting to evade the jurisdiction of the Respondent over it by filing these judicial review proceedings, having opposed the coming into force of the Regulations terming them as unconstitutional and even filing a constitutional petition which it later withdrew.
22. The 4<sup>th</sup> and 7<sup>th</sup> Interested Parties Yego Limited and Farasi Cabs Limited also filed their respective replying affidavits dated 31<sup>st</sup> August 2023 and 21<sup>st</sup> October 2023 respectively, both in full support of the ex parte Applicant's motion.
23. In their said affidavits, both the 4<sup>th</sup> and 7<sup>th</sup> Interested Parties advance two germane issues as raised by the exparte Applicant and these are: whether the 15<sup>th</sup> Interested Party had the locus standi to lodge the appeal before the Respondent Appeals Board seeking orders, since entities registered under the [Societies Act](#) Cap 108 are not legal entities that can be sued or sue in their own names.
24. The second issue is that the Respondent lacks jurisdiction as the 15<sup>th</sup> Interested Party does not fall within the categories of persons who have capacity to lodge an appeal before it as per section 38(1)(a) (b)(c) of the NTSA Act as no objection was filed by its officials or by itself against the NTSA, the 1<sup>st</sup> Interested Party's decision to license the ex parte Applicant and the 2<sup>nd</sup>-14<sup>th</sup> Interested Party.

### **Submissions**

25. The application was canvassed by way of both written and oral submissions.
26. The ex parte Applicant together with 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup> and 13<sup>th</sup> Interested Parties filed and or made similar submissions. In the said common submissions on jurisdiction, they relied on the cases of Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR, Samuel Kamau Macharia and Another vs. Kenya Commercial Bank Limited & 2 Others [2012] eKLR and Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] eKLR to lay emphasis that jurisdiction is everything and without it, a court ought to down its tools.
27. The cases of Trustees Kenya Redeemed Church & another vs. Samuel M'obuya Morara & 5 others [2011] eKLR, Pius Watene D. Maina (Suing for and on behalf of the Baptist Convention of Kenya) v Director General Kenya Urban Roads Authority & 5 others [2020] eKLR and Bridge Hotel Ltd v Wilfred Mutiso Lai Jesus Celebration Center [2016] eKLR, are also relied on where the courts are said to have restated that entities registered under the [Societies Act](#) are not legal persons with capacity to sue or be sued and as such, they can only sue through their office holders.
28. It is further submitted that the mere fact that the appeal was drawn by Zachariah Johana does not validate the appeal as it was filed in the name of the 15<sup>th</sup> Interested Party.
29. Further reliance is placed on the cases of Daniel Nyaga Mvungu vs. ACK Diocese of Mbeere [2019] eKLR and Ephuntus Kihara Guchu vs. Grace Gathoni Matu & 4 others (Officials of Multipurpose



- Women Group)[2020] eKLR where the respective similarly observed that societies can only sue or be sued through their officials.
30. Reliance is further placed on the case of Odinga & 16 others vs. Ruto & 10 others; Law Society of Kenya & 4 others (Amicus Curiae) Presidential Election Petition E005,E001,E002,E003,E004,E007 & E008 of 2022(Consolidated) [2022] KESC 54 KLR where the court is said to have observed while comparing Article 138(3)(c) of *the Constitution*, Section 39(1C)(b) and Regulation 87(3) of the Elections (General) Regulations that the said Regulation being inconsistent with Statute and the supreme law of the land, were unconstitutional.
  31. Further reliance is placed on the cases of Evans Odhiambo Kidero & 4 others v Ferdinand Ndungu Waititu & 4 others 2014 eKLR and Odinga & 16 others v Ruto & 10 others; law Society of Kenya & 4 others (amicus curiae) presidential election petition E005, E001, E002, E003,E004, E007 & E008 of 2022 (consolidated) 2022 KESC 54 KLR) to support their position on jurisdiction and locus standi of the 15<sup>th</sup> Interested party.
  32. The case of Kangemi Matatu Owners Sacco Society Ltd v National Transport & Safety Authority & 2 others; Westland Watch for Peace, Gender & Development & 2 others (Interested Parties) [2021] eKLR is also relied on where it is stated that the court held that interpreting section 38 (1) (a) and (b) of the National Transport and Safety Act in a manner that would exclude third party objectors who are not applicants for license would clearly offend Article 22. The court also found that an applicant and objector as envisaged under Section 38 are two different persons.
  33. It is also submitted that a letter of objection was filed by a body that describes itself as a digital taxi association of Kenya and does not concern an objection to issuance of a license to the ex parte Applicant, rather that they deal with the issues of commissions charged by the Transport Network Companies (TNC).
  34. The ex parte Applicant also submits that it did not raise a preliminary objection before the Respondent as it was doubtful whether the respondent had or had no jurisdiction to take any step in the appeal filed before it.
  35. On the issue of sub judice, it was submitted that the Respondent entertained appeals TLAB Appeal No. E008 & E009 of 2023-David Muteru & Others vs. National Transport & Safety Authority and 2 Others challenged in JR E063 of 2023-Republic vs. Transport Licensing Appeals Board & Others ex parte Uber B.V. Reliance is placed on the case of Kenya National Commission on Human Rights vs. Attorney General; IEBC & 16 Others (Interested Parties) [2020] eKLR in which the purpose of sub judice was spelt out to include, so as to avoid abuse of court process and to prevent issuing of conflicting decisions.
  36. In the submissions dated 7<sup>th</sup> November, 2024 filed by the 4<sup>th</sup> interested party as highlighted, the 4<sup>th</sup> interested party opposes the exparte applicant's notice of motion. It is submitted that the exparte applicant did not exhaust the remedies under the NTSA Act. That the exparte raises the issue of jurisdiction of the respondent to hear and determine the appeal filed by the 15<sup>th</sup> interested party yet it could have raised that issue of jurisdiction before the said respondent for a decision to be made.
  37. That the TLAB had only issued a mention notice to the parties. Counsel places reliance on Republic versus Kenya Revenue Authority [2019]e KLR where the Court stated that one has to exhaust the available remedies before the primary body, before filing judicial review application.



38. Responding on the sub judice allegation against the respondent, counsel submitted that the 15<sup>th</sup> interested party is not a party to those proceedings that the respondent was accused of proceeding with hearings despite the stay orders.
39. Further, it was submitted that in the event that the court finds that there was exhaustion of remedies, then, the appeal was filed by Zacharia Johana on behalf of Ridehail Transport Association and that the association can file proceedings through its officials. Counsel relied on *Kipsiwo Self Help Group v Attorney General & others*[2013] e KLR where the court is said to have held that officials can sue and represent an association.
40. The 15<sup>th</sup> interested party did not file any submissions and its counsel informed the court that she relied on submissions in JR E063 of 2023 in opposition to the present proceedings. I however observe that those other proceedings are independent of these proceedings and the 15<sup>th</sup> interested party could have filed those submissions in this matter since the two cases are not consolidated.
41. In a rejoinder, the exparte applicant's counsel submitted that they could not raise the jurisdictional issue before the respondent because they were not sure if the Appeals Board had any jurisdiction to take any step and guided by the *Motor Vessel Lilian S* case. On subjudice, it was submitted that there was a possibility of two different conflicting decisions being rendered which is an abuse of court process. On locus standi, the case of *Ephamtus Kihara Guchu v Grace Gathoni Mathu & 4 other* [2020]e KLR by the Court of Appeal was relied on.

### **Analysis and determination**

42. I have considered the substantive Notice of motion applications as opposed and supported by some of the interested parties. I have considered the submissions both in writing and orally. The main issue for determination is whether the 15<sup>th</sup> Interested Party had locus to lodge TLAB Appeal No. E011 of 2023-*Ridehail Transport Association v National Transport Safety Authority & 14 Others* and if the answer is in the affirmative, whether the respondent has jurisdiction to hear and determine the appeal which, according to the exparte applicant and some of the interested parties, was no appeal at all since there was no decision of the NTSA capable of being appealed against and that besides, the 15<sup>th</sup> interested party not being objector to the grant of licenses to some of the interested parties and the exparte applicant, could not have appealed, according to section 38 of the NTSA Act.
43. On the locus standi of the 15<sup>th</sup> interested party, the case of *Kipsiwo Community Self Help Group v Attorney General & 6 Others* [2013] eKLR, is instructive. In the said case, the Respondents raised a preliminary objection questioning whether a self-help group could initiate legal proceedings in its own name. They contended that since the petition had been filed on behalf of over 300 families, it qualified as a representative suit and therefore needed to comply with the provisions of Order 1 Rule 8 of the Civil Procedure Rules.
44. However, in this case, just like in the *Kipsiwo* case, the issue is not whether such an association has the right to sue or be sued, but rather the proper procedure through which it ought to access the court. This is particularly relevant given that Article 260 of *the Constitution* defines a "person" to include companies, associations and other bodies of persons, whether incorporated or not. As such, it is settled that unincorporated associations can indeed institute proceedings; the key question is the procedural avenue for doing so. This has been clarified through constitutional interpretation in various judicial decisions.



45. In *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd.* (1989) the Court of Appeal for eastern Africa stated that:

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

46. More so, jurisdiction cannot be conferred by consent of parties and neither can the court assume jurisdiction that it does not have. See Court of Appeal Decision in *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service* [2019] eKLR.

47. In the case of *Kituo Cha Sheria v. John Ndirangu Kariuki & Another* [2013]KLR, it was observed that: -

“As a general rule, unincorporated legal persons including societies, clubs and business-names can only bring proceedings through their registered or elected officials or in their proprietor’s names.”

48. The basis for an unincorporated association lacking capacity to sue and be sued in its own name is clear. A voluntary association is only a collection of individuals who in the absence of an enabling statute, cannot sue or be sued in the common name. The proper course, is to sue through the registered officials of such an association. In such circumstances.

49. This principle affirms that legal proceedings on behalf of an association or group must be initiated by a legally recognized person acting with the consent of the other members. The rationale for this requirement was clearly articulated by Sila Munyao J in *Kipsiwo Community Self Help Group v Attorney General & 6 Others* [2013] eKLR, where he stated:

“The importance of this, is so as to recognize the persons who seek legal redress, and so that orders are not issued in favour of or against people who cannot be precisely identified. This may look minor, but it is extremely significant. In litigation, rights and duties will be imposed on the litigants. If the court does not know who the litigants are, then it becomes impossible for the court to enforce its own orders, for it will never be clear who the beneficiary of the order was, or who had the obligation to obey or enforce such order.”

50. More recently, in *Naka Residents Association v Ease Ltd & 33 Others*, ELC Petition No. 15 of 2021 [2023] eKLR (Ruling delivered on 9<sup>th</sup> February 2023), Ombwayo J considered a similar objection where the petitioner was a society registered under the *Societies Act*. The court noted:

“A perusal of the Petition and annexures confirms that the Petitioner is a Society registered under the *Societies Act*. Being a Society under the *Societies Act*, the issue being raised in the Preliminary Objection is whether the Petitioner can sue in its own name, as it has done.

“This to me is a noble legal question which goes to the root of the matter herein. It is a point of law which could dispose of the case depending on how it goes.”



51. The court in Trustees Kenya Redeemed Church & Another v Samuel M’Obiya & 5 Others [2011] eKLR, where it was held that:

“It is trite law that a society under the Societies Act is not a legal person with capacity to sue or be sued. A Society can only sue or be sued through its due officers. It has not been pleaded that the 2<sup>nd</sup> Appellant has been sued in the capacity of an official of Kenya Redeemed Church nor has it been pleaded that he has been sued in his personal capacity.”

52. Similarly, in African Orthodox Church of Kenya v Rev. Charles Omuroka & Another [2014] eKLR, E.C. Mwita J reaffirmed:

“The Plaintiff has pleaded in paragraph 1 of its Complaint that it is a duly registered church. At paragraph 3 of the complaint, the plaintiff has described the 2nd Defendant as a duly registered church or organization. Obviously, churches are societies under the Societies Act. Societies do not have capacity to sue or be sued in their own names.”

53. These authorities, however, must be distinguished from cases involving Public Benefit Organizations (PBOs), formerly referred to as NGOs, which are governed by the Public Benefit Organizations Act No. 18 of 2013. Under Section 10(3) of that Act, registered PBOs are expressly conferred with corporate status and legal capacity to sue and be sued in their own names. The provision states:

10. Certificate of registration

- (1) Upon registering a public benefit organization, the Authority shall issue a certificate of registration in the prescribed form.
- (2) A certificate of registration shall be a conclusive evidence of the authority to operate throughout Kenya as specified in the constitution of the public benefit organization or in the certificate of registration.
- (3) A registered public benefit organization shall by virtue of such registration be a body corporate with perpetual succession capable, in its name, of—
  - a. suing and being sued;
  - b. taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
  - c. entering into contracts; and
  - d. doing or performing all such other things or acts necessary for proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.

54. There is no such corresponding provision under the Societies Act.

55. I note from the Certificate of Registration annexed by the ex parte Applicant and which has not been discredited by the 15<sup>th</sup> Interested Party that Ridehail Transport Association was registered under The Societies Rules, 1968 by the Deputy Registrar of Societies on 21<sup>st</sup> November 2022.

56. The court also notes from the Mention Notice dated 5<sup>th</sup> June, 2023 issued by the CEO/Secretary of the Transport Licensing Appeals Board Dr. A.G. Kimani (PhD) that TLAB Appeal No.E011 of 2023 is between Ridehail Transport Association (Appellant) vs. National Transport and Safety Authority & 14 Others.



57. In the instant matter, TLAB Appeal No. E011 of 2023; Ridehail Transport Association (Appellant) vs. National Transport and Safety Authority & 14 Others, an appeal before the Respondent was instituted in the name of a society, Ridehail Transport Association, which is not a body corporate for it to sue as a legal personality. That being the case, from the onset, it lacked the capacity to institute proceedings in its own name.
58. The ex parte Applicant raises the issue of sub judice, submitting that the parties and the subject matter in Appeal No. TLAB E-008 & 009 of 2023 (Consolidated) are the same as those in TLAB Appeal No. E011 of 2023. I note that the Appellants in Appeal E008 & E009 of 2023 are David Muteru & 20 Others while in TLAB Appeal No. E011 OF 2023 Ridehail is the Appellant. The ground of sub judice therefore fails.
59. On jurisdiction of the respondent, it is worth noting that the respondent can only hear and determine appeals arising from decisions of the 1<sup>st</sup> interested party, NTSA.
60. The respondent has no original jurisdiction to hear appeals filed before it directly by parties aggrieved by the 1<sup>st</sup> interested party licensing of other transport operators, before filing objections to such issuance of licenses, or seeking for revocation of such licenses and only upon being aggrieved by such decisions of the 1<sup>st</sup> interested party NTSA can they appeal to the respondent.
61. This issue has been determined by this Court in other judgments and one wonders why the respondent does not see or hear the obvious, noting that jurisdiction is only conferred by the statute or the Constitution and not parties filing or instituting proceedings.
62. The 15<sup>th</sup> interested party never objected to the issuance of license by the 1<sup>st</sup> interested party to license the exparte applicant and the 2<sup>nd</sup> to the 14<sup>th</sup> interested parties as required by section 38 of the NTSA Act. The letter written by digital taxi Association of Kenya objected to issues of payment of commissions charged by TNCs and not licensing. It therefore behoves the respondent to purport to entertain an appeal concerning licensing of operators.
63. Accordingly, I am satisfied that the respondent had no jurisdiction to hear appeals which were in effect, original complaints as opposed to appeals as contemplated under the Act.
64. Although the 15<sup>th</sup> interested party argues that the appeal was lodged under regulation 23 and not section 38 of the Act as above stated, it is trite that a regulation which is subsidiary legislation cannot be superior to the substantive law and neither can subsidiary legislation confer jurisdiction not provided in the enabling Act. Section 31 (b) of the Interpretation and General provisions Act, Cap 2 Laws of Kenya provides that:
31. Where an Act confers power on an authority to make subsidiary legislation, the following provisions shall, unless a contrary intention appears, have effect with reference to the making of the subsidiary legislation—
- (a) ...
- (b) no subsidiary legislation shall be inconsistent with the provisions of an Act
65. Subsidiary legislation must follow the parent Act and cannot exceed the scope or contradict it. As was held in *Evans Kidero & 4 Others v Ferdinand Waititu & 4 Others* [2014] eKLR, the Court reiterated that regulations cannot override provisions of a statute. Similarly, in *Samuel Kamau Macharia and*



Another vs. Kenya Commercial Bank Limited & 2 Others [2012] eKLR, the Court affirmed that jurisdiction must be expressly conferred.

66. See also in Jared Odoyo Okello & another v Independent Electoral & Boundaries Commission & 6 others [2014] eKLR where the Court of Appeal stated:

“We need not belabor the first principle that subsidiary legislation cannot, in our jurisdiction, be inconsistent with the principal legislation under which it is made, let alone *the Constitution* (See section 31(b) of the Interpretations and General provisions Act, cap 2 Laws of Kenya). It cannot possibly be that jurisdiction which is not expressly limited by *the Constitution* in Art 164(3) is left to be limited by subsidiary legislation. We do not buy the argument at all. In Peter Gichuki King’ara v IEBC & 2 Others (Supra), that argument was disposed of as follows:

“We hold that rule 35 of the Elections Petition Rules, being a subsidiary legislation within procedural rules, is not a jurisdictional rule and cannot confer or limit the jurisdiction of the Court of Appeal to hear and determine Election Petitions. We further hold that Rule 35 of the Elections Petition Rules cannot limit the jurisdiction of the Court of Appeal as granted under Art 164(3) of *the Constitution* and as operationalized by section 85A of the *Elections Act*. A subsidiary legislation cannot expand, add to or reduce the jurisdiction of any court as spelt out in *the Constitution* or by statute. Jurisdiction is neither derived nor does it emanate from regulations or rules; jurisdiction is either from *the Constitution* or statute. A rule cannot limit the jurisdiction of a court of law.”[emphasis added]

67. Thus, Regulation 23 cannot be interpreted as expanding TLAB’s jurisdiction beyond what Section 38 of the NTSA Act permits, as subsidiary legislation cannot confer jurisdiction which is not provided for in the parent Act.
68. Although the exparte applicant did not raise the issue of jurisdiction before the 1<sup>st</sup> respondent, this court in entertaining these proceedings is not sitting on appeal. One of the grounds upon which judicial review orders of certiorari and prohibition can issue is where a body entertains a matter when it has no such jurisdiction from the very beginning and in such a case, this court will not demand that the issue of jurisdiction be first and foremost be considered by a body that has no jurisdiction.
69. In view of the foregoing, I find that the applicant’s Notice of Motion is merited.
70. An order of Certiorari is hereby issued removing into this court for purposes of quashing and I do hereby quash the Respondent’s decision to hear and determine TLAB Appeal No. E011 of 2023; Ridehail Transport Association (Appellant) vs. National Transport and Safety Authority & 14 Others.
71. An order of prohibition is also issued against the Respondent prohibiting it from proceeding with, entertaining, hearing or determining TLAB Appeal No. E011 of 2023; Ridehail Transport Association (Appellant) vs. National Transport and Safety Authority & 14 Others.
72. I find it necessary to issue this order owing to the fact that the Respondent has in the past failed to comply with a previous orders of this court dated 25<sup>th</sup> May 2023.
73. The respondent is a body subordinate to the High Court and is supervised by the High Court pursuant to the provisions of Article 165(6) and (7) of *the Constitution*. This Court in exercise of supervisory jurisdiction exercises jurisdiction conferred by *the Constitution* and therefore it is surprising that the respondent can ignore orders of this Court and proceed to hear and determine proceedings which this



court has found that it has no jurisdiction to hear and determine and where this court has stayed the proceedings pending hearing and determination of the judicial review proceedings.

74. As the Respondent is a public body which acted without jurisdiction, I order that each party bear their own costs of these proceedings. However, should the respondent persist in flouting the law, the parties affected are at liberty to apply for appropriate orders against the officials of the respondent, noting that something is done without jurisdiction, it remains void. Such decisions made without jurisdiction will remain paper decisions as they will be incapable of implementation.

75. This file is closed.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE, 2025**

**R.E. ABURILI**

**JUDGE**

