



**Matunda v National Transport and Safety Authority (Appeal E006 of 2022)
[2022] KETLABT 830 (KLR) (16 November 2022) (Judgment)**

Neutral citation: [2022] KETLABT 830 (KLR)

**REPUBLIC OF KENYA
IN THE TRANSPORT LICENSING APPEALS BOARD TRIBUNAL
APPEAL E006 OF 2022**

**JOSEPH MCDONALD, CHAIR, JAMES NGOMELI,
LILLIAN WAITHERA & MARYAN HAJIR, MEMBERS**

NOVEMBER 16, 2022

BETWEEN

ONDIEKI DANIEL MATUNDA APPELLANT

AND

NATIONAL TRANSPORT AND SAFETY AUTHORITY RESPONDENT

JUDGMENT

Introduction

1. The appellant is a holder of A, B, C, E license issued by the respondent. He has been driving under the license the last 15 years.
2. The respondent, National Transport and Safety Authority (NTSA), is established under section 3 of the *National Transport and Safety Authority Act* No 33 of 2012 and has the responsibility to: advise and make recommendations to the Cabinet Secretary on matters relating to road transport and safety, implement policies relating to road transport and safety; plan, manage and regulate the road transport system; ensure the provision of safe, reliable, and efficient road transport services and to administer the *Traffic Act*.

Appellant's Case

3. The appellant averred that he has 15 years of experience in driving; he attached a copy of his driving license.
4. Further to the above the appellant attached evidence that he has consistently renewed his license; he showed that from the year 2011 he has done so without fail. The last renewal being February 9, 2017 valid to February 9, 2018.



5. On August 2, 2019; the appellant applied for a smart DL he attached the payment receipt as proof of the same. He was therefore shocked when the respondent refused to reinstate his earlier classes; and advising him to do fresh driving test.
6. Finally, the appellant averred that the respondent's failure to endorse for him a class A or D2 on his license has made him lose income and the requirement by the respondent imposed on him to go back for a driving test was unreasonable since he has 15 years of experience and in any case he has been previously had the same endorsed by the respondent.

Respondent's Case

7. The respondent authority argued that the class A endorsement carries a lot of public expectations and for abundance of caution it would be important for the appellant to go back to a driving school so that the authority can be confident with the endorsement. The authority argued that public safety is of greater public interest.
8. The respondent further argued that since as the appellant claims to be a driver for 15 years this short driving school test would not be a problem to the appellant. To support the argument, the respondent relied on section 13,14 and 17 of the Traffic Rules (under section 119 of the Traffic Act) as read together with section 31 of the Traffic Act.

Determination

9. Following the arguments made and evidence adduced by the parties before the Transport Licensing and Appeals Board during the trial, the board has extrapolated the following issues for determination whether:
 1. The appellant has adduced enough evidence to prove that he had a class A stamp on his driving licence to enable him drive D2 vehicles and whether he is entitled to class D2 endorsement on his driving licence.
 2. The National Transport and Safety Authority infringed on the appellant's right to fair administrative action when it made the decision that the appellant should go back to driving school for class D2 endorsement on his licence.

Whether enough evidence has been adduced by the appellant

9. The appellant has proved that he has been driving for more than 40 years and that hence above 24 years, which makes him entitled to a class D2 endorsement. He has therefore satisfied the conditions enumerated under section 33 of the Traffic Act, chapter 403 of laws of Kenya. section 33(1) of the Traffic Act states that

- "1. No driving licence or provisional licence shall be granted to any person
 - i. under the age of sixteen years;
 - ii. under the age of eighteen years, except in respect of motorcycles;
or
 - iii. endorsed in respect of matatus and motor-omnibuses, unless he
 - a. is over the age of twenty-four years; and



- b. has for not less than four years held a licence endorsed in respect of motor-cars or commercial vehicles:

Provided that any person who satisfies the licensing officer that he has, before the commencement of this Act, been in possession of a licence authorizing him to drive a motor vehicle in Kenya shall, subject to subsection 2 of section 31, notwithstanding the provisions of this section, be entitled to receive a licence in respect of the same class or description of vehicles which he is by such licence authorized to drive."

10. The appellant has also furnished copies of his driving license which he has constantly renewed from 2011. The driving licence dated February 9, 2017 and which expires on February 9, 2018 bears a signature against class A which according to the regulations is equivalent to class D2. This is in line with section 30 of the [Traffic Act](#) which states that

- "1. No person shall drive a motor vehicle of any class on a road unless he is the holder of a valid driving licence or a provisional licence endorsed in respect of that class of vehicle.
2. No person who owns or who has charge of a motor vehicle of any class shall cause or permit any person to drive such motor vehicle unless such person is the holder of a valid driving licence or a valid provisional licence endorsed in respect of that class of motor vehicle.
3. No person shall be entitled to more than one driving licence, but a driving licence may be endorsed to permit the holder to drive one or more classes of motor vehicle. (emphasis added).
4. Driving licences shall be issued, and upon expiry renewed on production, by a licensing officer upon payment of the prescribed fee, and a driving licence so issued or renewed may be expressed to be valid for a period of three years, from the date of issue or renewal."

11. Further section 82 of the [Traffic](#) states whose sub-heading reads "Particulars of endorsement to be inserted in new licence." Categorically states

"On the issue of a driving licence or provisional driving licence to any person, the particulars endorsed on any previous licence held by him shall be inserted in the new licence, unless he has previously become entitled under section 84 to the issue of a licence free from endorsement."

12. Section 82 (*supra*) is couched in simple straight forwards terms and it does not impose additional requirements for applicants to go back to a driving test or school. If there were such intention, then nothing would be easier than for the legislature to include that requirement in the Act.
13. The TLAB also considered section 13,14 and 17 of the [Traffic Rules](#) as submitted by counsel for the respondent and observed that section 13 applies to new applications and section 14 applies to a person who is applying to a new class for the first time; and does not apply to someone who already has the class endorsed. TLAB also observed that nothing in those sections suggest that a person who previously held a certain class would be required to do another test in order to get the same endorsement on renewal of



a license or during transition from normal DL to smart DL; therefore, the authority would be acting *ultra vires* by creating new impositions outside the law.

14. The appellant is thus entitled to a class D2 endorsement on his driving licence by virtue of having met all the requisite requirements namely: proof of having to driven such vehicles for 4 years; that he is above 24 years and that his latest driving licence has a class A stamp which is similar to class D2.

Whether NTSA has violated the appellant's right to fair administrative action

15. Article 47 of the [Constitution of Kenya](#), 2010 posits that "Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair." Section 4 of the [Fair Administrative Action Act](#), 2015 equally reiterates that "Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair." The decision by the National Transport and Safety Authority that the appellant should return to driving school for him to get class D2 endorsement was not backed by any law and was unreasonable because it would be illogical for the appellant to go back to driving school yet he had requisite driving skills and had a class A stamp on his driving licence which carried the same weight as a class D2. The decision was therefore illegal and contravened article 47 of the [Constitution of Kenya](#), 2010 and section 4 of the [Fair Administration Act](#), 2015.
16. The appellant was right in bringing this appeal before the board claiming his rights were violated under section 7(1) of the [Fair Administrative Action Act](#), 2015 which states that:

"Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to:
 - a. A court...; or
 - b. A tribunal in exercise of its jurisdiction conferred in that regard under any written law.
17. The board finds the decision of the respondent authority to have been illegal, unreasonable and contrary to the right to fair administrative action of the appellant as per sections 7(2) (d)(f)(k). The Act posits that
 - (7) (2) A court or tribunal under subsection (1) may review an administrative action or decision, if-
 - (d) the action or decision was materially influenced by an error of law;
 - (f) the administrator failed to take into account relevant considerations;
 - (k) the administrative action or decision is unreasonable;
18. The rules of administrative law to which the National Transport and Safety Authority is bound as an administrative organ serving members of the public are legality, proportionality, legitimate expectation, duty to give reasons, reasonableness and public participation or consultation. NTSA in making its decision against the appellant violated some of these principles which are key in ensuring efficient and effective service delivery by administrative organs. It made a decision that did not meet the legitimate expectation of the appellant and which was not only illegal but also unreasonable. The legitimate expectation of the appellant was that since he had met the statutory requirements to be given class D2 endorsement and that he already had a class A stamp on his driving licence which is equivalent to class D2, his driving licence would be updated with a class D2 endorsement without him being necessarily



required to go back to driving school. This board finds the decision of the National Transport and Safety Authority to be wrong, null and void pursuant to section 7(2) (m) which avers that

“A court or tribunal (Transport Licensing Appeals Board sits as a tribunal or quasi-judicial body) may review an administrative action or decision, if the administrative action or decision violates the legitimate expectations of the person to whom it relates.”

19. Having considered the facts, evidence adduced and the relevant law, the Transport Licensing Appeals Board hereby makes the following orders:

1. That the appellant has proved to the satisfaction of this board that he has class A stamp on his driving licence; that he is 48 years and has been driving for over four years hence he is entitled to class D2 endorsement which will enable him drive class D2 vehicles.
2. That the appellant’s right to fair administrative action was infringed.
3. That the appellant is entitled to the endorsement of class D2 in his licence and should use this order as proof of the entitlement.
4. That NTSA should update the appellant’s driving licence with class D2 endorsement within seven (7) days of this order.
5. Every party to bear their own cost.

DELIVERED, DATED, AND SIGNED IN MERU LAW COURTS BY THE TRANSPORT LICENSING APPEALS BOARD ON THIS 16TH DAY OF NOVEMBER 2022.

Joseph McDonald Chairman

James Ngomeli Member

Lilian Waithera Member

Maryan Hajir Member

