



REPUBLIC OF KENYA



KENYA LAW
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**SKM v National Transport and Safety Authority (Appeal E038 of 2022)
[2023] KETLABT 682 (KLR) (16 August 2023) (Judgment)**

Neutral citation: [2023] KETLABT 682 (KLR)

**REPUBLIC OF KENYA
IN THE TRANSPORT LICENSING APPEALS BOARD TRIBUNAL
APPEAL E038 OF 2022**

**A KAMOTHO, CHAIR, JOSEPH MCDONALD, MARYAN
HAJIR, JAMES NGOMELI & WAITHIRA MUIRURI, MEMBERS**

AUGUST 16, 2023

BETWEEN

SKM APPELLANT

AND

NATIONAL TRANSPORT AND SAFETY AUTHORITY RESPONDENT

JUDGMENT

Introduction

1. The appellant is a male adult of Identification Number xxx resident of Murang'a County.
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 filed a memorandum of appeal on the 16th day of November 2022 at Murang'a Law Courts and heard on the 22nd of November 2022. The appellant claimed that the respondent had refused to issue him with a public service vehicle badge (PSV Badge) citing that his police clearance certificate (PCC) has remarks.
4. The Appellant had been charged with the charge of assault contrary to section 251 of the *Penal Code*. He presented evidence to the tribunal of a letter from the Chief Magistrate's Court, Thika law courts Ref no. TKA-Crc 2383/06.



5. The letter dated December 18, 2018 stated that the archives were not able to provide the copies of proceedings applied for as the Original File was disposed. The letter however showed the particulars of the case affirming that the accused person (herein the Appellant) was discharged under section 87(a) [CPC](#) on the 15th of September, 2006.
6. The Appellant provided evidence showing that the Police Clearance Certificate (PCC) was of the present year that is 2022 and it had “Outstanding” in its remarks. The PCC had the same crime the Appellant had committed and acquitted for in 2006.

Respondent’s case

7. The Respondent Authority did not have any objection to the Appellant’s application apart from the issue of the PCC and after they were produced with evidence stating otherwise they had no other objection.

Issues For Determination

8. Following the arguments made and evidence adduced by the parties before the tribunal during the trial, the following issues have been extrapolated for determination:
 1. Whether the Respondent has a right to refuse to grant a PSV Badge to the Appellant on grounds that he had a criminal record?
 2. Whether notwithstanding the remarks on the Appellant’s Police Clearance Certificate (PCC) the Appellants’ application for a PSV Badge should be approved?

Analysis And Determination

1. Whether the Respondent has a right to refuse to grant a PSV Badge to the Appellant on grounds that he had a criminal record?

9. Section 6(m) The [National Transport and Safety Authority \(Operation of Public Service Vehicles\) Regulations, 2014](#) provides;

“6 A person applying to for a licence shall submit to the Authority certified copies of—

- (m) the driving licence, identity card, and certificate of good conduct of each person who shall drive the public service vehicles in respect to which the application for the licences is being made;

10. The Respondents’ action of denying the Appellant’s application based on his failure to meet the requirements put in place have merit. This is because administrative action can be taken even after criminal actions have.

11. A licensee’s protection against double jeopardy does not apply to an administrative agency’s prosecution in an administrative disciplinary proceeding. The law is very clear that:

“the constitutional prohibitions against double jeopardy and double punishment do not prevent the legislature from enacting, and the executive from enforcing, civil as well as criminal sanctions for the same conduct.”



12. *In the Matter of Barnes v. Tofany*, 27 NY2d 74 (1970) (defendant's driver's license was suspended for 60 days in a civil administrative proceeding and was again suspended for 60 days in a subsequent criminal action). Hence the Respondent can rightfully enforce its administrative action
13. In this case though the Appellant does not have a pending criminal matter in court rather the case was dismissed and the Appellant should not be burdened with administrative punishment unless the respondent can come up with a policy or regulation showing that he should.
14. Section 35 (1) and (3) of the [Data Protection Act, 2019](#) provides that;

“ 35.

- (1) Every data subject has a right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning or significantly affects the data subject.
- (3) Where a data controller or data processor takes a decision, which produces legal effects or significantly affects the data subject based solely on automated processing—
 - (a) the data controller or data processor must, as soon as reasonably practicable, notify the data subject in writing that a decision has been taken based solely on automated processing; and
 - (b) the data subject may, after a reasonable period of receipt of the notification, request the data controller or data processor to —
 - (i) reconsider the decision; or
 - (ii) take a new decision that is not based solely on automated processing.”
15. Based on this argument, denying the appellant a PSV Badge based on automated information is a violation of his rights under the [Data Protection Act, 2019](#). The Respondent did not accord the Appellant an efficient and fair administrative action contrary to article 47 of the [Constitution of Kenya](#), 2010 that states;

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(1)

“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”

2. Whether notwithstanding the remarks on the Appellant’s Police Clearance Certificate (PCC) the Appellants’ application for a PSV Badge should be approved?

16. The requirement of the Police Clearance Certificate (PCC) for one to acquire a PSV Badge is put in place by the Respondent in collaboration with the Directorate of Criminal Information (DCI). The information in the Police Clearance Certificate issued in this matter was not up to date. This is based on the evidence adduced before the tribunal.



17. Section 25 (f) of the *Data Protection Act, 2019* provides;

“25 Principles of data protection

Every data controller or data processor shall ensure that personal data is-

(f) accurate and, where necessary, kept up to date, with every reasonable step being taken to ensure that any inaccurate personal data is erased or rectified without delay;”

18. The use of the information in the Police Clearance Certificate (PCC) that is generated from the DCI system that is not up to date, to determine the Appellant’s application is a violation of his rights. Section 26 of the *Data Protection Act, 2019* provides;

“26 Rights of a data subject

A data subject has a right—

(d) to correction of false or misleading data; and

(e) to deletion of false or misleading data about them.”

19. Being that the Respondent based their decision to issue the PSV Badge on the PCC provided, it will be a great injustice if Appellant continued to suffer economical loss based on incorrect information.

20. This Tribunal decision is on a case to case basis and in this matter the appellant has proved that he does not have an outstanding criminal matter and the remarks on his PCC are incorrect. Based on those facts the Appellant should be issued with a PSV Badge notwithstanding the remarks on his Police Clearance Certificate.

Orders

Having considered the facts and the law applicable to this case, the transport licensing appeals board hereby makes the following order:

- a. That the respondent authority to issue the appellant with a PSV badge within fourteen (14) days.
- b. That this order is enforceable for a period of one year from the date it is delivered.
- c. That the order be served upon NTSA and the Traffic Commandant

DELIVERED AT MURANG’A BY THE TRANSPORT LICENSING APPEALS BOARD ON THIS...16TH...DAY OF...AUGUST...2023

**DR. ADRIAN KAMOTHO
CHAIRPERSON**

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JOSEPH MCDONALD

MEMBER

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MARYAN HAJIR

MEMBER



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JAMES NGOMELI

MEMBER

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WAITHIRA MUIRURI

MEMBER

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