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**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

CASE NO: 3235/2022

Reportable: NO

Of Interest to other Judges: NO

Circulate to Magistrates: NO

In the matter between:

RETSHEDISITSOE ISAAC MAFISA

Applicant

And

GREATER BLOEMFONTEIN TAXI ASSOCIATION

1st Respondent

MOFEREFERE SHADRACK MAPHISA

2nd Respondent

HEARD ON: 17 NOVEMBER 2022

JUDGMENT BY: MHLAMBI, J

DELIVERED ON: This judgment was handed down electronically by circulation to the parties' legal representatives by email and released to SAFLI. The date and time for hand-down are deemed to be at 14h30 on 23 January 2023

[1] The applicant successfully obtained an order on 21 October 2022 interdicting the respondents from preventing his vehicle from loading passengers with his

licencing permit at the Majakathata taxi rank. The rule *nisi* was granted on the following terms:

“1. The forms, service and time periods prescribed in terms of the Uniform Rules of Court be dispensed with and the matter be admitted on the roll as one of urgency in terms of rule 6 (12) of the Uniform Rules of Court.

*2. The rule nisi is issued in terms whereof the First and Second Respondents are called upon to show cause on the **3rd of November 2022, at 9h30** why an order in the following terms should not be made a final order of the above Honourable Court.*

2.1 That the respondent be interdicted from preventing the applicant’s vehicle from loading at the Taxi Rank known as Majakathata Taxi Rank in line with a permit with number: [...]held by the applicant for the vehicle in question.

2.2 That the respondent be interdicted from instructing or affecting or causing any driver of the Applicant to vacate the Taxi rank where he is supposed to load.

3. Prayer 2.1 and 2.2 above shall serve as an interim interdict against the Respondents until the return date.

4. The Respondent are entitled to anticipate the return date on 24 hours written notice to the Applicant’s attorney.

5. The applicant is granted leave, in the event that the respondents fail or omit to comply with the order referred to in paragraph 2.1 and 2.2 supra, to approach the court on the same papers, duly supplemented where necessary, for an order of contempt of court.

6. This Court Oder must be served on the First and Second Respondent by the Sheriff of this Court at [...] [...] B [...] Road, Heidedal, Bloemfontein within 24 hours of the date of the order.

7. *The respondent is ordered to pay the costs of the application on an attorney and client scale.”*

[2] The applicant is a member of the first respondent to whom the second respondent is affiliated. The applicant bought an operating licence on 6 August 2019 from one Ms. Nontsokolo May. The second respondent refused to issue the applicant with a letter to facilitate the registration of the vehicle in his name. Ms Nontsokolo May obtained an order on 6 August 2020 compelling the first respondent to sign all necessary documents to facilitate the transfer of the licence into the name of the applicant.

[3] The second respondent having complied with the court order, the said Ms May refused to sign the transfer documents. Another court order was granted against her to sign such transfer documents on 24 March 2022. Another court order was obtained against the chairperson of the first respondent when both Ms. Nontsokolo May and the chairperson of the first respondent refused to sign the relevant transfer documents. The order was granted on 8 September 2022. The documents were signed by the first respondent and the operating permit was issued by the Free State Licencing Board on 19 October 2022.

[4] The second respondent and the chairperson of the Majalathata Taxi Rank prevented the applicant from loading passengers at the Majakathata Taxi Rank on 20 October 2022. The applicant approached the office of the first respondent for intervention and was referred to the office of the Majakathata Association as he had an operating licence. He did so on 21 October 2022, but his vehicle was prevented from loading passengers by the second respondent. The applicant then approached the court on an urgent basis for the necessary relief.

[5] In its papers, the first respondent expressed its co-operation in securing the applicant his operating licences¹ and that it complied with the court order². Save to lament and to completely go off on a tangent on procedural matters which included the loading of passengers, the first respondent admitted that the applicant

¹ Paragraph 6 and 9 of the Answering Affidavit.

² Paragraph 8 of the Answering Affidavit.

approached the chairperson of the first respondent to discuss his concerns.³ The counsel for the first respondent called it a day after a brief oral address during the court proceedings. Mr Bahlekazi, counsel for the applicant, was prompted to submit that it was not clear to him why the first respondent opposed the application; more so that it was acknowledged that the permit was valid.

[6] The second respondent raised the following preliminary points: the lack of urgency, the non-joinder of the MEC for Police, Roads and Transport, Free State Transport Licencing Board and Ms Nontsokolo May, the non-compliance with Rule 12 (1)(b) of the Uniform Rules of Court and the lack of a clear right. It is opportune to state that during argument, the second respondent's counsel conceded and did not oppose that a final order be granted in respect of prayer 2.1 of the interim interdict of 21 October 2022 but took up issue with prayer 2.2 of the same order. These two prayers serve as an interim interdict. The rationale of separating the second prayer from the first is not clear.

[7] On receipt of the urgent application, the second respondent, as chairman of the Majakathata Taxi Rank, and his deputy, called Ms Nontsokolo May to discuss the applicant's reasons and the "*purported urgency*" raised in the application.⁴ It was stated in the affidavit that it was not true that the applicant struggled to pay the bank as he was, on his own version, been active in the taxi industry since 2019.⁵ The Majakathata Taxi Rank Association took a decision based on a complaint by Ms May in July 2021 not to allow the applicant to transport passengers to far-flung destinations, an aspect of the decision he accepted and never challenged for more than a year.⁶ It had taken the applicant a period of a year, from July 2021 until 21 October 2022, to bring the present application on an urgent basis on the basis that he was unable to pay the bank.⁷

[8] The second respondent missed the point and, clearly, did not read the papers properly. The interim interdict referred to a specific permit, granted on the 19th of

³ Paragraph 12.1 of the Answering Affidavit.

⁴ Paragraph 4 of the Second Respondent's Answering Affidavit.

⁵ Paragraph 4.1.1.5 of the Second Respondent's Answering Affidavit.

⁶ Paragraph 4.1.1.6 of the Second Respondent's Answering Affidavit.

⁷ Paragraph 4.1.1.8 of the Second Respondent's Answering Affidavit.

October 2022 and the events giving rise to the application took place on 20 to 21 October 2022. Nowhere in the applicant's papers was it alleged, as the second respondent suggested, *"that the applicant cannot now bring this matter on an urgent basis simply because he wants Majakathata to add him as a new member, to wit, to be the number 23 member forgetting and misdirecting himself to the real issue that regardless of its alleged permit, he still has to operate under the umbrella of the permit holder Miss Mei in terms of their own private arrangement."*⁸

[9] It is clear that the second respondent, instead of addressing the issues at hand, referred to historical and irrelevant issues. The attitude of the second respondent in this application is captured in the following paragraph:

"these standing rules of our taxi association of The Greater Bloemfontein Taxi Association that says, only 22 members are the members of Majakathata Long Distance Association under the umbrella of Greater Bloemfontein Taxi Association, I submit that it is a well-known standing rule by both the applicant and Miss Mei even before they could enter into these private arrangements (or be it to be questionable) since both of them are members of Greater Bloemfontein Taxi Association and only Ms Nontsokolo Mei is a member of Majakathata Long Distance of which the applicant is not our member. He only operates with us at Majakathata Long Distance route under the umbrella of Ms Nontsokolo Mei as gleaned from the attached annexures marked "F1", "F2" and "F3" referred at paragraph 4.1.1.7 herein above. The applicant is not on the listed 22 members of Majakathata Long Distance Route Association and this fact can be confirmed as well by both Greater Bloemfontein Taxi Association the mother body and Miss Nontsokolo Mei who entered into such private dealings with Applicant.

4.1.1.10 (a) In this regard I challenge the applicant to prove who granted him membership if any, to join Majakathata Long Distance Route Association,

⁸ Paragraph 4.1.1.11 of the Second Respondent's Answering Affidavit.

except than what we know as fact that, he nearly operating under the umbrella wing of our member Ms Nontsokolo May.”⁹

[10] The second respondent submitted that the applicant was not prevented from loading commuters at the Majakathata Long Distance Rank as long as he complied with the terms and conditions of the private arrangement with Ms May relating to the sale agreement of the taxi permit which, in their view, was illegal as it flaunted the provisions of the National Land Transport Act 5, 2009. Their private arrangement should not affect the standing rules and practices of the Greater Bloemfontein Taxi Association and the Majakathata Long Distance Rank.¹⁰

[11] The preliminary points of non-joinder and the lack of a clear right do not hold water and should be disregarded. The Free State Operating Transportation Board resorts under the Department of Transport. It issued and granted an operating licence L[...]under the umbrella of the Greater Bloemfontein Taxi Association, which was valid from 17 October 2022 to 28 April 2023. Surely this document authorises the applicant to conduct a transportation business for the conveyance of passengers as per the conditions set out therein without the interference of third parties. Having issued a valid and lawful operating licence, I do not see any logic of joining the parties as suggested by the second respondent. The second respondent is free to approach the MEC and other parties if aggrieved and so chooses.

[12] On perusal of the papers, it is evident that the second respondent is the person who is at the root of the current problem.¹¹ There is no reason whatsoever why the first respondent opposed the application and, in doing so, pushed up the costs of the application. Both parties should be liable for the costs and in the given circumstances, costs on a punitive scale are appropriate. Both parties failed to adduce reasons and/or show cause why a final order should not be granted. Consequently, I make the following order:

Order:

⁹ Paragraph 4.1.1.10 of the Second Respondent's Answering Affidavit.

¹⁰ Paragraph 4.1.1.9 of the Second Respondent's Answering Affidavit.

¹¹ See also the Founding Affidavit paragraph 3.

1. The rule nisi is confirmed.
2. First and second respondents are to pay the applicant's costs on an attorney and client scale, jointly and severally, the one paying the other to be absolved.

MHLAMBI, J

On behalf of applicant:

Adv. NM Bahlekazi

Instructed by:

Lwandle Nkontso Inc Attorneys
54 Kellner Street
Bloemfontein

On behalf of the first respondent:

Adv. LW Mohale

Instructed by:

OMM Attorneys Inc.
Regus Business Centre
Unipark Building
Brandwag
Bloemfontein

On behalf of the second respondent:

Mr MJ Ponoane
Ponoane Attorneys
Suite 110
Library House
44 Westburger Street
Bloemfontein