

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

Reportable: NO

Of Interest to other Judges: NO

Circulate to Magistrates: NO

Case No: 5348/2021

In the matter between:

WELKOM UNITED TAXI ASSOCIATION

1st Applicant

TSUKULU JOEL MATLATSA

2nd Applicant

KGATELOPELE TAXI ASSOCIATION

3rd Applicant

and

**MAJAKATHATA LONG DISTANCE TAXI ASSOCIATION
(ODENDAALSRUS MAJAKATHATA LONG DISTANCE
TAXI ASSOCIATION)**

1st Respondent

**MOHAHLAULA TAXI ASSOCIATION AND OTHERS
(ODENDAALSRUS)**

2nd Respondent

MEC: DEPARTMENT OF POLICE, ROADS, AND

3rd Respondent

TRANSPORT AND OTHERS

FREE STATE PROVINCIAL REGULATORY AUTHORITY

4th Respondent

FREE STATE TRANSPORT REGISTRAR

5th Respondent

MATJHABENG LOCAL MUNICIPALITY

6th Respondent

HEARD ON: 27 JULY 2023

JUDGMENT BY: MHLAMBI, J

DELIVERED ON: 30 October 2023

[1] On 16 November 2021, The applicants launched an application seeking the following relief:

“1. That the 1st and 2nd respondents and their respective members, be ordered to restore, immediately, the 3rd applicant’s peaceful and undisturbed possession of their offices situated at MEDEX BUILDING, 4th Floor Room 16, Welkom with immediate effect.

2. That the 1st and 2nd respondents and their respective members be interdicted and restrained from operating on the Applicant’s routes, being routes FS255, FS788 and FS 139, without valid permits and or licences, with immediate effect.

3. That the 1st and 2nd respondents and their respective members, being interdicted and directed to desist from operating from an illegal taxi rank situated at Erf No, 2[...], Township Welkom, Ext, 2 also known as PTN of 2[...], Welkom and/or any illegal taxi rank or premises without any proper and/or valid authority.

4. That the 1st and 2nd respondents and their respective members be directed to remove or demolish an illegal taxi rank situated at Erf No. 2[...], Township Welkom, Ext 2 also known as PTN of 2[...], Welkom and/or any taxi rank established without any proper and/or valid authority.

5. That 1st and 2nd respondents and their respective members be interdicted from interfering, threatening, assaulting, insulting and/or abusing the Applicants, verbally and/or physically and/or in any other manner with immediate effect.

6. That the 3rd and/or 4th and/or 5th and/or 6th respondents and/or their appointee be directed to necessary action in terms of the powers granted to them by the Free State Transport Act 4 of 2005 and Free State Public Transport Regulations, 2010 against the 1st and/or 2nd respondents and their respective members for operation or providing taxi services on routes FS255, FS788 and FS139, without valid permit or licences and for establishing and operating from an illegal taxi rank situated behind the Shoprite in Errarat Street, Welkom or at Erf No. 2[...], Township Welkom, Ext 2 also known as PTN of 2[...], Welkom and/or any premises without any proper and valid authority with immediate effect.

7. That in the event that the 1st and 2nd respondents fail and/or refuse and/or omit to give the 3rd Applicants access to their offices situated at 4029/30 K1, Kutlwanong , Odendaalsurs, 9480 and/or remove the illegal taxi rank situated behind Shoprite in Errarat Street , Welkom or at Erf 2[...], township Welkom, extension 2 also known as PTN of 2[...], Welkom within 5 days of the order, the sheriff of the above honourable court be authorised and/or directed to remove all locks or obstacles put by the 1st and 2nd respondents on the said offices and to demolish the aforementioned taxi rank.

8. That 1st and 2nd respondents pay the costs of the application, and in the event that any of the other respondents oppose the application, it/he/she/they be ordered to pay the costs of the application jointly and severally with the 1st and 2nd respondents, the one paying the other to be absolved.

9. Further and/or alternative relief.”

[2] Even though the first and second respondents filed a joint notice to oppose the application on 3 December 2021, only the first respondent filed an answering affidavit as well as heads of argument. The sixth respondent did not oppose the application. The third, fourth and fifth respondents filed a notice to abide the decision of the court in the matter.

[3] On 21 December 2021 the first respondent filed its answering affidavit. On 7 November 2022, the applicant's current attorneys filed a notice of substitution of attorneys of record replacing the applicants' erstwhile attorneys firm, Mphafi Khang Incorporated. On the same day the applicants filed a notice in terms of Rule 30 giving notice that the first respondent's heads of argument filed on 25 January 2022 constituted an irregular step as the first respondent had not filed its answering affidavit. The applicants withdrew this notice on 17 November 2022. On 23 February 2023 the applicants filed and served a condonation application for the late filing of their replying affidavit and simultaneously filed a supplementary founding affidavit.

[4] The first respondent resisted the application on two grounds namely:

1. That the application was not urgent as it was styled in terms of Uniform Rule 6 (12) and sought an interdict and a restrained order against the first and second respondents together with their uncited members.¹ On the merits, the respondents contended that all the licences attached to the founding affidavit were *ad hoc* authorisations issued in terms of section 65 of the Act² which were meant for sports events, funerals or weddings. These authorisations could not be used to convey passengers in the manner alleged by the applicants. The applicants were operating illegally with the express authorisation of the authorities.³ On the other hand, the members of the first respondent operated on the disputed routes for years with the express knowledge and approval of the registrar and it could not be said that they

¹ Paragraphs 7, 11 and 12 of the AA.

² Free State Public Transport Act 4 of 2005.

³ Paragraph 12 of the AA

were operating illegally.⁴ The application should therefore be struck off the roll with punitive costs for lack of urgency.⁵

[5] On 25 January 2022, the first respondent's local correspondent, Messrs E.G. Cooper Majiedt Inc., addressed a letter to Ramos AJ which reads as follows:

"1. The above matter refers.

2. Our offices hereby kindly request that the matter don't proceed on Thursday, 27 January 2022.

3. Our offices are the local correspondent Attorney for the first Respondent in this matter and we are quite surprised that this matter was enrolled. Our offices don't know who enrolled the matter and we also did not receive a Notice of Set Down.

4. We confirm that our colleague who was the Attorney of Record for the Applicants has passed away in December 2021.

5. We also confirm that the Applicants' Attorneys didn't index the pleadings. They also haven't filed their Heads of Argument and Practice Notes.

6. We apologise for any inconvenience caused and we will instruct counsel to remove the matter from the roll on Thursday, 27 January 2022 with costs to stand over.

7. We trust that you find the above in order.

....."

⁴ Paragraph 21 of the AA.

⁵ Paragraph 27 of the AA.

[6] On 27 January 2023, Ramos AJ granted an order removing the application from the roll and costs were to stand over for later adjudication.

[7] On 23 February 2023, the applicants filed and served on the respondents a condonation application for the late filing of the replying affidavit, the replying affidavit and the supplementary founding affidavit. Despite having been served with these documents on 23 February 2023, the respondents failed to react thereto. The applicants contended that the supplementary affidavit should be admitted as the respondents would suffer no prejudice. The application had not been set down when it was filed and served on the respondents and they had ample time to respond thereto.

[8] In the condonation application, the applicants stated that they were not the cause of the delay for the late filing of the replying affidavit but that the delay was caused by the applicant's former attorney's health condition and subsequent death⁶ in December 2021. The first respondent's answering affidavit was dispatched by email to this attorney and the current attorneys only became aware of the answering affidavit on 16 November 2022 after the Rule 30 notice was served on the first respondent.⁷ The applicants thereafter consulted with their legal representatives and members. The services of counsel were secured and a consultation was held on 25 January 2023.⁸

[9] Both the applications for the condonation of the late filing of the replying affidavit and the admission of the supplementary affidavit were dismissed. The answering affidavit was filed on 21 December 2021 and the condonation application was filed on 23 February 2023. The applicants failed to give a full and reasonable explanation, which covered the entire period of delay.⁹

⁶ Paragraph 3.1 of the RA.

⁷ Paragraph 3.2 of the RA.

⁸ Paragraph 3.4 of the RA.

⁹ *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae)* 2008 (2) SA 472 (CC).

[10] In the founding affidavit, the applicants stated that they and their members were holders of permits and taxi licences which authorised them to operate taxis on the routes assigned to them in line with their permits.¹⁰ They operated the taxi business from the taxi ranks provided to them by the relevant authorities while the first and second respondents were operating without valid permits and/or licences on the routes not assigned to them in terms of the Act and the regulations.¹¹ Apart from operating from unlawful taxi ranks, the first and second respondents blockaded the routes assigned to the applicants and assaulted the members of the first and third applicants as a result of which they could not operate freely and without fear.¹² The first and second respondents unlawfully invaded the third applicant's offices situated at 4029/30 K1, Kutlwanong Odendaalsrus, broke the locks and replaced them with their own.¹³ The third applicant has since gained access to the said premises but the first and second respondents continued with their unlawful conduct which was brought to the attention of the third, fourth, fifth and sixth respondents without success.¹⁴

[11] The applicant's erstwhile attorneys addressed several letters in 2018 to the MEC, the Department of Police, Roads and Transport¹⁵ as well as the first and second respondent's attorneys, Messrs Mashala Komane Masekela Incorporated,¹⁶ informing them of the respondents' illegal operations on routes FS 255, FS 887 and FS139 assigned to the applicants and that the respondents should desist from this unlawful behaviour of assaulting the applicants and their members, locking up and closing their offices. These pleas and demands fell on deaf ears and no decisive action was taken against the first and second respondents for their unlawful conduct.

[12] Save for the bare denial that the respondents' members committed the alleged crimes and that they were never arrested by the police, the allegations

¹⁰ Para 6.1 of the FA.

¹¹ Para 6.4 of the FA.

¹² Para 6.6 of the FA.

¹³ Para 6.7 of the FA.

¹⁴ Para 6.9 of the FA.

¹⁵ Annexure "E2" to the FA.

¹⁶ Annexure "E3" to the FA.

mentioned above and contained in the founding affidavit were not addressed in the first respondent's answering affidavit.

[13] It is indeed so that the applicants stated in their founding affidavit that they had satisfied the requirements which are applicable to interim relief whereas they sought a final interdict. In oral address, Mr Mphulane submitted that the applicants sought a final relief and not an interim relief. The drafter of the documents had erred in referring to the requirements of an interim interdict in the founding affidavit. He contended that the prayers in the notice of motion clearly showed that a final and not an interim interdict was sought. The abortive applications for condonation for the filing of the interim interdict and the admission of the supplementary affidavit would have borne this out. He contended that the supplementary affidavit sought to correct paragraph 9 of the founding affidavit by stating that the applicants had satisfied the requirements for the granting of a final interdict. The applicants had a clear right as holders of valid taxi permits who were lawfully assigned taxi routes on which to operate.

[14] The question that arises is whether the applicants should stand and fall by their founding affidavit or, put otherwise, whether the applicants are entitled to the relief sought on the papers as they stand. The applicants were of the view that the appropriate relief should be granted whereas the respondents argued to the contrary and prayed for the removal of the application from the roll with costs. The respondents referred me to a full bench decision of this court under case number A154/2020 between the same parties where the court upheld the present respondents' appeal against the applicants. The relief sought in that case was essentially the same as *in casu*. The order of the court a quo was set aside and replaced with an order striking the application from the roll with costs. The court held that the respondents (applicants in this application) failed to make out a proper case for urgency.

[15] Mr Sthene, for the respondents, argued that the respondents had come to meet a case of urgency as set out in paragraph 9 of the founding affidavit. He contended that the application was formulated along the lines of Rule 6(12) and the application was, therefore, urgent. The applicants could not seek a final interdict

without securing an interim order. This argument is flawed. The application is in long form and in the notice of motion the respondents were required, within five days after the receipt of the application, to notify the applicants' attorneys in writing of their intention to oppose the application and twenty days thereafter, to file their opposing affidavits.

[16] It is evident from the papers that the parties had been at loggerheads for a considerable period of time.¹⁷ The respondents failed to respond to the damning allegations (which are the substratum of the relief sought) contained in paragraph 6 of the founding affidavit. The respondents were only content to state in this regard that the applicants used ad hoc authorisations to convey passengers and it was illegal for the applicants to do so on any routes.¹⁸ The respondents' interpretation of section 65 of the applicable Act¹⁹ is not correct or does not reflect the true position of the section.

[17] It was further contended that the members of the first respondent had operated on the disputed routes for years with the express knowledge and approval of the Registrar and it could not be said that they were operating illegally. No proof of any form of authorisation was furnished in support of these allegations. Section 65(1) of the Act provides as follows:

“65 Ad hoc authorisations

(1) No one may undertake public transport services in connection with a particular occurrence, such as a sports event, funeral or wedding, except under the authority of an ad hoc authorisation issued and completed under this section.

(2) Subsection (1) does not apply where-

¹⁷ Para 6 of the FA. See also paras 9-14 of Case A154/2020 supra.

¹⁸ Para 21 of the AA.

¹⁹ The Free State Public Transport Act 4 of 2005.

(a) a charter service will be operated in terms of an appropriate operating licence or permit; or

(b) the operator will provide the service in terms of an operating licence or permit which already authorises the relevant transport on the route or in the area in question.

(3)

[18] It is obvious that the respondents focussed solely on Section 65(1) and did not have regard to Section 65(2) of the Act. On perusal of annexures “C1-C13” and (“D1-D11”),²⁰ the ad hoc authorisations were issued in terms of section 65(2)(b) of the Act. The ad hoc authorisations were issued in conjunction with the applicable Public Operating Licence Numbers. The Operating Licence authorised and was restricted to the conveyance as set out in the conveyance of passengers on a particular route. The ad hoc authorisation was granted when an applicant had applied to the Free State Operating Licensing Board for a transfer, renewal etc. of the operating licence and the application was awaiting consideration by the Board.²¹

[19] The respondents’ approach to the application is technical and they chose not to respond to the factual allegations against them. Pointed allegations were made of the respondents’ illegal occupation of the applicants’ properties, assault on the applicants’ members and blockading the routes assigned to the applicants. Mr Mphulane correctly pointed out that the applicants were in peaceful and undisturbed possession of their offices when the respondents unlawfully invaded such premises, thus committing spoliation.

[20] Finally, the question that begs an answer is whether the applicants should be penalised for having “*styled their application in terms of Rule 6(12)*”²² instead of citing the requirements of a final interdict. There are three requirements for a final interdict:

²⁰ Pages 41 to 76 of the FA; Para 6.2 of the FA.

²¹ See annexures on pages 41-76.

²² Para 7 of the AA.

- (a) A clear right on the part of the applicant.
- (b) An injury actually committed or reasonably apprehended.
- (c) The absence of any other satisfactory remedy available to the applicant.

[19] In *Hotz v University of Cape Town*,²³ Wallis JA stated that the purpose of an interdict is to put an end to conduct in breach of the applicant's rights. The applicant invokes the aid of the court to order the respondent to desist from such conduct and, if the respondent does not comply, to enforce its order by way of the sanctions for contempt of court. He stated further that in granting an interdict, the court is enforcing the principle of legality that obliges courts to give effect to legally recognised rights. In the same way, the principle of legality precludes a court from granting legal recognition and enforcement to unlawful conduct. To do so is "the very antithesis of the rule of law".²⁴

[20] I have already stated that the respondents' opposition is technical in nature. It is clear that the application is not based on urgency and that the ad hoc authorisations were not impermissible and unlawful. Mr Sthene argued that the founding affidavit told them nothing about what they were doing in court on the date of the hearing. He contended that the applicants failed to go to the police station to report the transgressions as an alternative remedy. The application was frivolous and should be struck from the roll with punitive costs for lack of urgency which should include the wasted costs of 27 January 2023.

[21] This argument lost track of the contents of the founding affidavit and its annexures which went unanswered. Mr Sthene referred and handed up a copy of the appeal case, number A 154/2018, in which the court stated:

²³ 2017(2) SA 485 SCA para 36.

²⁴ Para 39.

“On 30 July 2018 the respondents laid criminal charges against the appellants and their members. The situation became ‘so dire and threatening’ that the Respondents’ attorney interrupted his sick leave to assist”.²⁵ Mr Sthene represented the appellants in that case.

[22] Having considered the above, I am of the view that failure to mention the legal requirements of a final interdict in the founding affidavit was not fatal as the factual exposition for the relief sought was adequately set out therein. To insist on such an approach in the given circumstances of this case would be elevating form above substance. I find that the respondents’ opposition is without merit and the applicants should succeed in the relief they seek.

[23] It is trite that the successful party is entitled to the costs. As regards the costs of 27 January 2021, it is not clear who enrolled the matter.²⁶ According to the notice of motion, the matter would have been enrolled for 27 January 2022 if the respondents failed to file the requisite notices and/or answering affidavits. The necessary notice and answering affidavit were already filed in December 2021.

[24] Consequently, I make the following order:

Prayers 1 to 8 of the notice of motion are granted.

MHLAMBI, J

On behalf of the Applicants:	Adv. P.S. Mphulwane
Instructed by:	Maqoma Attorneys
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On behalf of the respondent:	Adv. Smanga Sthene
Instructed by:	EG Cooper Majiedt Attorneys

²⁵ Para 12 of the judgment.

²⁶ Para 5 above.

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