

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No.: 55626/12

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3)	REVISED.
<u>14/06/19</u> DATE  SIGNATURE	

In the matter between:

GREAT NORTH TAXI ASSOCIATION (GRENTA)

Applicant

and

THE LIMPOPO PROVINCIAL TRANSPORT
REGULATORY ENTITY

1st Respondent

MEC FOR ROADS AND TRANSPORT: LIMPOPO
PROVINCE

2nd Respondent

GREAT NORTH LONG DISTANCE TAXI

ASSOCIATION (GNLDTA)

3rd Respondent

GAUTENG PROVINCIAL REGULATORY ENTITY

4th Respondent

MEC FOR ROADS AND TRANSPORT: GAUTENG
PROVINCE

5th Respondent

REGISTRAR OF ROADS AND TRANSPORT: LIMPOPO
PROVINCE

6th Respondent

JUDGEMENT

MNGQIBISA-THUSI, J

[1] In its amended notice of motion, the applicant seeks the following relief:

- 1.1 an order declaring that the operating licence (s) issued to a member (s) of the applicant grants a personal right to such a member limited only by the authority granted in such licence.
- 1.2 an order declaring that the members of the applicant have a right to load commuters in Mokopane to Hammanskraal and Pretoria in terms of the operating licences.
- 1.3 an order declaring the instruction of Percy Ndala, the former Registrar of Transport in the Limpopo Province, ordering the applicant's members not to load in Mokopane to Hammanskraal and Pretoria to be *ultra vires* the Northern Province Interim Passenger Transport Act, Act 4 of 1999 and hence unlawful.

- 1.4 an order directing the second respondent to ensure that the applicant's members may operate in accordance with the operating licences from Mokopane to Hammanskraal and Pretoria, Bosman Dairy Mall Taxi Rank (Pretoria).
- 1.5 an order directing the first and third respondents to make available to the applicant's attorneys within seven (7) days, legible copies of all the operating licences held by members of the third respondent authorising them to operate a minibus taxi type service from Mokopane to Hammanskraal and Pretoria.
- 1.6 an order directing the first respondent to make available to the applicant's attorneys, all documentation on the record in relation to any operating licences issued to members of the third respondent in respect of the route Mokopane to Hammanskraal and Mokopane to Pretoria.
- 1.7 an order directing the first and second respondents to make available to the applicant's attorneys within seven (7) days the documentation requested and received from the former registrar of transport, holding in respect of the operating licences granted to members of the third respondent.
- 1.8 an order permitting the applicant to supplement its founding affidavit after such documents have been received.
- 1.9 costs of this application.

[2] At the hearing of this matter, the applicant abandoned prayers 1.5 to 1.8 (above).

- [3] The applicant and the third respondent are taxi associations duly registered with the Gauteng and Limpopo provincial departments, respectively, with members operating between Hammanskraal/Pretoria to Mokopane. The first and fourth respondents are provincial regulatory bodies in Limpopo and Gauteng, respectively, whose functions include, inter alia, monitoring and overseeing public transport; and receiving and deciding on applications relating to operating licences for intra-provincial transport where no municipality to which the function has been assigned¹. They are empowered to regulate the taxi industry within their respective provinces. The second respondent is a member of the executive committee in the Limpopo Province responsible for roads and transport within provinces.
- [4] Initially, the applicant had cited the first to third respondents for the relief sought. As a result of a point *in limine* raised by the first and third respondents with regard to the non-joinder of the fourth to sixth respondents, including the Limpopo Taxi Council, the applicant brought an interlocutory application for the joinder of the fourth to sixth respondents, which application was granted on 03 November 2015. The applicant was also granted leave to supplement its founding papers.
- [5] After being joined in the proceedings, the fourth to sixth respondents did not file notices to oppose.

¹ In terms of s 24(1)(a) read with s 51 of the National Land Transport Act 5 of 2009 (the Act).

[6] The genesis of the dispute is an instruction issued by the then registrar of transport, Limpopo Province², that the applicant's members should stop loading passengers from Mokopane to Hammanskraal/Pretoria once they have offloaded passengers they picked up in Hammanskraal or Pretoria.

[7] In effect, the remaining prayers relate to the first to the fourth respondents and are mainly concerned with the applicant's members being allowed to operate their taxis between Hammanskraal and Pretoria to Mokopane and return.

[8] Besides the issue of non-joinder raised by the 1st and 3rd respondents, the respondents have also raised in the answering affidavits the following preliminary points:

- 6.1 that the applicant has not disclosed any cause of action in that in its founding affidavit it only attached the operating license of its chairman and not those of its other members which the applicant professes to also represents in these proceedings;
- 6.2 that the relief sought by the applicant is not competent in that the applicant failed to also join the Taxi Council of Limpopo which will be affected by the outcome of these proceedings; and
- 6.3 that the applicant does not have legal standing to bring this application on behalf of its members.
- 6.4 that with regard to the decision made by the sixth respondent, the applicant has not exhausted the internal remedies.

² Registered in terms of the Limpopo interim passenger transport act 4 of 1999.

- [9] the first preliminary point (6.1 above) raised has no merit in that in terms of the interlocutory order granted on 03 November 2019, besides being granted leave to join the fourth to the sixth respondents, the applicant was also granted leave to supplement its founding papers which it did by also attaching to its amended notice of motion are operating licenses issued to 22 members of the applicants.
- [10] The second preliminary point (6.2 above) raised is moot in that the Taxi Council no longer exist in terms of the prevailing Act.
- [11] The third preliminary point raised by the first respondent has no merit in that, it is not in dispute that the applicant is representing its members who are operating in the disputed routes. The right of the applicant to represent its members is now settled. In *Polokwane Local & Long Distance Taxi Association v Limpopo Permission Board and Other*³ it was stated that:

“The full court's finding that the appellant lacked *locus standi* on the basis that the granting of a licence to an individual was not dependent on his membership of the appellant, and that the right to a particular route arose from the allocation of that licence, is wrong on two fronts. First, in terms of s 39(11) of the Act '[n]o permission may be granted unless the applicant is a member of an association that has been registered by the Registrar under s 29 and the application is supported in writing by the association, or the Registrar certifies in writing that the applicant qualifies as a registered non-members under that section and has applied for registration as such'. To this extent the issuing of a taxi licence is dependent on membership of an association. Secondly, the appellant in its

³ (490/2016) ZASCA 44 (30 March 2017) at [para 21].

application for judicial review, relies upon the fact that this is a decision that affects its members. The focus of the enquiry by the full court should therefore have been the standing of the appellant and should not have been on ancillary issues."

[12] In *Bongani Nkala and 15 Ors v Harmony Gold Mining Company and Others*⁴ the court stated that:

"The Interim Constitution introduced numerous innovations into our law. One such innovation was s 7(4)(b)(iv), which, in particular, expanded the standing of a person allowed to approach court. It provided for "*a person acting as a member of or in the interest of a group or class of persons*" to approach court for appropriate relief, even if the person had no real or direct interest in the relief.⁵ The provision was replicated verbatim in section 38(c) of the Constitution. It allows any person (natural or juristic) to approach a court alleging that a right in the Bill of Rights (Chapter 2 of the Constitution) has been infringed or threatened. Such person may approach the court "*as a member of, or in the interest of, a group or class of persons*". The Constitution, therefore, makes special provision for class actions to be brought in cases where there are allegations of a violation of the Bill of Rights: a class action in such a case is now part of "*the supreme law of the Republic*".⁶ Against this background, there is no reason, logical or practical, to deprive anyone from bringing a class action in a non-Bill of Rights case. The challenge posed by the Roman-Dutch Law unfamiliarity with the class actions was referred to the South African Law Commission ("SALC") that met it by establishing Project 88 on which it reported in 1998".

⁴ Consolidated case number: 48226/12.

⁵ Section 7(4) of the Interim Constitution read: '(a) When an infringement of or threat to any right entrenched in this chapter (Bill of Rights Chapter) is alleged, any person referred to in para (b) shall be entitled to apply to a competent court of law for appropriate relief, which may include a declaration of rights. (b) The relief referred to in para (a) may be sought by - (i) a person acting in his or her own interest; (ii) an association acting in the interest of its members; (iii) a person acting on behalf of another person who is not in a position to seek such relief in his or her own name; (iv) a person acting as a member of or in the interest of a group or class of persons; or (v) a person acting in the public interest.'

⁶ Section 2 of the Constitution.

- [13] In the founding affidavit the deponent thereto avers that he is duly authorised and mandated by the applicant after a resolution of the applicant's executive to institute these proceedings on behalf of its members was taken. Bearing in mind that the individual members of the applicant were granted operating licences by virtue of being members of the applicant, the outcome of this application does affect the members of the applicant and therefore the applicant does have a direct and substantial interest in the relief sought.
- [14] The preliminary point relating to the non-joinder of the Taxi Council of Limpopo has also been abandoned.
- [15] With regard to the issue of the failure by the applicant to exhaust the internal remedies, the first respondent contends that if the applicant was not happy with the direction of the sixth respondent that the applicant's members should cease picking up passengers from Mokopane to Hammanskraal/Pretoria, it should have taken its complaint to the Transport Appeal Tribunal before launching these proceedings.
- [16] Section 92 of the Act provides that:
- “(1) The following persons may appeal to the transport appeal Tribunal against an act, direction or decision of an entity that is granted or refused an application relating to an operating license, in the manner and within the time prescribed:
- (a) the aggrieved applicant;
 - (b) the holder of any operating license or permit affected by the decision; or
 - (c) any other person interested in or affected by the decision.

- [17] The point raised by the first respondent in relating to the exhaustion of internal remedies is valid. The applicant's members should have approached the Appeals Tribunal and within the prescribed period for the decision of the then Registrar to be dealt with. Even if the Registrar's direction was ultra vires and therefore unlawful, by failing to do so, the applicant cannot now complain as it failed to take action against the direction given by the then Registrar. The issue of a review of the Registrar's instruction also has to fail as the applicant and/or its members had failed to seek reasons from the then Registrar about his direction stopping them from operating from Mokopane to Pretoria/Hammanskraal.
- [18] The applicant's main complaint is that the members of the third respondent are encroaching on the route designated primarily for the applicant and that despite the fact that the applicant's members have operating licences to operate on the Pretoria/Hammanskraal to Mokopane route, they are prevented from loading passengers from Mokopane to Pretoria/Hammanskraal unless given permission to do so by members of the third respondent.
- [19] A background of the events leading to the institution of these proceedings is set out in the applicant's founding affidavit, whose contents are not seriously disputed by the first and third respondents in their answering affidavits.
- [20] The applicant alleges the following. The relationship between the applicant's members and those of the third respondent has a troubled history with in some instance violence being used and court orders obtained in order to restrain one

group from interfering with the other⁷. The applicant's members started operating the disputed route from 1985. The applicant alleges that the members of the third respondent only started operating the disputed route in 2006 after the then Limpopo Operating Licencing Board had converted their licences to enable them to operate on the Mokopane to Pretoria route even though they had previously operated the Mokopane to Johannesburg route only. To confirm that the members of the applicant's members authorisation to operate the Pretoria/Hammanskraal to Mokopane and back route, the applicant has attached the operating licences of its members which clearly indicate that the members are authorised to operate on the disputed route.

[21] On 23 June 2006, the sixth respondent called a meeting at which the applicant and the third respondent's representatives were present. At that meeting it was resolved that the members of the third respondent had no authorisation to operate from Mokopane to Hammanskraal and that the applicant's operation on that route should be restored. In spite of the resolution, the members of the third respondent continued to operate on that route.

[22] In its answering affidavits, both the first and third respondents do not dispute the validity of the applicant's members' operating licences. Instead the first respondent, in the face of the applicant's members' operating licences, alleges that those licences do not allow the applicant's members from loading passengers from Mokopane to Pretoria/ Hammanskraal. The first respondent

⁷ For instance, on 4 October 2007 Judge Rabie (under case number 43816/2007) granted an order in favour of the applicant in terms of which the third respondent was ordered, inter alia, to take all reasonable steps to ensure that its members do not assault, intimidate or interfere with the members of the applicant.

alleges that the applicant's members' can load passengers at Mokopane only if there are no members of the third respondent who wish to do so. Further, the first and third respondents allege that the third respondent did, before the conversion of taxi permits to operating licences in terms of the now repealed National Land Transport Transitional Act⁸, the third respondent has not attached to its papers proof that it had been granted permission to operate on the disputed route. However, it appears that on 5 May 2011, a meeting chaired by the sixth respondent where agreement was reached that in view of the fact that in 2010 the members of the third respondent were granted operating licences authorising them to operate on the Mokopane to Pretoria route, the members of the two association would work together and that the members of the applicant would operate the Mokopane to Hammanskraal and not Pretoria.

[23] It is not in dispute that the members of the applicant have been granted operating licences from Pretoria/Hammanskraal to Mokopane and back. This authorisation has not been withdrawn. I am satisfied that the applicant has shown sufficient cause for it to be allowed to operate in terms of the permission it has been granted.

[24] As indicated in paragraph 15 (above), the applicants have failed to exhaust the available internal remedies in relation to the instruction of the sixth respondent and due to the lapse of time since the instruction was given and the prescribed period within which it ought to have appealed to the Transport appeal tribunal or brought an application in terms of the provisions of the Promotion of Administrative Justice Act, the prayer in this regard ought to fail.

⁸ Act 22 of 2000.

- [25] In its answering affidavit, the second respondent opposes any prayer sought against him, in particular prayer 1.7 (above) and alleges that it is responsible for the supervision of the first respondent. Further, the second respondent relies on the contents of the first respondent's answering affidavit. The second respondent makes common cause with the first respondent's contention that, firstly, the applicant, despite the authorisation granted to its members in their operating licences, that the members of the applicant do not have an automatic right to load passengers at Mokopane unless permitted to do so by the members of the third respondent. Secondly that the third respondent has always had permission to operate the Pretoria to Mokopane and back route.
- [26] As indicated in paragraph 21 (above), despite the respondents' contentions, the applicant's members are authorised to transport passengers as per the operating licences. The fact that a similar operating licences have been granted to members of the third respondents does not change the applicant's legal entitlement to operate on the disputed route. In as far as the consequences resulting from such dual permission, that falls within the purview of the first and second respondents to deal with.
- [27] With regard to costs I am of the view that as the applicant is successful with regard to the main dispute, it is entitled to its costs.
- [28] In the result the following order is made:

1. The 2nd respondent it is directed to ensure that the applicant's members operate in accordance with their operating licenses from Mokopane to Hammanskraal and Mokopane to Pretoria.
2. The respondents are liable for the costs of this application, jointly and severally, the one paying the other to be absolved.



NP MNGQIBISA-THUSI

Judge of the high Court

Appearances

For Applicant: Adv HJ Potgieter (instructed by HJ Groenewald Attorneys).

For 1st & 2nd Respondent: Adv MS Phaswane (instructed by State Attorney).

For 3rd Respondent: Adv M Malowa (instructed by Mashamaite M R Inc).