



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

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case no: 5503/2018

In the matter between:

PHELABADANE GERT LEDIDI

Applicant

and

JOSEPH MZONJANI LIDIDI

1st Respondent

**GREATER BLOEMFONTEIN TAXI
ASSOCIATION**

2nd Respondent

CORAM: MOROBANE, AJ

JUDGMENT BY: MOROBANE, AJ

HEARD ON: 21, 22 FEBRUARY 2019

DELIVERED ON: 7 MARCH 2019

[1] This is an opposed motion in terms of which the applicant seeks an order to compel the first respondent to sign transfer

documents of specified vehicles into his name. The first respondent is opposing the relief sought against him on the basis that he is the owner of the vehicles and the operating licences.

- [2] The first respondent filed his opposing affidavit six days out of time and he applied for condonation for the late filing. This application was not opposed and it was granted by Court.
- [3] During the hearing, applicant applied for leave to amend a typographical error in paragraph 2.5 of the notice of motion to read as follows: "Operating number LFSLB 34684/3". The Court granted his application and the papers were accordingly amended.
- [4] In his opposing affidavit the applicant raised three preliminary points. That is, the non-joinder of Mr Ottlie Anton Noordman and South African Revenue Service ("SARS") in the current proceedings. He stated that Mr Noordman was appointed as the receiver to divide the joint estate of the applicant and his former wife after the divorce. The vehicles in question were not disclosed to the receiver during the liquidation process. Also, the Applicant has been conducting a taxi business since 2002 whilst employed by the South African Police Service as a Police Officer. Mr Noordman and SARS have interest in the undisclosed assets of the joint estate and the uncollected taxes respectively. Alternatively, the applicant is before this Court with dirty hands.
- [5] The non-joinder of Mr Noordman and SARS was dismissed during the hearing and my reasons follow hereunder. The undisclosed assets in question comprise of 6 minibuses together with the taxi operating licences. The first respondent is the owner of the vehicles and the operating licences which are subject to

adjudication in the main application. In regard to the applicant, the alleged interest of the receiver and SARS has not arisen.

- [6] Another point raised by the first respondent is the late filing of the replying affidavit. The parties previously agreed that applicant should file his replying affidavit by 21 January 2019. However, the affidavit was only filed on 24 January 2019, three (3) days after the agreed date. During the proceedings the applicant applied for condonation for the late filing of his replying affidavit which was opposed by the first respondent. At this stage, I could not find the alleged prejudice that the first respondent would suffer if the condonation were to be granted. I accepted that 3 days was not inordinately long to justify the refusal of the application before Court. The application for condonation for the late filing of the replying affidavit was granted.
- [7] The first respondent raised a dispute of facts as a point in *limine*. He submitted that he (the first respondent) is the owner of the vehicles and the operating licences. The applicant is not the registered owner of the vehicles and the operating licences thus not entitled to the relief sought. He submitted that there is a dispute with regards to the terms of the verbal agreement, the ownership of the vehicles and operating licences. As a result, the application cannot be decided on papers without leading oral evidence. The Applicant submitted that the Court will be justified to refer the matter to trial or for oral evidence.
- [8] On careful study of the founding affidavit and the opposing affidavit, the papers give rise to material dispute of facts. In

dealing with dispute of facts, Harms DP in **National Director of Public Prosecutions v Zuma**¹ said:

“Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the *Plascon-Evans* rule that where in motion proceedings disputes of fact arise in the affidavits, a final order can be granted only if the facts averred in the applicant’s (Zuma’s) affidavit, which have been admitted by the respondent (NDPP), together with the facts alleged by the latter, justifies such an order.”

- [9] According to the applicant, he was employed as a Police officer in the South African Police Service and a member of the Hiway Taxi Line, also known as Turflaagte Route Committee. He has been the owner of specified taxi vehicles and operating licences and is conducting taxi business since 2002. The vehicles include one CAM Inyathi, four Toyota Quantum and one BAW. The applicant was advised that it was not desirable for a police officer to be involved in the taxi industry. As a result, he entered into a verbal agreement with the first respondent and agreed that: the first respondent would be registered as a full member of the taxi association, but the applicant would retain full authority in relation to the taxi business; the applicant would be in possession of the vehicles and operating licences; and the first respondent would not become the owner or acquire any rights in respect of the vehicles and the operating licences. He retired from the police in

¹ 2009 (2) SA 277 (SCA) at 290D-E

2017 and the first respondent refuses to sign documents to effect transfer of the vehicle and operating licences in his name.

- [10] The first respondent denies the applicant's claim in his opposing affidavit. He submitted that he (the first respondent) is the registered owner of the vehicles and operating licences. He has entered into an agreement with the applicant on the following terms: a taxi business partnership; first respondent to pay R55 000.00 to the applicant to join the business partnership; and once the applicant ceases to be employed by the SAPS and he obtains membership of a taxi association, the first respondent would transfer ownership of half of the taxis and half of the operating licences to the applicant.
- [11] In my view, a dispute of material facts exists in the affidavits. That is, each party has its own version concerning the terms of the agreement allegedly entered into, whether the agreement was a partnership or not, and the contested ownership of the vehicles. Applying the *Plascon-Evans* rule, the facts are incapable of being resolved on affidavits as they stand. The dispute is also incapable of being resolved by common-sense approach as suggested in **Soffiantini v Mould**² case.
- [12] The defendant's version is not far-fetched to justify its rejection merely on the papers. It should rather be ventilated at trial or by oral evidence. The applicant ought to have foreseen that dispute of facts was bound to occur when the application was launched.
- [13] I make the following order:
1. The application is referred to trial;

² 1956 (4) SA 150 (EDLD) at 154G

2. The notice of motion and the founding affidavit shall stand as simple summons, and the opposing affidavit as notice to defend;
3. The Applicant shall file his declaration within 20 days of this order;
4. Thereafter the provisions of the Uniform Rules of Court will apply.
5. The costs of the proceedings to date are reserved.

V.M. MOROBANE, AJ

For the applicant:

NW Phalatsi
Instructed by:
Phalatsi & Partners
BLOEMFONTEIN

For the 1st Respondent:

Mr HJ Booysen
Instructed by:
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