



IN THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC OF SOUTH AFRICA]

15/3/2017

CASE NUMBER: 84973 / 2015

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
15 / 03 / 2017	
DATE	SIGNATURE

In the matter between:

AUTOPAX PASSENGER SERVICES (SOC) LIMITED

1ST APPLICANT

VENDA JOHANNESBURG TAXI ASSOCIATION

2ND APPLICANT

And

AFRICA PEOPLE MOVER (PTY) LTD

1ST RESPONDENT

THULAMELA LOCAL MUNICIPALITY

2ND RESPONDENT

BUSBUCKRIDGE	TAXI ASSOCIATION	3 RD RESPONDENT
BUSBUCKRIDGE	LOCAL MUNICIPALITY	5 TH RESPONDENT
LIMPOPO	PROVINCIAL REGULATORY ENTITY	6 TH RESPONDENT
GAUTENG	PROVINCIAL REGULATORY ENTITY	7 TH RESPONDENT
MPUMALANGA	REGISTRAR OF TRANSPORT	8 TH RESPONDENT

JUDGMENT

MAVUNDLA J;

[1] The applicants, being the first and second respondents respectively in the main application, apply for leave to appeal to the Full Bench, alternately to the Supreme Court of Appeal against the whole of the judgment and orders granted by this Court on 3 November 2015, and the reasons thereof delivered on the 1 July 2016 per order marked "A" and amended order marked "X".

[2] The order sought to be appealed against provides as follows:

"1 The first respondent is interdicted and restrained from:-

1.1 inciting any person, in particular taxi operators and its employees to disrupt the applicant's bus operations:

1.2 inciting any person, in particular taxi operators and its employees to damage the applicant's buses and premises;

- 1.3 spreading false allegations about the applicant's bus operations and applicant's officials;
 - 1.4 intimidating and harassing the applicant's [personnel and customers at any of type applicant's premises';
 - 1.5 blocking access to and from the applicant's remises and designated loading zones;
 - 1.6 inciting any person, in particular taxi operators, its employees and security personnel to assault the applicant's personnel and customers and to disrupt the applicant's bus operations;
 - 1.7 preventing members of the public from conducting business with the applicant, in particular, using the applicant's busses.
- 2 The first respondent shall issue a public statement in which it denounces violence against the applicant's seasonal and customers and the disruption of the applicant's business operations;
- 3 The second respondent, acting through its members or any third party, is interdicted and strained from-
- 3.1 preventing the applicant from conveying commuters between Johannesburg and Sibasa;
 - 3.2 preventing the applicant from loading and off-loading commuters in Sibasa and at any other place;
 - 3.3 intimidating and harassing the applicant's personnel;
 - 3.4 intimidating and harassing the applicant's passengers and preventing them from boarding the applicant's buses in Sibasa and at any other place;
 - 3.5 removing the applicant's passengers from the applicant's buses so as to

prevent them from using the applicant's buses to commute between Sibasa and Johannesburg;

3.6 damaging the applicant's buses;

3.7 intimidating, harassing, assaulting and threatening the applicant's employees whilst conveying commuters to and from Sibasa;

3.8 damaging and vandalizing the applicant's properties, including buses;

3.9 barricading, blocking or in any manner restricting or preventing access to and from the applicant's commuters' loading zone in Sibasa.

4...

5 The first respondent, second respondent and fourth respondent shall pay the applicant's costs of the application, jointly and severally, the one paying the other to be absolved."

[3] The thrust of the applicants for seeking leave to appeal is, *inter alia*, that the Court erred in granting a final interdictory relief, contrary to the principles enunciated in the celebrated *Plascon Evans Paints v Van Riebeeck Paints* 1984 (3) SA 623 (AD) at pages 634-E-635C in that there were disputes of facts in this matter, and applicant in the main application attached unsigned confirmatory affidavits, which constituted hearsay evidence.

[4] In opposing the application, it was submitted on behalf of the first respondent (the applicant in the main application), that leave to appeal should not be granted: because, *inter alia*, it would merely be of academic exercise, assuming that this

Court's interdictory order were to be set aside, which is not conceded, the result would be academic, because by law, the applicants for leave to appeal are obliged not to commit any criminal activity; damage property of the present first respondent, or incite members of the public or taxi operators to intimidate members of the public from using the buses of the present first respondent. It is further submitted that with regard to costs, this is a matter of the discretion of the court and appeals on costs are seldom countenanced.

[5] Section 17 of the Supreme Court Act 10 of 2013 provides, *inter alia*, that leave to appeal may only be granted where the Court is of the opinion that the appeal would have a reasonable prospect of success.

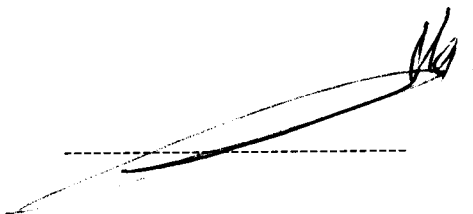
[6] It is trite that in urgent applications the Court has discretion to admit hearsay evidence, provided the source of such evidence is disclosed; *vide Lehani NO v Lagoon Beach Hotel (Pty) Ltd* 2015 (4) SA 72 (WCC) at 79F-G; *Yorigami Maritime Construction v Nissho-Iwai* 1977 (4) SA 682 (C) at 692B. *In casu* the applicant in the main application attached unsigned confirmatory affidavits of the would be deponents. The names were clearly disclosed. This Court is of the view that there is no reasonable prospect that the appeal would succeed on this ground.

[7] It is equally trite that the grant of costs is a matter of the discretion of the trial the Court. The Court of appeal is reluctant to interfere with the exercise of the Court's

discretion, unless it is demonstratively clear that such discretion was not judicially exercised or was capriciously exercised; *vide Naylor and Another v Jansen* 2007 (1) SA 16 (SCA) at 23 F-24A-D. This Court is not persuaded that there are reasonable prospects of success on the award of costs.

[8] I am further persuaded by the submission of the first respondent, *inter alia*, that granting leave to appeal would be of no practical effect. I further take note of the matter of *Beyers v Eleven Judges of the Constitutional Court* 2002 (6) SA 630 (CC) at 635 H where it was held that giving of reasons by the court of final instance for refusal of application for leave to appeal was unnecessary and undesirable. I therefore deem it not necessary to traverse all the points canvassed by the applicants for leave to appeal. It suffices to state that in my opinion there are no reasonable prospects that the appeal of the respective applicants would succeed.

[9] In the result the application for leave to appeal is refused with cost.

A handwritten signature in black ink, appearing to be 'N.M. MAVUNDLA', is written over a horizontal dashed line.

N.M. MAVUNDLA

JUDGE OF THE HIGH COURT

DATE OF JUDGEMENT :15 / 03 / 2017

APPLICANTS' ADV : ADV. N. H. MAENETJE S C

WITH ADV : ADV MAKGETHU

INSTRUCTED BY : HOGEN LOVELLS (SOUTH AFRICA) INCORPORATED AS

ROUTLEDGE MODISE INC. &

SAM SEKHU ATTORNEYS

1ST RESPONDENT'S' ADV: ADV. KENNEDY TSATSAWANE

INSTRUCTED BY : GILDENHUYS MALATJI INC

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