IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

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

Case number: 3919/2015

In the matter between:

MAJAKATHATA LONG DISTANCE TAXI ASSOCIATION AND OTHERS	1st Applicant – 12th Applicant
KGATELOPELE TAXI ASSOCIATION AND OTHERS	13th Applicant – 33rd Applicant
MOHALAULA TAXI ASSOCIATION AND OTHERS	34th Applicant – 51st Applicant

and

MEC FOR POLICE, ROADS AND TRANSPORT, FREE STATE PROVINCE	1st Respondent
FREE STATE PROVINCIAL REGULATORY ENTITY	2nd Respondent
FREE STATE TRANSPORT REGISTRAR	3rd Respondent
WELKOM UNITED TAXI ASSOCIATION	4th Respondent

JUDGMENT BY: DAFFUE, J

HEARD ON: 27 OCTOBER 2016

DELIVERED ON: 16 FEBRUARY 2017

I INTRODUCTION

[1] Three taxi associations and their members are at loggerheads with the Free State Provincial Regulatory Entity and the Transport Registrar. This application is the second between the parties under the same case number, the first application having been settled as will be indicated *infra*. The present proceedings are contempt of court proceedings.

II THE PARTIES

[2] The 1st applicant is Majakathata Long Distance Taxi Association and eleven of its members are cited as 2nd to 12th applicants respectively. Kgatelopele Taxi Association is cited as the 13th applicant and its members as 14th to 33rd applicants respectively. The third taxi association in these proceedings is Mohalaula Taxi Association cited as 34th applicant and its members as 35th to 51st applicants respectively. They were all represented by Blair Attorneys although the attorneys withdrew as attorneys of record for 12th, 13th, 30th, 42nd, 43rd and 48th applicants just before the hearing. Adv W van Aswegen argued the matter before me.

[3] Four respondents are cited as such, to wit the MEC for Police, Roads and Transport, Free State Province, the Free State Provincial Regulatory Entity, the Free State Transport Registrar and the Welkom United Taxi Association. The first three respondents were represented by Rampai Attorneys and Adv A E Ayayee appeared for them. I shall refer to them collectively as the

respondents, unless I wish to deal with a specific respondent in which case I shall make it clear. The matter is not opposed by the fourth respondent, the Welkom United Taxi Association.

III THE RELIEF CLAIMED

[4] Applicants claim the following relief:

> "1. That the Second and Third Respondents be found guilty of contempt of this Honourable Court's order under the above **case number** dated **6 February 2016**;
> 2. That the Second and Third Respondents be sentenced in such a manner as this Honourable Court deems meet;
> 3. Directing the Fourth Respondent to intervene and take all steps necessary to effect the implementation of the aforesaid order;
> 4. That the Second and Third Respondents be ordered to pay the cost of this application on a scale as between attorney and client;" (my underlining)

IV THE ORDER DATED 26 FEBRUARY 2016 GRANTED BY AGREEMENT

[5] By agreement between the parties the following order was made by Ebrahim J on 26 February 2016 (and not on 6 February 2016 as set out in the notice of motion):

> "1. 1.1 The second respondent (being the Free State Provincial Regulatory Entity) take the necessary steps to have applicants' applications (attached as Annexures

"OD12 – ODI64") processed, published in the prescribed manner, if necessary, and prepared for consideration;

1.2 The second respondent consider and finalise the prepared applications and to furnish reasons for each and every application, if any, not granted after due consideration.

2. The third respondent (being the Transport Registrar) act in accordance with the provisions of Section 25 of the Promotion of Access to Information Act 2/2000 and furnish any particulars and information as requested in Annexure "X5" to annexure "OD11.56" and/or to furnish particulars of information as to the identity of the relevant authority of the internal appeal as envisaged in Section 74 of Act 2/2000.

3. The first, second and third respondents are jointly and severally liable for the applicants opposed taxed costs, the one to pay the other one to be absolved."

V THE DISPUTE

[6] It is applicants' case that second and third respondents are in contempt of court as they have failed to comply with the order of 26 February 2016. In his heads of argument applicants' counsel submitted that the MEC, cited as 1st respondent, is also guilty of contempt of court notwithstanding the fact that no obligation of the kind relied upon by applicants was placed on the MEC in terms of the court order.

[7] It is respondents' version that they have indeed complied with the court order to the extent that it was possible, but that certain legislative requirements for considering the applications have not been met. According to them applicants seek authority to provide

transport on routes that are not on their Registration Administration System ("RAS") and consequently, the second respondent has no competence to consider these applications. The administrative secretariat of the second respondent could also not be compelled to incur huge costs in publishing the applications and preparing them for consideration by second respondent. The fact that amended routes were applied for by applicants would lead to increased tension between the applicants and the fourth respondent and its members as fourth respondent and its members are presently authorised to operate on one specific route which is apparently regarded by all as an extremely lucrative route.

[8] It is not in dispute that the individual applicants have operating licences to transport members of the public for reward on specified routes in the Odendaalsrus area; also that in 2014 they filed applications in terms whereof they seek to amend their routes and/or to expand upon their authority to operate on certain of their routes. They paid the application fees as well. However, according to respondents the applications were either not properly filled out, or wrong route descriptions were provided and/or improper route codes were utilised, to name some of the defects.

VI <u>LEGAL PRINCIPLES PERTAINING TO CONTEMPT OF COURT</u>

[9] The leading authority is *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 SCA which was quoted with approval in *Pheko v*

Ekurhuleni City 2015 (5) SA 600 (CC) at paras [28] – [37]. I quote from paras [9] and [10] of Fakie *supra:*

> "[9] The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed 'deliberately and mala fide'. A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case, good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith).
>
> [10]. These requirements – that the refusal to obey should be both wilful and mala fide, and that unreasonable non-compliance, provided it is bona fide, does not constitute contempt – accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the court's dignity, repute or authority that this evinces. Honest belief that non-compliance is justified or proper is incompatible with that intent."

[10] At para [23] of *Fakie supra* Cameron JA made it clear that the common law had been developed and that a change pertaining to the burden of proof had taken place. I quote:

> "What is changed is that the accused no longer bears a legal burden to disprove wilfulness and mala fides on a balance of probabilities, but to avoid conviction need only lead evidence that establishes a reasonable doubt."

[11] I am respectfully in agreement with Nkabinde J in *Pheko supra* at para [25] where the learned judge referred to *"the difficulties inherent in compelling compliance from recalcitrant state parties in a manner that displays the courts' discontent with disregard for the rule of law."* Courts are too often confronted with certain state parties displaying a total disregard for court orders. In *Meadow Glen Home Owners Association and Others v Tshwane City Metropolitan Municipality* 2015 (2) SA 413 (SCA) the Supreme Court of Appeal stated in para [22] that:

> "…We do not hesitate to endorse what Nugent JA said in this court in Kate, that 'there ought to be no doubt that a public official who is ordered by a court to do or to refrain from doing a particular act, and fails to do so, is liable to be committed for contempt, in accordance with ordinary principles'. However, it must be clear beyond reasonable doubt that the official in question is the person who has wilfully and with knowledge of the court order failed to comply with its terms."

VII **<u>RELEVANT LEGISLATION</u>**

[12] Two Acts, one a provincial and the other a national Act, are applicable. The parties hereto concentrated on the provincial Act, but the two Acts, i.e. the Free State Public Transport Act, 4 of 2005 ("the Free State Act") and National Land Transport Act, 5 of 2009 ("the National Transport Act"), must be read together. The Free State Act has not been repealed *in toto*, either expressly, or impliedly, but several provisions thereof have become redundant, they having been replaced by various sections of the National Transport Act.

[13] Respondents relied on s 47 of the Free State Act in support of their opposition and s 47(2) in particular. This section deals with the establishment of transport operating licence administrative bodies and s 47(2) reads as follows:

> "The transport operating licence administrative body must –
> (a) receive completed application forms for operating licences in respect of services commencing in its area together with the application fees;
> (b) check whether the application forms had been properly completed;
> (c) check that all the necessary accompanying documentation have been submitted and is valid and acceptable; and
> (d) enter details of the applications into the relevant data banks in the manner prescribed."

[14] The transport operating licence administrative body must in terms of s 47(6) collect all the representations and submit them with the application form and supporting documentation to the Board (which is now known as the Provincial Regulatory Entity as indicated *infra)* for a decision. *"Board"* is defined in s 1 of the Free State Act as *"the Free State Transport Operating Licencing Board established for the province in compliance with section 42 of this Act to exercise the powers mentioned in section 44 of this Act."*

[15] In terms of the Free State Act the Board consists of a chairperson and a number of other members determined by the MEC that must be persons who possess wide experience of, and have shown ability in, public transport, industrial, commercial, financial or legal matters or in the conduct of public affairs. See s 42(2).

The Board has various powers as set out in s 44 and *inter alia* the power in s 44(1)(b) to

"consider and give a decision on, or otherwise deal with, in accordance with this Act, an application made to it thereunder -

"i. for the granting of an operating licence authorising public transport within the Free State;

2. ….

3. for the renewal, amendment or transfer of an operating licence granted by it;"

[16] Section 24(2) of the National Transport Act provided the framework for the disestablishing of provincial operating licencing boards and the establishment of provincial regulatory entities as well as a transfer of the boards' functions to the provincial regulatory entities. Therefore second respondent is correctly cited as the Free State Provincial Regulatory Entity. In terms of s 23(2) of the National Transport Act a provincial regulatory entity must consist of dedicated officials of the provincial department, appointed either on a full time, or part time basis, by virtue of their specialised knowledge, training or experience of public transport or related matters. Provincial regulatory entities are accountable to the heads of their provincial governments.

[17] The functions of provincial regulatory entities are set out in s 24(1) of the National Transport Act and I quote:

"1. Each Provincial Regulatory Entity must –

a. monitor and oversee public transport in the province;

b. receive and decide on applications relating to operating licences or intra-provincial transport where no municipality exists to which the operating licence function has been assigned, but excluding applications that must be made to the National Public Transport Regulator in terms of section 21.”

[18] Section 51 of the Free State Act stipulates that “(w)here a transport plan shows a need for additional services on a route, the planning authority may invite applications to the Board for operating licences to provide public transport services that are not subject to a contract on that route.”

Section 55 of the National Transport Act deals in some detail with this issue as well, but it is not necessary to discuss it in further detail.

[19] Section 51 of the National Transport Act reads as follows: “An operating licence must only be issued on application made in terms of this Act by the National Public Transport Regulator, a Provincial Regulatory Entity or a municipality to which the operating licence function has been assigned, as the case may be, after considering all the factors mandated by this Act.”

VIII THE AMBIQUITY OF THE COURT ORDER DATED 26 FEBRUARY 2016

[19] Applicants sought the relief eventually granted by the court by agreement in the main application brought under case number 3919/2015. It is ironic, but the draft order proposed by respondents which forms part of the papers before me, would be much more favourable for applicants insofar as it specifically

states that second respondent will consider and decide the applications of the applicants and furnish reasons for its decision. If the draft order was made an order of court, applicants would be on much firmer ground. In such case second respondent would have to consider and decide the applications without further ado and furnish reasons for its decision.

[20] Bearing in mind the provisions of s 47(2) of the Free State Act and the framework of the National Transport Act, it is apparently so that the secretariat of second respondent, i.e. the administrative body or personnel who assist second respondent are entitled to act as so-called gate-keepers by keeping all non-compliant applications away from second respondent. It is certainly not the duty of the Regulatory Entity, consisting of several individuals who sit from time to time to consider applications, to receive, process, publish and prepare applications.

[21] An order of court binds all those to whom and all organs of State to which it applies. See s 165(5) of the Constitution. However, court orders must be clear and unambiguous. They must comply with the same standard expected of statutes and must be written in a clear and accessible manner as impermissibly vague provisions violate the rule of law which is a founding principle of our Constitution. See *Minister of Water and Environmental Affairs v Kloof Conservancy* 106/2015 [2015] ZASCA 177 (27 November 2015) at para [14]. It is also instructive to consider the *dicta* in *Eke v Parsons* 2016 (3) SA 37 (CC) at paras [24] – [31].

In *Mazibuko NO v Sisulu NO and Others* 2013 (6) SA 249 (CC) the Constitutional Court stated the following at para [24]:

> "… the prayer in the applicant's notice of motion that the Speaker personally take whatever steps are necessary to vindicate the applicant's constitutional right, is so open-ended and vague as to render the relief incompetent."

[21] Prayer 1 of the court order relied upon by the applicant provides for two processes, to wit (a) the taking of the necessary steps by second respondent (The Free State Provincial Regulatory Entity) to have applicants' applications processed, published in the prescribed manner, if necessary, and prepared for consideration; and (b) to consider and finalise the prepared applications and to furnish reasons for each and every application, if any, not granted after due consideration.

[22] I indicated *supra* that the Free State Regulatory Entity consists of various individual members. Although there is a measure of uncertainty as to what exactly respondents tried to convey to the court, it is at least clear that none of applicants' applications were presented to the Regulatory Entity for consideration. What transpired, on respondents' version, is that the administrative body and/or personnel, also referred to as second respondent's secretariat, processed the applications which have been received by them, but found them to be non-compliant. Bearing in mind the costs of publication in the Provincial Gazette, it was regarded

as wastage of money to advertise the applications and to prepare them for consideration by the second respondent.

[23] Paragraph 1.2 of the court order of 26 February 2016 did in fact place an obligation on second respondent to consider and finalise prepared applications and to furnish reasons, if any, for each application not granted. This part of the order is clear and unambiguous. However, it was wrong to place an obligation on second respondent to process applications, to publish the applications, if necessary, and to prepare them for consideration as this part of the order creates an unjustified disharmony with the statutory scheme of the Free State Act as well as the National Transport Act.

[24] The order was made by agreement between the parties and I have reason to believe that the learned judge did not consider whether or not the order was clear and unambiguous and in harmony with the applicable statutes. The general principle is that once a settlement agreement is made an order of court, the status of the rights and obligations between the parties is changed. The order is supposed to bring finality to the lis between them, save for litigation that may be consequent upon the nature of the particular order. *In casu* respondents have never conceded that the applications were compliant and it cannot be argued that respondents were not entitled to revisit the merits of the defences relied upon in the main application.

IX ADJUDICATION OF FACTUAL DISPUTES

[25] In the main application respondents conceded that the individual applicants all paid the required fees for the applications for additional authority and/or amendment of routes and that these applications were still dealt with by second and third respondents at the time. According to respondents the applications were put in abeyance as there were discussions around the disputed routes amongst all interested parties, including those not before the court. It was specifically placed on record that one route relied upon by applicants was not an officially registered route listed in accordance with the RAS. Applicants' counsel submitted to me in the contempt of court application that respondents' position in the present application is palpably strained and that they tried to revert back to the merits of the main application which was not justified.

[26] In motion proceedings the affidavits not only serve as the pleadings, but must also contain the essential evidence which would ordinarily be led at the trial. See *Transnet Ltd v Rubenstein* 2006 (1) SA 591 (SCA) at para [28]. A party in motion proceedings is obliged to state the facts as well as the conclusions drawn from such facts in his or her affidavits and is not allowed to base an argument on passages and documents annexed to the papers, unless the conclusions sought to be drawn from such passages have been canvassed in their affidavits. See *Minister of Land Affairs and Agriculture and Other v D & F Wevell Trust and Others* 2008 (2) SA 184 (SCA) at 200B-E. An applicant must make out his case in the founding affidavit

and will not be allowed to do so and/or to rely upon new matter in the replying affidavit, notwithstanding the fact that such matter has not been struck-out. See *Van Zyl and Others v Government of the Republic of South Africa* 2008 (3) SA 294 (SCA) at 307E - 308A.

[27] In line with *Plascon-Evans* final relief may only be granted in motion proceedings if the facts averred by the applicant, which have been admitted by the respondent, justify such an order, unless the allegations and denials by the respondent are so far-fetched or untenable that the court is entitled to reject the respondent's version merely on the papers. In general, decisions of fact cannot properly be made in motion proceedings on a consideration of the probabilities, unless the court is satisfied that there is no real and genuine dispute on the papers regarding the facts in question, or that one of the party's allegations are so far-fetched or untenable as to warrant their rejection on the papers, or that *viva voce* evidence would not disturb the probabilities appearing from the affidavits. See *Administrator of the Transvaal and Others v Theletsane & Others* 1991 (2) SA 192 (A) at 197A-B. The principles mentioned in this and the previous paragraph are of particular importance insofar as applicants seek respondents' conviction for contempt of court.

[28] Prior to the institution of the contempt of court application third respondent forwarded a letter dated 29 April 2016 to applicants' attorneys which I quote *verbatim*:

"Pursuant to the above High Court the Registrar comment follows:

> 1.1 Before a permit can be issued to an applicant, the specific route which the applicant applies for must be registered on the Registration Administration System (RAS).
>
> 1.2 The additional routes i.e. from Kutloanong, Du Plessis Taxi Rank to 140, 141 and 139, which applicant applied for do not exist on RAS system.
>
> 1.3 Accordingly his application cannot be entertained as he does not meet the basic requirement of route existence.
>
> 1.4 Furthermore where the route is already in existence, and there are operations taking place on that route, then a new applicant must first obtain the permission from the association operating there at before his application can be considered."

This letter referred to an application of Mr M B Mantsho, cited as the second applicant in these proceedings. Thereafter similarly worded letters were sent to applicants' attorneys in respect of the other individual applicants.

[29] Mr Van Aswegen mistakenly referred in general to the first, second and third respondents as the respondents in his heads of arguments under the heading "the first respondent's contempt". The MEC is cited as first respondent, but no order was granted against the MEC in the main application as mentioned *supra,* and furthermore, no relief is sought against the MEC in the present proceedings. The MEC was under no obligation to comply with either paragraph 1 or 2 of the court order of 26 February 2016. When Mr Van Aswegen's oral submissions are considered, he meant to submit that second (and not first) respondent should be held in contempt of court.

[30] The reference to respondents in general terms is indicative of applicants' misunderstanding of the statutory framework. In paragraphs 50 and 51 of the founding affidavit applicants allege that the MEC (first respondent) should be ordered to intervene because of second and third respondents' failure to comply with the court order. However, in the notice of motion an order is sought in terms whereof fourth respondent, the Welkom United Taxi Association, be ordered to intervene. Even if a suitable amendment was sought and granted, it would not entitle applicants to any relief against the MEC based on my findings herein.

[31] The defences relied upon by first, second and third respondents appear *inter alia* from the following direct and *verbatim* quotation, which evidence could not be controverted by applicants:

> "15 …The fact is, in multiple instances in the present applications, the <u>routes applied for do not exist on the RAS,</u> the <u>applicants have not obtained appropriate permissions from the taxi associations operating on such routes</u> or the <u>routes</u> requested are <u>indiscernibly described.</u>
>
> …
>
> 16. The applications were incapable of being processed, and published in the prescribed manner as <u>the Secretariat</u> of the Licencing Board <u>has determined</u> that the requirements as provided by the Free State Public Transport Act No 4 of 2005 ("the Act") have not been met. The practical hurdle is that the Department utilises specialist software programs in handling licence applications. These programs allow the Department to utilise certain internal databases that match up applicants with "entitled routes" and contains features that allow for placing such applications in the provincial gazette. The applicants various applications cannot be processed by the system due to the

many defects, including the improper route codes the applicants have sought to employ. There is a practical challenge created by these "bad" applications.

….

18. Accordingly the administrative Secretariat of the Licencing Board could not be compelled to incur huge costs in publishing and processing the applicants' applications which involves placing notices in the provincial gazette as the Licencing Board would not be in a position to grant such licence. Further as indicated the Operating Licence Administrative System (OLAS) is configured in a manner that precludes the gazetting of non-registered routes.

19. Further the seeming insistence that the respondents should nonetheless have gone through the motions would have been an exercise in futility. The Board has no competence to consider routes not on the RAS system and such action would have led to a wastage of departmental resources.

20. Indeed, if the applicants were of the inclination to amend routes assigned to their various associations, same was to be achieved in consultation with the Registrar's office and by the facilitation of discussions with affected taxi associations as opposed to insisting on the pursuit of the current application…." (emphasis added)

[32] It is apparent that one route in particular, i.e. the one commencing at Kort Taxi Rank in Welkom with a destination point at Du Plessis Taxi Rank in Odendaalsrus is a lucrative route. It has been assigned to fourth respondent. The taxi associations and individual taxi owners in Odendaalsrus, some of whom are the applicants *in casu*, are dissatisfied with the fact that fourth respondent's members who operate from Welkom, are allowed to utilise the particular route whilst they may only do so from Van der Vyver Taxi Rank in Odendaalsrus to Welkom which represents a shorter and in their mind less lucrative route.

[33] According to respondents the Provincial Department, in consultation with affected taxi associations and other stakeholders, identify from time to time viable routes which are then registered and assigned. These routes are identified with reference to the streets and connecting streets utilised. Once it is determined that a route is viable it is then registered on the RAS, whereafter taxi associations are invited to apply to operate on such route. Ultimately the route is formally assigned to a particular taxi association. A taxi operator that wants to utilise that particular route must first seek to join the particular taxi association to which the route was assigned whereupon the Registrar would be approached to amend the details of the taxi association on its database to include such operator as a new member.

[34] The OLAS system interfaces with the RAS system. In *casu* the individual applicants could not overcome the first hurdle insofar as the OLAS and RAS systems did not recognise the applicants as being entitled to the routes applied for, predominantly because the routes applied for are not registered and as such not on the RAS. The most popular route, being FS140 which is the subject of most of the applications, has been changed deliberately by applicants, as alleged by respondents, by changing the origin point and furthermore, no permission was obtained from fourth respondent to whom the route was assigned. Route FS140, as changed pertaining to its origin point, is not registered on the RAS system.

[35] Section 51(6)(a) of the Free State Act provides that an application form for an operating licence must make provision for:

> "recommendations from the association operating on the route or the route network in question of which the applicant is a member, which must be completed by the association before submission of the application."

Even an applicant who is a non-member of a particular taxi association must comply with this proviso and I refer to s 51(6)(b) read with s 83(1)(e) of the Free State Act.

[36] Although respondents indicated in *inter alia* paragraph 81 of their answering affidavit that the applicants' applications have now been dealt with, it is clear that the applications were "rejected" by the Secretariat and that the second respondent as the Regulatory Entity did not consider the applications in a formal board meeting due to the reasons advanced. These applications were rejected because they were found by the Secretariat to be non-compliant.

X **FURTHER COMMENTS IN RESPECT OF CONTEMPT OF COURT APPLICATION**

[37] The MEC, cited as first respondent in these proceedings, was not ordered to comply with either paragraph 1 or 2 of the court order of 26 February 2016 and no relief is sought against the MEC in the notice of motion. There is no case against the MEC.

[38] I have indicated *supra* that the court order is ambiguous and creates an unjustified disharmony with the aforesaid two statutes.

[39] In my view applicants wrongly applied for and obtained an order in terms whereof second respondent, i.e. a statutory body, be ordered to take steps to process, publish and prepare applicants' applications. These functions are not the second respondent's functions. Second respondent consists of individual persons, some may be appointed full time and others part-time, and they sit from time to time as a Regulatory Entity to consider and adjudicate prepared applications. Neither the Regulatory Entity, nor its individual members are statutory obliged to process, publish or prepare applications for consideration.

[40] Applicants should have established who was responsible for carrying out the obligations in paragraph 1.1 of the court order and to identify such person or persons in the court order. Only then would it be possible, and on the basis that sufficient evidence is tendered, to consider convicting one or all such persons for contempt of court.

[41] Even if it was possible to find the second respondent guilty of contempt of court for failing to adjudicate applications presented to it, no such finding can be made on the facts as the applications were never put on the Regulatory Entity's agenda for consideration.

XI RELIANCE ON PROMOTION OF ACCESS TO INFORMATION ACT, 2 OF 2000 (PAIA)

[42] Paragraph 2 of the order of 26 February 2016 obliged the Free State Transport Registrar, cited as third respondent, to furnish certain particulars and information. It is alleged under oath that the Department at a stage was under the wrong impression that it required the permission of certain third parties before it could release what was in essence public information, but that the information required has been provided in the interim. In this regard a bold statement was made without referring to when, where, to whom and by whom the documents and information have been provided. It became evident during the hearing of the application that the information and documents had not been provided and Mr Ayayee, counsel for respondents, informed me that he had received instructions from his clients to ensure that the court order would be complied with before the end of the day.

[43] The ultimate question is then whether third respondent should be convicted of contempt of court and if so, the penalty to be imposed. There can be no doubt that third respondent knew at all relevant times that he was duty bound to comply with paragraph 2 of the court order and he even deposed to a confirmatory affidavit, confirming the version of Mr Mosia who deposed to the answering affidavit on behalf of respondents, alleging compliance with the court order.

[44] Bearing in mind the steadfast approach that the court order was complied with and the eventual acceptance that there was indeed

no compliance, all three requirements for committal have been established. *Mala fides* and wilfulness should therefore be presumed, unless sufficient evidence is led to create reasonable doubt as to their existence, failing which contempt will be established. See *Pheko v Ekurhuleni Metropolitan Municipality* supra at para [25] and further, *inter alia* with reference to *Fakie supra* at para [36] in particular.

[45] I accept for purposes hereof that third respondent did not wilfully and *mala fide* disobey the court order. Although no reasons have been advanced in this regard, it is apparent that once it became clear during argument that the information and documents required had in fact not been provided to applicants' attorneys, counsel was immediately instructed to inform the court that compliance would take place before the end of the day. I am prepared to accept that the mistake was caused by an administrative error. I base my judgment in this regard on the undertaking communicated to me via respondents' counsel and consequently refrain from convicting third respondent for contempt of court.

XII FOURTH RESPONDENT'S INTERVENTION

[46] Applicants also seek an order directing fourth respondent to intervene and take all steps necessary to effect the implementation of the order of 26 February 2016. I am confused by the relief sought, bearing in mind that fourth respondent is cited as the Welkom United Taxi Association. It surely cannot intervene and see to the implementation of the court order by any

of the other respondents. It might be a typing error, but I have never been requested to amend the notice of motion. Probably a similar typing error occurred in applicants' heads of argument where it is submitted that the MEC, cited as first respondent, should be convicted of contempt of court. I am aware of the evidence contained in paragraphs 46 to 51 of the founding affidavit wherein certain allegations pertaining to the MEC as first respondent have been levelled, but the notice of motion in its present form is in conflict with these averments. However, bearing in mind the conclusions to which I have arrived, it is unnecessary to consider this aspect any further.

XIII STRUCTURAL INTERDICT

[47] Mr Van Aswegen submitted that this court may issue a structural interdict in order to ensure finalisation of the dispute between the parties. The problem with such request is that no factual basis has been provided to which respondents could reply. The notice of motion does not contain a prayer in this regard and Mr Van Aswegen has not even attempted to suggest a suitable order from the Bar. Mr Ayayee conceded that it is conceivable that the court may make a suitable order, but pointed out that no statutory obligations can be flouted in the process. I am not prepared to grant any kind of structural interdict in the absence of the issues being properly canvassed. I am also mindful of the fact that a court is required to decide the issues formulated by the parties and those disputes only should be adjudicated. See *City of Cape Town v SANRAL* 2015 (5) BCLR 560 (SCA) at para [10].

XIV **COSTS**

[48] Applicants have obtained some relief insofar as respondents accepted at the hearing of the application that third respondent had not complied with paragraph 2 of the court order of 26 February 2016 and undertook to comply with the order by the end of the day.

[49] Applicants have not made out a case for the substantive relief claimed in the notice of motion. The basic rule pertaining to costs is that the award of costs is in the discretion of the presiding judge. The general rule to be considered with the basic rule is that the successful party is entitled to his/her costs, save in exceptional circumstances. By far the majority of the time spent in drafting the papers and presentation of argument concerned paragraph 1 of the court order whilst very little time and effort was spent on paragraph 2. I am therefore not satisfied that the partial success achieved by applicants entitle them to costs.

[50] On the other hand, it appears to me that respondents should never have consented to the order of 26 February 2016 whilst knowing that applicants' applications were not compliant and not in line with the statutory provisions. If they allowed that matter to be argued and properly adjudicated by the court, this contempt of court application would probably never be issued. Furthermore I have reason to believe that the Department has been dragging its feet pertaining to the processes to be followed for the awarding of routes to the particular taxi associations. Uncertainty, lack of co-operation and indecisiveness are the breeding ground for unrest,

a feature not uncommon in the taxi industry in this country. Consequently I am satisfied that both parties should accept some of the blame and therefore each party shall be obliged to accept responsibility for payment of their own costs.

XV THE ORDER

[51] Consequently the application is dismissed, the parties to be responsible for the payment of their own legal costs.

J.P. DAFFUE, J

On behalf of the applicant: Adv. W. A. van Aswegen
Instructed by:
Blair Attorneys
BLOEMFONTEIN

On behalf of the 1st, 2nd and 3rd respondents: Adv. A. E. Ayayee
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