



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 number: 5335/2016

In the matter between:

MOKHELE HERENG KOPANE

First Applicant

& 90 OTHERS

Second to Ninetieth

(AS PER ANNEXURE X)

Applicants

and

**THE GREATER BLOEMFONTEIN TAXI
ASSOCIATION**

1st Respondent

**MEC: DEPARTMENT OF POLICE, ROADS &
TRANSPORT**

2nd Respondent

**THE PROVINCIAL REGISTRAR, TRANSPORT,
FREE STATE PROVINCE**

3rd Respondent

L SELOANE

4th Respondent

MA MPOTANE

5th Respondent

HEARD ON: 24 AUGUST 2017

JUDGMENT BY: RAMPAL, J

DELIVERED ON: 12 OCTOBER 2017

- [1] These are motion proceedings. The matter was launched as an urgent application. The applicants seek the relief which is in the nature of an interdict. The majority of the respondents oppose the application. The second and the third respondents abide.
- [2] The application was first placed on the roll of urgent applications on 11 November 2016. By agreement between the parties my brother Mhlambi J granted an interim order. Among others he also fixed formal deadlines for the filing of the answering affidavit, the replying affidavit, and the return day of the *rule nisi* for the final adjudication of the application.
- [3] The application is opposed by the first, fourth and fifth respondents. The Greater Bloemfontein Taxi Association, is the 1st respondent. It is an umbrella body of two local taxi associations in the city. The fourth and the fifth respondents are members of the executive committee of the first respondent. From now on I shall refer to the three collectively as the respondents. Therefore, whenever I use that pronoun in the plural form it must be understood to exclude the 2nd and the 3rd respondents.
- [4] There is one grouping of taxi service providers in the city called Highway Taxi Line on the one hand. On the other hand there is another grouping of taxi service providers in the city called

Heidedal Taxi Association. The former was previously known as Turflaagte Taxi Association. *Brevitas causa* I shall henceforth refer to the former as the Highway Group and to the latter as the Heidedal Group. Both groups are affiliates of the 1st respondent, the Greater Bloemfontein Taxi Association (BTA).

- [5] Above the 1st respondent, there is an entity called Motheo District Taxi Council (Motheo DTC). Its primary function is to resolve disputes emanating from its affiliated taxi umbrella structures in Bloemfontein, Botshabelo and Thaba Nchu. For instance, if any member of the Bloemfontein Taxi Association is aggrieved by any of its decision, such an affiliated member may lodge its grievance with Motheo DTC.

- [6] Above Motheo, there is an entity called the Free State Provincial Taxi (PTC). The primary function of this structure is to deal with appeals Council against the decision of Motheo DTC and other similar regional taxi structures in the province. In brief, that is the hierarchial or organizational structure of the grievance procedure.

- [7] On 2 February 2017 the application was postponed to 30 March 2016. The *rule nisi* was accordingly extended by my sister, Van Zyl J. All this was done in order to afford the applicants an opportunity to file their replying affidavit. They were called upon to do so before or on 24 February 2017.

- [8] On 30 March 2017 my brother, Motimele AJ, was seized with the matter. By virtue of his guidance, the parties mutually agreed to have the dispute dealt with in accordance with the domestic

grievance procedure as laid down in the 1st respondent's constitution. - See par 1.1 of the court order by Motimele AJ.

- [9] The applicants subsequently referred the dispute to Motheo District Taxi Council. The idea behind the order by Motimele AJ was to have the internal remedies and processes exhausted. The domestic grievance procedure is set out in clause 4 "anx c" to the 1st respondent's constitution read with clause 5 thereof. The parties were also granted leave to supplement their papers and to revert to this court should the dispute still remain unresolved on the domestic front. The application was then postponed and the *rule nisi* was further extended. The condonation application was also put on hold.
- [10] By 25 May 2017 the parties had still not found an internal resolution of the dispute. By agreement between the parties, I postponed the matter to 22 June 2017 and accordingly extended the *rule nisi*.
- [11] On 22 June 2017 my sister Gela AJ postponed the matter once again. The agreed date of the postponement was 17 August 2017. The *rule nisi* was implicitly extended.
- [12] On 30 June 2017 the applicants filed a further supplementary affidavit. The respondents opted to file no supplementary affidavit in reply. According to the supplementary affidavit filed by the applicants, the Provincial Taxi Association adjudicated the dispute on 19 May 2017. The applicants lost out on the domestic front. The applicants still remained aggrieved – hence the matter was taken back to court.

- [13] On 17 August 2017 the matter was yet again postponed to 24 August 2017. The *rule nisi* was further extended one more time.
- [14] The matter was finally argued before me on 24 August 2017. On behalf of the applicants, Mr Heymans submitted that a proper case had been made out for the final confirmation of the *rule nisi*. Therefore, he urged me to finally confirm the *rule nisi*. On behalf of the respondents, Mr Snyman submitted that the applicants did not make out a proper case for the grant of a final interdict. Therefore, he implored me to discharge the *rule nisi*.
- [15] Before I dealt with the interdict, I was called upon to consider a condonation application brought by the respondents. They were supposed to have filed their answering affidavit before or on 2 December 2016 at the very latest. They failed to comply with the interim order. They only did so eight weeks later, on 1 February 2017 to be precise. They simultaneously filed the condonation application for the late filing of the answering affidavit. I condoned their lateness.
- [16] The material averments of the version of the applicants need to be condensed. The historical background ventilates their version. Before 1 January 2007 the applicants enjoyed free and undisturbed use of the Meadows Road. The road was previously known as Sannaspos Road. It connects Dewetsdorp Road, on the outskirts of Heidedal, to the National Road N8, on the outskirts of Mandela View. As one drives from Heidedal to Mandel View, Meadows Road is flanked by Bloemside on the left and Peter Swarts on the

right. The Heidedal Group was not using the road as on 31 December 2006.

- [17] The road was reconstructed and broadened during the course of the year 2007. There are a few large neighbourhoods to the south of Meadows Roads. Among them, one may mention residential neighbourhoods such as Phase 6, 7, 9, 10 and Peter Swarts. The streets in all those residential areas are not tarred. They are in extremely poor conditions. There is only one exception, the street called Meadows Road. The overheads of service providers who render taxi services to those poor and forsaken communities are, for obvious reasons, very high. Some of those communities are readily accessible by taxis travelling to and from them through Meadows Road.
- [18] On 30 March 2008 the Highway Group applied to the 3rd respondent via the 1st respondent for the amendment of their taxi permits - vide "anx mk5 (i)". The underlying idea was to extend the routes of their taxi operations so as to include Meadows Road. Heidedal Group also made similar group application to the 3rd respondent via the 1st respondent. However, the 1st respondent withheld the group application of the Highway Group but submitted the group application of the Heidedal Group only to the 3rd respondent. The operating licences, in other words the taxi permits, of Heidedal Group were subsequently amended. By virtue of their amended taxi permits, they were authorized to pick up and to drop off commuters in Meadows Road.

- [19] The Highway Group was aggrieved. It felt betrayed by the lack of impartiality on the part of the local mother body, the Greater Bloemfontein Taxi Association. On account of the unequal treatment displayed by the 1st respondent, the Highway Group once again applied for the extension of their routes of operations. The purpose of their second application was really not to compete with the Heidedal Group by picking up and dropping off commuters on Meadows Road but rather to use Meadows Road as a drive-through avenue in order to have a quicker and shorter access to the communities of Phases 7, 9 and 10 – vide “anx mk5(m)”. On that occasion the 1st respondent did not shelve their group application. Nonetheless the 3rd respondent declined their group application as would more fully appear from “anx mk5(t)”. The applicants were sceptical about the annexure because it was written on the official letterheads of the 2nd respondent instead of those of the 3rd respondent. They became more frustrated.
- [20] The Highway Group and the Heidedal Group engaged each other in an attempt to solve the Meadows Road dilemmas. The volatile situation was averted on 19 September 2008. On that particular day a memorandum of understanding, (M.O.U) was signed by the two rival groups. The salient feature of the M.O.U was that Heidedal Group softened its originally rigid position for the exclusive use of the contested street, Meadows Road. The Highway Group was, on the strength of the M.O.U, also became entitled to use the same street – vide “anx mk5(h)”. However, Heidedal Group did not honour the terms and conditions of the M.O.U. Similarly the 1st respondent also rejected it.

[21] The dispute over the use of Meadows Road was investigated. A comprehensive investigation report dated 10 April 2015 was released – vide “anx mk5(u)”. The investigator found:

- that the Highway Group rendered taxi services on the routes aligned to Bloemside, Phase 3, Phase 4, Phase 5, Phase 6, Phase 9, Phase 10, Turflaagte and Chris Hani;
- that originally neither Heidedal Group nor Highway Group was lawfully and expressly authorised to provide taxi services on Meadows Road;
- that both groups later on decided to apply to the 3rd respondent to have their taxi permits amended so as to include Meadows Road as an extension of their routes of operations;
- that the Highway Group did not receive a fair deal but instead a raw deal from the route committee of the 1st respondent because the chairperson thereof was resident at Heidedal and was biased towards Heidedal Group;
- that the Highway Group was entitled to use Meadows Road in order to provide taxi service to and from Turflaagte, Bloemside, Phase 4, Phase 9 and Phase 10 – vide 4.1 “anx mk5(u)”;

[22] The investigator then recommended, among others, that the Heidedal Group and the Highway Group should share the use of Meadows Road from its intersection with Dewetsdorp Road at Bloemside to Eleventh Avenue at Phase 9 for the benefit of the commuters and both taxi groups.

[23] The applicants commented to record that all the recommendations made by the investigator were repudiated by the 1st respondent who improperly chose sides in the dispute between its two

constituent members, namely Heidedal Group on the one hand and Highway Group on the other hand. The 1st respondent's wrongful and partisan conduct fuelled a violent clash between the two groups.

[24] Aggrieved by the conduct of the 1st respondent who displayed an inclination to advance the interests of the Heidedal Group at the expense of the interests of the Highway Group, the latter lodged a formal complaint with Motheo DTC against Heidedal Group as well as the 1st respondent. The hearing of the grievance took place on 22 September 2016. An extract from the minutes may be conveniently paraphrased as follows:

- that the routes used by the two groups must be redemarcated;
- that taxi services or operations in the city should be rendered in accordance with the taxi permits;
- that taxi services or operations be carried out as they were before 1 January 2007 – vide “anx mk8”.

[25] The Highway Group heavily relied on the third of the aforesaid resolutions by Motheo DTC. The group asserted that the resolution was binding on Motheo DTC.

I pause to remark that whereas the third resolution appeared to favour the Highway Group, the same could not be said about the second. Unlike the third, the second obviously favoured and supported the case of the Heidedal Group. It will be recalled that at the time the grievance was heard, the taxi permits of Heidedal Group officially and expressly authorized its members to use Meadows Road but the taxi permits of the Highway Group did not. Consequently it must be readily appreciated that the decision of

Motheo DTC actually did nothing meaningful to solve the dilemma concerning Meadows Road. Instead, Motheo DTC complicated and confused the issues and made the already bad and volatile situation worse. The last two resolutions were inconsistent and irreconcilable.

- [26] Almost a month later, on 20 October 2016, Motheo DTC purportedly revisited the grievance of the Highway Group. It *mero motu* purported to reconsider its previous decision of 22 September 2016 as evidenced by “anx mk8”. It then purported to reverse such earlier decision – vide “anx gbta19”. The essence of the alleged subsequent decision was that the earlier resolution, which required that taxis services be rendered as they were before the year 2007, be cancelled and regarded as *pro non scripto*. All that retraction was done behind the back of the Highway Group.
- [27] It was the contention of Highway Group that the earlier decision of Motheo, DTC as per “anx mk5”, was final; that Motheo DTC was *functus officio*; that Motheo DTC was legally precluded from reconsidering and, reviewing its own decision; that it could not properly reverse its own decision as it did since there was no more any grievance between the two groups and that what Motheo DTC did on 20 October 2016 was a nullity in law.
- [28] The Highway Group also attached to its replying affidavit a transcript of the mechanical recording of the proceedings before Motheo DTC on 20 October 2016. The version of the Heidedal Group as contained in “anx gbta19” as compiled and signed by a certain SS Qiba on 20 October 2016 and “anx gbta19(a)” as

compiled and signed by a certain K.P Mathosa, ME Banyani, SS Qiba and LJ Lebatta on 20 November 2016 could not be reconciled with the tape recording or its transcript. One of the alleged signatories of “anx gbta19(a)”, namely: LJ Lebatta was not present at the meeting of Motheo DTC which was held on 20 October 2016. The conduct of that forum was highly suspect and irregular. It raised serious questions about the integrity of certain individuals and factions in the taxi forums.

- [29] Still dissatisfied with the irregular conduct of the 1st respondent on 20 October 2016 (vide “anx gbta19”) as well as that of 20 November 2016 (vide “anx gbta19(a)”) the Highway Group took the matter up with the 3rd respondent, the Free State Provincial Taxi Council on appeal. The aforesaid “anx gbta19” and “anx gbta19(a)” were attached to the appeal papers, labelled “referral 1” and marked as “anx b” and “anx c”.

- [30] On appeal the Free State PTC, instead of upholding the appeal of Highway Group by reversing the decision of Motheo DTC which was under attack or dismissing the appeal of Highway Group by confirming the retraction decision of Motheo DTC, decided that Highway Group and Heidedal Group should operate together and share the route in dispute as the registrar, the 3rd respondent, had decided – vide 2.5 “referral 2” being the written decision of the Free State PTC.

- [31] According to the Highway Group, the appellate forum, in other words the Free State Provincial Taxi Council mischaracterised the nature of the issue. The Highway Group did not seek to share

Meadows Road with the Heidedal Group by competing for the pickups and drop-offs in that particular street.

What they sought was official endorsement on their taxi permits authorizing their use of Meadows Road as a kind of a steppingstone or thoroughfare to access, certain communities or residential neighbourhoods specifically designated to them in order to render an efficient, speedy and costs effective service to those communities.

- [32] The decision of the Free State PTC was exploited by the 1st respondent and 4th respondent. They maintained that the Highway Group can only share Meadows Road with Heidedal Group provided their taxi permits are officially amended to include the street in question. The effect of the stance of Heidedal Group was and still is that until the taxi of the Highway Group have been so amended, they must be implicitly deemed to be lawfully prohibited, at all costs from using the street in question.
- [33] Based on those factual allegations, the applicants moved and sought a multifold relief. Among others, the following three were the main pillars of the relief they sought
- Firstly, they sought an order that the decision of Motheo DTC taken on 22 September 2016 be adhered to; that the two rival groups be directed to participate in the fresh demarcation process of the disputed routes and that the demarcation be done so as to restore the taxi operations on the disputed routes to the same position as it was prior to 1 January 2007 – vide 2.1 notice of motion

- Secondly, they sought an order whereby the 1st respondent was directed to call upon its members, Heidedal Group, within 24 hours after the grant of the *rule nisi*, to refrain from using violence against the other members of the 1st respondent, supposedly the Highway Group. - vide 2.2 notice of motion.
- Thirdly, they sought an order whereby the 1st respondent was called upon to issue taxi permits to the members of the Highway Group only and to indicate which roads they must use in order to provide taxi services to the residential areas designated to them – vide 2.6 notice of motion. This completes the summary of the material features of the version of the applicants.

[34] The relief sought by the applicants is final in nature. It has, as its essence, all the hallmarks of a final interdict. In motion proceedings when an applicant moves for a final interdictory order, as in the applicants do in these proceedings, and there is a dispute of fact, as this instance, it has been held that a final order may be granted if, and only if, those facts averred in the applicant's founding affidavit which have been admitted in the respondent's answering affidavit taken together with the facts alleged by the respondent justify such a final order – **Plascon-Evans Paints (Pty) Ltd v Van Riebeeck Paints (Pty) Ltd** 1984 (3) SA 623 (AD) at 634H.

[35] The final relief sought by the applicants is opposed by the 1st respondent, among others. The essence of the defence is that there is a clear factual dispute as regards the alleged previous and exclusive use of the road in question by the applicants. The 1st respondent disputes the claim or allegation that through peaceful,

undisturbed and exclusive open usage of the road over an alleged long period of time prior to 1 January 2007, the Highway Group had by custom acquired a vested right which deserves to be recognised and protected by law.

[36] In their answering affidavit the respondents alleged that the applicants have always unlawfully used the road in question; that in so doing they infringed on the rights of other taxi service providers especially the Heidedal Group; that the procedural process so far followed by the applicants was flawed; that such process completely disregarded the correct procedure to have taxi permits amended; that the applicants did not divulge their true intention in launching the current application; that Motheo DTC had subsequently retracted its earlier resolution on which the applicants heavily relied in support of their current application; that the applicants, in other words the Highway Group, and not the Heidedal Group, were behind the blockage(s) of the road(s) which fermented violence, led to damage of vehicles and caused disruption of taxi service delivery to the detriment of the community at large.

[37] In the light of the respondents' version, it can be readily appreciated that there is a clear dispute between the parties. The dispute concerns a wide range of material aspects. I am persuaded that this clear factual dispute was foreseeable. Adopting the approach as formulated in **Plascon-Evans Paints v Van Riebeeck Paints**, *supra* in the instant matter, dooms the applicants but aids the respondents.

- [38] The requisites for the grant of a final interdict are well-known. In order to succeed an applicant is required to prove a clear right, an injury actually committed or reasonable apprehension thereof and the absence of any other satisfactory remedy – **Erasmus: Superior Court Practice**. Second Edition by De Van Loggerenberg. Volume 2 page D6-12 to D6-16.
- [39] As regards the first requisite, it is an undisputed fact the applicants possess valid taxi permits; that the name of the road which is the bone of contention in the current application forms no part of their official route according to their taxi permits; that they are, therefore, not officially authorized to use such road in the ordinary course of their taxi operations; and that their previous use of that particular road was never officially authorized. The high watermark of their case was that they previously had exclusive use of the road, an allegation disputed by the respondent. The respondents' denial must prevail **Plascon-Evans, supra**. Given those facts and the law, it cannot be seriously submitted that the applicants have established a clear right which deserves permanent recognition and protection by way of final interdict.
- [40] It is trite that the requisites of a final interdict are conjunctive. The law makes it incumbent upon an applicant to prove all of them and not some of them. Where, as in this instance, one requisite is not proven, an interdict cannot be granted. Consequently it becomes unnecessary to determine the requisite of harm. It follows that where there is no proven right, there can be no abstract harm or apprehension thereof. That which does not really exist cannot be injured.

- [41] As regards the third requisite, it must be borne in mind that initially the applicants had rushed to court on an urgent basis. They had other satisfactory remedies available to them. The constitution of the 1st respondent made provision for a three level grievance procedure, namely: the local forum, the regional forum and the provincial forum. However, the applicants disregarded the internal dispute resolution mechanism. It has been authoritatively held that private systems designed to resolve domestic disputes are binding and have to be respected – See **Lufumo Mphaphuli & Associates (Pty) Ltd v Andrews & Another** 2009 (6) BCLR 527 (CC). Although that decision concerned a voluntary choice to arbitrate contained in a contract – there is no reason why the principle should not also apply to a voluntary choice to resolve grievances according to a particular procedure contained in a constitution of a voluntary association.
- [42] Motimele AJ stopped the train, put the court process on hold and diverted the parties to their domestic forums. The disputes was entertained first by the regional forum, Motheo DTC, and later by the provincial forum, Free State PTC. Both domestic grievance structures ruled against the applicants.
- [43] The applicants then returned and rescucitated the court process. There was no attempt made to take the decision of the Free State PTC on review. They were bound to do so. Yet they did not. They neglected to do so at their own peril. In my view taking the decision of the provincial forum on judicial review, before returning to court as they did, was another satisfactory remedy available to the applicants. This is a material consideration.

- [44] The failure of the applicants post the order by Motimele AJ to have the decision of the provincial forum judicially reviewed has created an awkward situation. They are challenging the decision of statutory entity which they did not join as a co-respondent. This is an anomalous situation. Even if the substantive merits had strongly favoured the applicants, their application would, nonetheless, have fallen to be struck off on procedural grounds and not dismissed on substantive ground. That is the harvest of neglect.
- [45] The procedural irregularities are simply overwhelming in this application. On their own version, it was obvious that the Heidedal Group had a substantial interest in the outcome of the application launched by the Highway Group. Notwithstanding such knowledge and appreciation, the applicants did not cite the Heidedal Group as a co-respondent in its own right. Their omission or neglect clearly constituted misjoinder. Consequently, even if I am wrong as regards the merits, the relief sought cannot be granted on this point in *limine* alone. The misjoinder is also a material consideration.
- [46] Subsequent to their unsuccessful mission on the provincial grievance forum, the applicants filed a supplementary affidavit to revive the court process. Now their new contention is that the taxi permits of their rival taxi operators, the Heidedal Group, were amended in accordance with the provisions of the National Land Transport Transition Act 22 of 2000 – see paragraphs 8 – 10 applicants' supplementary affidavit.

- [47] They then went on to point out that the aforesaid transitional statute, Act No 22 of 2000, was in fact repealed and replaced by the National Land Transport Act 5 of 2009. The latter, a permanent legislation, came into effect on 8 December 2009, and before the taxi permits of the Heidedal Group were amended and well before the present application for a final interdict was launched. In view of those facts, the applicants contend now that the amendment of such taxi permits was irregular and therefore invalid; that the Heidedal Group was supposed to have applied in terms of the current legislation, Act No 5/2009 and not the repealed legislation Act No 22/2000; that taxi service providers can now apply directly to the 3rd respondent for the amendment of their taxi permits and that they are no layer required to do so through the aid of the 1st respondent.
- [48] I hasten to point out that the very ticket on which the applicants travelled on a bus to this court was the repealed legislation, Act No 22/2000. When they initiated these motion proceedings the current legislation was already operative. However, they did not invoke its provisions, instead they also opted in 2016 to move their application for relief in terms of the repealed legislation of 2000. It follows, therefore, that if the application of the Heidedal Group via the 1st respondent for the amendment of the taxi permits of its member was procedurally invalid so too was the application of the Highway Group for the final interdict ordering the 1st respondent or the 3rd respondent in terms of the same repealed legislation to perform certain act such as to issue amended taxi permits to the applicants only. The refusal or reluctance of the 1st respondent to act as an impartial intermediary between the applicants and the 3rd

respondent as the transitional legislation required him to do was precisely the very reason which precipitated the launch of these proceedings.

[49] Consequently the *rule nisi* cannot be finally confirmed on this procedural ground alone. This is yet another material consideration. All of these procedural defects strongly militate against the grant of the application. The substantive merits aside, I have reached the conclusion that on procedural grounds, the applicants cannot succeed.

[50] There remains one more aspect. It concerns the question of costs. The applicants reckoned that the respondents, in particular the 3rd respondent and 4th respondent, were fully aware that the transitional legislation had already been repealed and that the current legislation has been governing the taxi operations or industry since 8 December 2009. They further alleged that, notwithstanding such knowledge, the respondents deliberately chose to keep them uninformed. The complaint was fallacious. A litigant cannot blame his adversary for his ignorance of the law. In these circumstances, one would have expected the applicants to have withdrawn their ill-fated application as soon as they became aware that their application was based on an obsolete legal framework. They did not. Instead they pointed fingers at their opponents. They accused the respondents of misleading them. It seemed to me that it never occurred to them that the respondents, just like the applicants themselves, might also have been innocently ignorant of the new legal position which governs the land transportation of passengers for reward.

[51] Having considered all the relevant factors in particular the procedural defects and the peculiar circumstances of this particular matter, it is my considered opinion that the applicants must jointly pay the costs of the main application. I was given to understand that there were no reserved costs for me to adjudicate. The previous costs orders concerning postponements will, therefore, apply. As regards the condonation application, I am not inclined to make an order one way or the other.

[52] Accordingly I make the following order:

52.1 The application is struck off with costs.

52.2 The applicants are ordered to pay the cost jointly and severally, the one paying the others to be absolved.

MH RAMPAL, J

On behalf of applicants: Adv PJ Heymans
Instructed by: EG Cooper Majiedt Inc.
Bloemfontein

On behalf of respondents: Adv C Snyman
Instructed by: Lovius Block
Bloemfontein