



Judge's copy

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Case No: 3374/16 P

In the matter between:

MEC FOR TRANSPORT, COMMUNITY SAFETY AND
LIAISON FOR THE PROVINCE OF KWAZULU-NATAL

1ST APPLICANT

THE DEPARTMENT OF TRANSPORT, KWAZULU-
NATAL

2ND APPLICANT

THE PROVINCIAL REGULATORY ENTITY FOR THE
PROVINCE OF KWAZULU-NATAL

3RD APPLICANT

and

THE ZAMOKUHLE LONG DISTANCE TAXI
ASSOCIATION

1ST RESPONDENT

THE CHAIRPERSON: ZAMOKUHLE LONG DISTANCE
TAXI ASSOCIATION

2ND RESPONDENT

MR. VELA MAPHUMULO

3RD RESPONDENT

JUDGMENT

DELIVERED ON: 29 MARCH 2017

MNGADI AJ:

[1] The applicants are the MEC for Transport, Community Safety and Liaison for the Province of KwaZulu-Natal ('the MEC') the second applicant is the Department of Transport for the Province of KwaZulu-Natal ('the KZN Department of Transport') and the third applicant is the Provincial Regulatory Entity for the Province of KwaZulu-Natal ('the PRE') which is a statutory body with its function to monitor and oversee public transport within the province of KwaZulu-Natal. The applicants are obligated to ensure the safety of the members of the public using public transport.

[2] The first respondent is Zamokuhle Long Distance Taxi Association ('Zamokuhle Taxi Association') which is a registered voluntary association of minibus taxi owners in Port Shepstone. The second respondent is Mr Bekwa Amos Madlala ('Madlala') the chairperson of the first respondent and a large scale taxi operator, and the third respondent is Mr Vela Maphumulo, a member of the first respondent ('Maphumulo').

[3] The applicants obtained an interim interdict by means of an urgent application against the respondents in terms of which the respondents were

- (a) interdicted and restrained from invading, occupying, accessing or blockading Bazley Street at Port Shepstone;
- (b) interdicting and restraining the respondents from threatening, attacking, harming, harassing or in any manner whatsoever assaulting, attempting to kill or killing any of the security guards of the KSS Security Company employed by the first applicant to guard the Port Shepstone Taxi Rank;
- (c) that the respondents are interdicted and restrained from perpetuating or causing or inciting any public violence at Port Shepstone Taxi rank or its locality;
- (d) that the respondents are interdicted and restrained from operating their minibus taxis from non-designated and/or non-approved taxi ranks in the Port Shepstone area, including use of and access to the public area on Bazley Street, Ryder Street and Nelson Mandela streets in Port Shepstone;
- (e) that the respondents and its members are interdicted and restrained from threatening, intimidating, physically or verbally assaulting,

harassing, insulting or otherwise abusing or provoking members of other taxi association operating out of the Port Shepstone Taxi rank or members of the public or motorists and law enforcement agencies and their members and the employees of KSS Security company;

- (f) that the respondents and its members are interdicted and restrained from physically or verbally attacking, abusing or threatening to attack mini bus taxi owners and/or minibus taxi occupants of taxis belonging to or owned by any of the members of Bambanani or Nyandezulu Taxi Associations.

[4] The applicants now seek confirmation of the rule *nisi* as a final interdict with costs on a punitive scale against the respondents, jointly and severally, such costs to include the costs consequent upon the employment of two counsel. The applicants in support of the application relied on the affidavits of Sifundiswa Justice Lunga ('Lunga'), the acting general manager of PRE; the affidavit of Sibusiso Herbet Ntuli ('Ntuli'), an acting senior manager of PRE; the affidavit of Vusumuzi Zondi ('Zondi'), employed as a facilitator of the community structure of the first applicant's Ministry; the affidavit of Mduduzi Remington Shabalala ('Shabalala'), a captain in the South African Police Service ('SAPS') based at the Public Order Police Unit in Port Shepstone under the command of Major-General Ndlovu, the cluster commander; and the affidavit of Lucky Sibonelo Mbambo ('Mbambo'), an employee of KSS Security Company.

[5] Lunga states that any disruption through violent conduct or any other criminal conduct which may lead to violence invades the authority of the applicants which is to ensure that the public using public transport is safe and the public transport operates in a smooth, safe and undisturbed manner.

[6] Langa states that from during or about mid-2015 there has been a severe dispute which has erupted between the first respondent and its membership and Sonke Long Distance Taxi Association ('Sonke Taxi Association') relating to the invasion of the routes and ranking facilities operated by the first respondent and its membership both in Durban and Port Shepstone. He states that the dispute between the first respondent and Sonke Taxi Association is currently being used as a smoke-

screen for the respondents to create and perpetrate anarchy and a state of lawlessness at Port Shepstone. Prior to the Zamokuhle/Sonke dispute arising Zamokuhle Taxi Association members were already involved in a dispute which three other Port Shepstone based taxi associations, namely; Bambanani Taxi Association, Gamalakhe Taxi Association and Nyandezulu Taxi Association. The upshot of this rivalry within Port Shepstone based associations created violence at Port Shepstone taxi rank situated on Ryder Street. In order to quell this violence and in an attempt to resolve the disputes, the first applicant and second applicant intervened. The results of the intervention was the signing by all four rival associations of an operational agreement undertaking to honour the prescripts of their operating licence/permit limitations in order not to encroach on each other's territory. The first applicant as a step to quell violence permanently to ensure safety and in order to ensure that operators operating from Port Shepstone Taxi Rank ('the Rank') did so lawfully and within the limits/bounds of their operating licences he would appoint a security company to ensure the safety of commuters and users of the rank.

[7] Lunga states that on 24 March 2016 in the roll out of his transport plans to ensure safety of road users and commuters within the province, the first applicant addressed all the local and long distance taxi associations of the Lower South Coast when he repeated his decision to employ the services of a security company from Empangeni to maintain safety and security and lawful operations at Port Shepstone Taxi Rank.

[8] It is to be noted that Lunga's affidavit does not claim that there were any incidents of violence at Port Shepstone Taxi Rank immediately prior to the deployment of KSS Security on 30 March 2016. There are no affidavits by the members of Bambanani Taxi Association, Gamalakhe Taxi Association and Nyandezulu Taxi Association supporting the need to deploy a security company to ensure safety and lawfulness at Port Shepstone Taxi Rank. Shabalala and Ndlovu the members of SAPS have not indicated that immediately prior to the deployment of KSS Security on 30 March 2016 the situation on the ground was such that it was necessary to provide security. Madlala, the second respondent and the chairperson of the first respondent states that the dispute between the associations was resolved

in August 2015 and an agreement was signed, there has been no trouble between the associations and the rank has been functioning peacefully. Therefore, he states it was a surprise to all the associations when they observed KSS Security personnel surrounding the entire rank carrying automatic rifles. He states that as a result all the taxi associations were very upset and in protest they decided to park their taxis outside the Port Shepstone Taxi Rank and stop their operations as a protest against the deployment of KSS Security.

[9] Shabalala states that there was a commotion at the Port Shepstone Taxi Rank on 30 March 2016 as a result of the protest against the presence of KSS Security. The police, in the interest of peace, requested the security guards to leave and the situation calmed down. On 31 March 2016 the taxi drivers and the owners gathered in their numbers and walked to the rank. The police, together with traffic officers and the municipality security, PRE and KSS Security guards stood their ground. The protesters had by Zamokuhle Taxi Association, all agreed to stop operating in the rank whilst the security guards were still deployed at the rank. He states that there was some violence on 31 March 2016 despite their presence. He states that on 1 April 2016 the operators divided themselves into two groups, one group occupied Bazley Road and the other group occupied the spot near the Total Service Station at the intersection of the Ryder Street and the Nelson Mandela Street. The purpose of the groups was to prevent every vehicle from picking up people in the central business district or from transporting people out of the central business district.

[10] The affidavits of Lunga, Ntuli and Mbambo indicate that there were pockets of violence around the protest action. It entailed threats of violence, hurling objects at vehicles, blocking access to public roads. As a result 32 persons were arrested. However, these pockets of violence are not necessarily attributed to the respondents. Madlala states that at no point did the respondents attempt to assault or kill KSS security guards. It would have been foolhardy to do so since the guards were armed with automatic rifles.

[11] In motion proceedings if the facts averred in the applicants' affidavit that have been admitted by the respondent or not denied by the respondent together with the

facts alleged by the respondent justify such an order, a final order whether it may be a final interdict, may be granted. See *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634H-I.

[12] A final interdict unlike an interim interdict, involves a final determination of rights of the parties. It is granted in order to secure a permanent cessation of an unlawful course of conduct. There are three requisites all of which must be present and be established on the preponderance of probabilities. Firstly, there must be a clear right that is sought to be protected. It must be an acknowledged right and it must clearly be established. Secondly, there must be an interference with the right, which constitutes an invasion of the right. The injury must be actually committed or reasonable apprehended. The injury must be a continuing one and the interdict be aimed at stopping such injury. Lastly, it must be shown that there is no other satisfactory remedy. A final interdict is a drastic remedy; see *Setlogelo v Setlogelo* 1914 AD 221.

[13] The injury must be caused by the respondent or the respondent authorised such injury to be performed by his agent, unauthorised action by an agent or servant will not justify an interdict against the principal (*Goldsmid v The South African Amalgamated Jewish Press Ltd* 1929 AD 441).

[14] The Applicants have established that the respondents were primarily the main drivers of the protest. In fact the respondents admit participating in the peaceful protest. The right to protest is a constitutionally entrenched right and it is an essential feature of a constitutional democracy.

[15] The municipality, which is the local authority, has not complained of the blocking of streets in the area of its jurisdiction. The applicants have not shown that the respondents or persons acting as their agents carried out the violent incidents which accompanied the protest. There is no evidence that the respondents planned a protest the essential feature of which was violence or that during the protest they, or their agents, carried out the violent acts.

[16] The applicants according to their counsel and the documents before me continue to submit that the respondents have carried out the acts of violence. The respondents have not denied that the criminal acts took place but they have distanced themselves from such acts. The purpose of the interdict is not necessarily directed at the respondents but the aim is to stop the violence and criminal acts from continuing.

[17] I am of the view that a case has been made for a final interdict. Further, at the commencement of the hearing for the confirmation or discharge of the *rule nisi* the court was advised that the respondents do not oppose the granting of the final interdict but were asking that each party pay their own costs. The *rule nisi* issued on 21 January 2016, subject to the below mentioned relating to costs, is confirmed.

[18] The applicants rejects the respondents proposal that each party bear his/her own costs. They insist that the respondents be ordered to pay costs. The counsel for the applicants addressed me at length on the question of costs. The core of his argument as I understood it was that the costs should follow the results. He stated that the applicants established the requirements of the granting of a final interdict. He referred me to the averments in the affidavits and he argued that the respondents perpetrated the acts of violence. He criticised the respondents in failing to deal pertinently with the allegations that they or their members/agents had not committed the acts of violence. In my view despite a close examination of the averments in the various affidavits there were no specific averments linking the respondents directly with the acts of violence. The persons who were alleged to have committed the acts of violence were not named and it was not pointed out how they were associated with the respondents.

[19] The nature of the allegations against the respondents, in my view is not of such a nature that the failure to counter them pertinently renders them established. Neither of the respondents is shown to have incited violence or shown to have participated in the actual acts of violence. The affidavits, formulated in vague terms, refer to persons who are members of the first respondent without naming the particular individuals as having carried out the acts of violence.

[20] Furthermore the court will not easily deprive a successful party of his costs. The granting of a final interdict does not necessarily mean persons cited as the respondents must bear liability for costs, in particular, where there was no active opposition to the granting of the interdict.

[21] The court must be careful not to use costs as an element of intimidation. The interested parties must accept that the matter shall be carefully considered before costs are ordered against them. In *Herbstain & Van Winsen Civil Practice* 477; *Standard Bank of SA Ltd v Oneanate Investments (Pty) Ltd* 1995 (4) SA 510 (C) at 582D referred to in the *Law & Practice of Interdicts* by CB Prest (1996) page 364 it is stated:

'The award of costs is a matter wholly within the discretion of the court. This is a judicial discretion and must be exercised upon grounds on which a reasonable man could have come to the conclusion arrived at. In leaving the magistrate or judge a discretion, the law contemplates that he should take into consideration the circumstances of each case, carefully weighing the various issues of the case, the conduct of the parties and any other circumstance which may have bearing upon the question of costs as would be fair and just between the parties. ...

The court's discretion should be exercised within the limits of certain general rules which the courts have laid down for guidance, namely; (i) the successful party is entitled to his costs; (ii) in determining who is the successful party the court should look at the substance of the judgment and not merely its forum; (iii) the court can, for good reason order a successful party to pay the whole or portion of the costs of the other party; (iv) the court can, for good reason, deprive a successful party of his costs, in whole or in part; (v) the court can, in special circumstances, make an order that the unsuccessful party shall pay the costs of the successful party on an attorney and client basis'.

[22] In my view, the nature of the case against the respondents is of such a nature that it is fair and just that the rule *nisi* be confirmed with no order made as to the costs.

[23] Accordingly it is ordered that:

'The rule *nisi* issued on 14 April 2016 is confirmed, with no order as to costs.'



MNGADI A

APPEARANCES

Case Number	:	3374/16
Applicant	:	The MEC for Transport, Community Safety & Liaison for the province of KZN & ors
Represented by	:	R Padayachee SC
Applicant's Attorneys	:	Nzimande S.G Attorneys 033 342 0754
Respondent	:	The Zamokuhle Long Distance Taxi Association and ors
Represented by	:	none present in court
Date of Hearing	:	9 March 2017
Date of Judgment	:	29 March 2017