IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO. 7087/2014

In the matter between:

PIETER DANIEL JACOBS	**FIRST APPLICANT**
CLAREMONT AND KWADABEKA TAXI OWNERS ASSOCIATION	**SECOND APPLICANT**
SOUTHGATE TAXI OWNERS ASSOCIATION	**THIRD APPLICANT**
STANGER TAXI OWNERS ASSOCIATION	**FOURTH APPLICANT**
NGWELEZANE TAXI OWNERS ASSOCIATION	**FIFTH APPLICANT**
NGLABANE TAXI OWNERS ASSOCIATION	**SIXTH APPLICANT**

and

MINISTER OF TRANSPORT	**FIRST RESPONDENT**
THE MEMBER OF THE EXECUTIVE COUNCIL: TRANSPORT: KWAZULU-NATAL	**SECOND RESPONDENT**
DEPARTMENT OF TRANSPORT: PROVINCE OF KWAZULU-NATAL	**THIRD RESPONDENT**
THE PROVINCIAL REGULATORY ENTITY ESTABLISHED BY THE OFFICE OF THE SECOND RESPONDENT	**FOURTH RESPONDENT**
CHAIRPERSON OF THE PROVINCIAL REGULATORY ENTITY ESTABLISHED BY THE OFFICE OF THE SECOND RESPONDENT	**FIFTH RESPONDENT**

J U D G M E N T

STEYN J

[1] In order to fully understand the three applications before court, it is necessary to look at the proceedings that preceded the opposed application. The matter has its genesis in an urgent application that was launched on 26 June 2014. On 17 July 2014 Lopes J issued a rule *nisi* that was extended by Sishi J. The rule provided for the respondents to show cause by 1 August 2014 why an order should not be granted in the following terms:

> '1.1 it is declared that the current procedure utilised by the Respondents to deal with applications for operation licences does not comply with the National Land Transport Act no 5 of 2009.
>
> 1.2 the 4th Respondent is directed to comply with the Act in respect of all Applications made to it [in] terms of section 54(3), 57(3) and 58(1) of the National Land Transport Act, No. 5 of 2009, read with sections 59(1) of the said Act, by publishing such applications as provided for in section 59(1), read with regulation 17(1).
>
> 1.3 the 4th Respondent is interdicted from dealing with applications in terms of section 54, 57 and 58 [of] the National Land Transport Act, 2009, otherwise than as set out above.
>
> 1.4 the Respondents, jointly and severally, are directed to pay the costs of this application.'

[2] The applications were opposed and were argued on 5 February 2016. The applicants sought confirmation of the rule so that the Regulatory Authority (fourth respondent) would give notice of applications made to it for operating licences as prescribed in reg 17(1) of the National Land Transport Act 5 of 2009 (hereinafter referred to as 'the NLTA') read with the provisions stipulated under 1.2 of the rule *nisi*. The applicants sought compliance with s 54 of the NLTA read with s 57(1), 58 and 59 of the Act. In addition to the confirmation of the rule, the applicants sought an order to strike out certain allegations made in paragraphs 28, 48(6), 51 and 58(b) of the fourth respondent's answering affidavit. The respondents in a counter-application sought the setting aside of its own decision to grant operating licences to the second to sixth applicants which were granted between 2 January 2014 and 18 January 2014.

[3] At the onset Mr Choudree, appearing on behalf of the respondents, conceded that the first applicant's *locus standi* and authority was no longer in issue. What remained in issue was whether the respondents have complied with the requirements of the NLTA; whether the applications lodged were in nature 'new' or whether they were 'renewals' of existing operating licences; whether the respondents were entitled to review their own decision without complying with s 79 of the NLTA and lastly, whether the allegations in the paragraphs listed above should be struck out.

[4] It is common cause that the respondents have failed to publish the applications that were made in terms of the NLTA. It is also common cause that the NLTA only distinguishes between 'renewal' of licences and 'new' licences. Mr Choudree in his written heads of argument submitted that reg 17(2)(c) leaves the Regulatory Entity with a discretion which is qualified in terms of reg 17(1) by reference to the words '… if it so decides, in such other manner as it deems fit to comply with PAJA, Act 3 of 2000'. It was submitted that none of the applicants' applications were for 'new' operating licences. I disagree. A clear reading of the NLTA as alluded to earlier leaves only two categories of licences, 'new' and 'renewal'. There is no room for the argument that the applications could constitute 'late renewals'.[1] Reg 25 deals with the renewal of an operating licence, and provides as follows:

'**<u>25. Application for renewal of operating licence</u>**

(1) Where an operating licence was issued for more than 30 days and the holder wishes to renew it, the holder must apply not later than 30 days before expiry of the licence for its renewal.
(2) Where application for renewal was properly made under sub-regulation (1) and the regulatory entity has not issued the licence by the expiry date, the operating licence will remain valid until the entity either issues the renewed licence or notifies the applicant that the application has been refused, and the operator must keep in the vehicle the receipt issued by the regulatory entity as proof that such an application has been made.
(3) Subject to the Act, the regulatory entity may not refuse to renew an operating licence unless –

[1] See Annexure 'C' attached to the applicants' founding affidavit which shows that the secretariat of the Regulatory Entity labels applications as 'late renewals'.

(a) the applicant, as decided by the entity, is no longer a fit and proper person to provide public transport services for a reason contemplated in section 79(2) of the Act;
(b) the applicant has failed to provide proof of registration, licensing or roadworthiness of the vehicle as required by the Act;
(c) the services authorised by the licence have not been provided for the previous 180 days, unless the holder has provided acceptable reasons for not providing the services;
(d) a planning authority has directed the entity to refuse the application in terms of section 55(3) of the Act; or
(e) there is another reason to do so contemplated by the Act.

(4) No permit may be renewed unless it is first converted to an operating licence in terms of the Act and these Regulations, but the holder may apply simultaneously for such conversion and renewal.

(5) Regulatory entities must send a notice of renewal to operators not less than 60 days before their operating licences or permits will expire, advising them to apply for renewal, but failure to do so will not affect the expiry of the licence or permit.'

[5] If an operator fails to comply with regs 23 and 25, then such failure impacts on the validity of the licence. Simply put, the licences were no longer valid and accordingly the applications were to be dealt with as new licences. Once it is determined that they were not valid 'renewals'[2] it could only be classified as 'new' applications.

[6] In the event of a new application there is no discretion left to the Regulatory Entity, it must publish the application as per reg 17(1), which reads:

'(1) A regulatory entity <u>must give notice of applications received by it in connection with operating licences, at least in the *Gazette*</u>, and, if it so decides, in such other manner as it deems fit to comply with the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), stating at least the following:

(a) the name and address of the applicant;
(b) the nature of the application (granting, renewal, amendment, transfer or conversion);
(c) the type and passenger capacity of the vehicle or vehicles involved; and
(d) the route or routes or area or areas of operation.'

[2] Renewal is defined in the Merriam Webster dictionary as 'the act of extending the period of time when something is effective or valid.'

(My emphasis.)

[7] This interpretation of s 59 of the Act read with reg 17(1) is in line with the ordinary rules of grammar and in the context of the provision as it stands in the Act. The purpose and intention of this provision is that notice be given to all interested parties that an application in respect of a taxi licence was made and to grant affected persons an opportunity to object or respond, should such person so wish. This interpretation is in line with the approach adopted by the SCA in *Natal Joint Municipal Pension Fund v Endumeni Municipality*.[3] If an application is a 'new' application then notice must be given by publishing the application in the Government Gazette.

[8] The counter-application of the respondents must fail. I am satisfied that it cannot be regarded as a review in terms of Rule 53 of the Uniform Rules of Court since it does not comply with the requirements of the Rule. Mr Choudree conceded, wisely in my view, that the counter-application fails since s 79 of the NLTA was not adhered to. S 79 is aimed at a fair process when the Regulatory Entity withdraws, suspends or amends a permit or a licence. Accordingly the counter-application has to be dismissed.

[9] Finally what remains are the paragraphs in the fourth respondent's answering affidavit that needed to be considered for striking out. An application to strike out remains discretionary in nature. It is trite that averments which are scandalous, vexatious or irrelevant would be struck out.[4] Paragraph 28 of the fourth respondent's answering affidavit reads as follows:

> 'I respectfully submit that the true reasons for the application being moved at the behest of the first applicant is not altruistic <u>but rather to enable him to garner as much business as he can from whichever applicant he can advise</u>'.[5] (My emphasis.)

[3] 2012 (4) SA 593 (SCA) at para 17.
[4] See generally Erasmus *Superior Court Practice* 2nd ed (2015) at D1-307.
[5] See page 63 of the papers.

[10] This averment is not only irrelevant to the pleadings but an averment worded in a manner to annoy the first applicant. I am satisfied that the paragraph ought to be struck out. The first applicant in his founding affidavit certainly showed his standing and what was expected of the respondents was to answer to the specific averments. I do not consider the first applicant's business interest as being relevant to the pleadings.

[11] The offending sentence in paragraph 48(b) of the papers is 'Mr Jacobs is well aware of the proceedings and has <u>deliberately withheld</u> material facts which are known to him and which are designed to malign the fourth respondent in an unfair manner'.[6] (My emphasis.)

[12] Paragraph 34.2 of the first applicant's founding affidavit needs to be quoted to understand and decide upon the allegedly offending response:

> 'The only way that applicants/objectors and representatives are aware of the date of the hearing is at the whim of the department who generally advise of the date of hearing a mere day or two days before the hearing. This they do by emailing an agenda of what is to be heard to the legal representatives.'[7]

[13] It cannot be overlooked that the first applicant is an officer of the court and to allege that he deliberately withheld information material to the dispute from court is a serious allegation and certainly prejudicial to the first applicant. As a practicing attorney he ought to ascribe to the ethical rules of practice. To suggest that he intentionally mislead the court, given the facts, is vexatious. This allegation is irrelevant and vexatious in nature and I order that it be struck from the record.

---

[6] See page 72 of the papers.
[7] See page 20 of the papers.

[14] Paragraph 51 reads:

> 'The allegations contained in this paragraph are denied. I will cite one example in which the Fifth Applicant has appeared before the Fourth Respondent with notifications having been dispatched to all the parties concerned. The First Applicant seems to be unhappy that his practice does not include representation for all and every Applicant especially in view of the procedure adopted by the Fourth Respondent as described above, which includes even the legal representatives and this is evidenced in Annexure 'C' which is dated 9 April 2014 which clearly disproves the allegations by the First Applicant. <u>The fact that any Applicant with an interest in renewals does not instruct the First Applicant, is not due to any fault on the part of the Fourth Respondent.</u>'[8] (My emphasis.)

[15] I have carefully considered the averment and the content of the paragraph and as much as it is superfluous and not directly linked to the matter, I am not persuaded that it ought to be struck out.

[16] Paragraph 58(b) reads:

> 'the First Applicant has taken the unusual <u>steps of making himself a litigant not in order to protect the interests of any other Applicant save for his own</u>. He has no entitlement by law to claim any relief where he has made himself a party as he is not an Applicant within the meaning of that term as set out in the Act.'[9] (My emphasis.)

[17] I find this averment to be unsubstantiated and irrelevant. The first applicant most certainly had an interest and there is nothing unusual in his conduct. This paragraph has to be struck from the record. The first applicant in the main succeeded in his application to strike out the listed paragraphs, so costs should follow the result.

[18] The following order is issued:

---

[8] See page 75 of the papers.
[9] See page 79 of the papers.

1. The rule *nisi* issued on 17 July 2014 is hereby confirmed.

2. The application to strike out succeeds.

3. The counter-application is dismissed.

4. The respondents are ordered to pay the costs of the applications, jointly and severally.

……………………………..

STEYN J

Application heard on :	5 February 2016
Counsel for the applicants :	Mr R Pillemer
Instructed by :	Jacobs and Partners
Counsel for the respondents :	Mr ABG Choudree
Instructed by :	The State Attorney (KwaZulu-Natal)
Judgment handed down on :	11 February 2016