



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 30586/14

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

DATE: 26/6/2015

· SIGNATURE

IN THE MATTER BETWEEN

FINES 4 U (PTY) LTD

First Applicant

BRET HUDSON (PTY) LTD
T/A AUDI CENTRE JOHANNESBURG (PTY) LTD

Second Applicant

and

SHERMAN MAMOS, DEPUTY REGISTRAR, ROAD

TRAFFIC INFRINGEMENT AGENCY

First Respondent

THE MINISTER OF TRANSPORT

Second Respondent

THE DIRECTOR-GENERAL, DEPARTMENT OF TRANSPORT

Third Respondent

THE ROAD TRAFFIC INFRINGEMENT AGENCY BOARD

Fourth Respondent

JUDGMENT

LEGODI J

[1] The application before me revolves around whether the interlocutory application for the joinder of certain persons referred to in these proceedings as representations officers and other such officers identified only by their employment numbers, should be granted. The applicants want them to be joined in the main application for review as additional respondents. In the review application, the representations officers' rejection issued in terms of section 18(5) (c)(ii) of the Administrative Adjudication of Board Traffic Offences Act no. 46 of 1998 ("the Act"). of the applicants' representations, not to be held liable for the penalty payable in terms of the infringement notices issued under section 17 of the Act, is challenged.

[2] In terms of section 17(1) of the Act, if a person is alleged to have committed an infringement, an authorized officer or a person duly authorized by an issuing authority, must instead of notice contemplated in section 56 or 341 of the Criminal Procedure Act no. 51 of 1977 and subject to section 23 serve or cause to be served on that person an infringement notice, which must specify certain particulars and information set out in paragraphs (a) to (f) of thereof.

[3] Subsection (1) of section 18 allows an infringer who has been served with an infringement notice alleging that he or she has committed a minor infringement, to make representations with respect to that notice to the agency.

[4] The applicants, Fines 4 U (PTY) Ltd and Brett Hudson (PTY) Ltd t/a Audi Centre Johannesburg (PTY) Ltd, had brought a review application challenging the decisions by various representations officers who rejected the representations by the applicants pursuant to several infringement notices issued in terms of section 17 of the Act against the applicants. That review application is opposed and the present interlocutory is also opposed by the fourth respondent, i.e. the Road Traffic Infringement Agency Board. The first, second and third respondents are Deputy Registrar of Traffic Infringement Agency, Minister of Transport and Director-General Department of Transport respectively.

[5] As I said, the only application before me is interlocutory. The grounds for the objection in the present application are no different from those in the main application. In a nutshell, the challenge is as follows: The representations officers do not make reviewable decisions, their decisions cannot be reviewed under PAJA and they have no legal interest in the subject matter of review.

[6] In paragraph 11 of the fourth respondent's written heads of argument, the contention is crystalized as follows:

"11. The applicants suggest that the representations officers' decisions to "reject" their representations are reviewable under PAJA. They are, with respect, incorrect. That is so because their decisions to "reject" the representations do not amount to administrative action. "Administrative action" in this context is defined in section 1(a)(ii) of PAJA as follow: "Administrative action" means any decision taken, or a failure to take decision by an organ of state when executing a public power or performing a public function in terms of any legislation which adversely affects the rights of any person and which has a direct, external effect".

[7] I must be careful not to deal with the present application as if one is dealing with the main application, issues of which, as I said, are no different from the issues before me. Whatever I say hereunder, should therefore not be understood as a final determination on the issues.

[8] The scheme of the legislative framework and issues under discussion, introduce some novelty in the approach prompted by the infringement notices in terms of section 17 of the Act. I will deal with what I think is relevant for the present application.

[9] In issuing infringement notice, the infringer's attention and of relevance, must be drawn to the following:

9.1 That the demerit points position may be ascertained from the national contraventions register at the office of any issuing authority, registering authority or driving licence, and or testing centre (section 17(1)(e).

9.2 That not later than 32 days after the date of service of the infringement notice, the infringer may:

9.2.1 pay the penalty, as reduced by the discount contemplated or make representations to the agency in case of a minor infringement (section 17(1)(f)(i).

9.2.2 elect in the prescribed manner to be tried in court on a charge of having committed the alleged offence (section 17(1)(f)(iv).

9.2.3 provide information in the prescribed manner, to the satisfaction of the issuing authority that he or she was not the driver of the motor vehicle at the time of the alleged infringement, coupled with the name, acceptable identification and residential and postal address of the alleged driver or person in control of the vehicle, failing which the matter will be referred to the agency and a courtesy letter will be issued in terms of section 19, whereafter the penalty and the prescribed fee of the courtesy letter (section 17(1)(f)(v), will be payable

[10] In terms of subsection (2) of section 17, if an infringer fails to comply with an infringement notice within the period contemplated in subsection (1)(f), the issuing authority must give notice of the failure, in the prescribed manner, to the agency for further action in terms of section 19.

[11] Section 18 deals with the making of representations upon service of the infringement notice and if such representations are rejected, in terms of subsection (7) the representations officer may advise the infringer to elect in the prescribed manner to be tried in court and must serve or cause to be served on the infringer a prescribed written notification, drawing his attention, of relevance, to the following:

11.1 That if he or she does not elect to be tried in court –

11.1.1 the penalty, the prescribed representations fee and the prescribed fee of the courtesy letter if any, are payable to the agency or that the arrangements can be made with the agency in the prescribed manner to pay in installments, not later than 32 days after the date of service of the notification. (section 18(7)(b)(i); and

11.1.2 failure to pay the penalty and fees or to make arrangements to pay in installments will result in an enforcement order being served on

the infringer and that the infringer will become liable to pay the penalty, and fees and the prescribed fee of the enforcement order (subsection (7)(b)(ii); and

11.1.3 The infringer elects to be tried in court, which may only be done on the advice of the representations officer, the provisions of section 22 will apply (subsection (7) (c)).

[12] From the scheme of things, if the infringer fails to comply with infringement notice in any manner, that will trigger the enforcement steps envisaged in section 20 of the Act. In terms of subsection (1) thereof, if an infringer fails to comply with the infringements of the notification contemplated in section 18(7) or a courtesy letter contemplated in section 19(2)(b) or has failed to appear in court as contemplated in section 22(3)(a), as the case may be, the registrar must subject to subsection (2) of section 20 issue enforcement order, and serve it on the infringer. Before the issue of enforcement order, the registrar should be satisfied that all procedural processes have been complied with.

[13] The contention on behalf of the fourth respondent is that the decision to reject representations is not final and therefore does not qualify as administrative action subject to review. One needs to look at the legislative framework in isolation in order to come to the conclusion as suggested by the fourth respondent. For example, if not satisfied with the rejection, an infringer can either pursue the matter in court or wait for the enforcement step to take place and then apply for revocation of the enforcement in terms of subsection (9) of section 20 which provides that an enforcement order can be revoked by the registrar if the infringer applies to the agency in the prescribed manner and submits reasons to the satisfaction of the registrar why an enforcement order must be revoked.

[14] The gist of the contention by the fourth respondent is that, failure to respond positively to the infringement notice after rejection of the representations, has no legal consequences and does not adversely affect the infringer's right, until a court of law has taken a decision or until enforcement order has been issued. As I said, one needs to look at the scheme in isolation to come to this conclusion.

[15] The registrar of the Road Traffic Infringement Agency Board, (the first respondent) is the custodian of a register for contraventions or infringements. In terms of subsection (3) of section 17, if infringer complies with an infringement notice by arranging to pay the penalty in installments or by paying the penalty, as reduced by the discount contemplated in subsection (1)(d), the agency must update the national contraventions register in the prescribed manner, (paragraph (a), record the demerit points incurred by the infringer in terms of section 24 in the national contraventions register (paragraph (b)).

[16] It appears from the provisions of subsection (3) of section 17 that once an allegation of infringement is made and an infringement notice issued, the particulars of the alleged infringer and probably with all alleged infringements are entered into the national register. Subsection (8) of section 17 provides as follows:

- "(8) If an infringer pays the penalty and fee as contemplated in subsection (7)(b)(i) or makes arrangements to pay in installments, the agency must -*
- (a) Update the national contraventions register in the prescribed manner;*
 - (b) Record demerit points incurred by the infringer in the national contraventions register;*
 - (c) Notify the infringer by registered mail in the prescribed manner that the demerit points have been recorded against his or her name in the national contraventions register in respect of the infringement in question; and*
 - (d) Provide the infringer with a printout of the demerit points incurred to date, together with an indication of the number points left before his or her driving licence, professional driving permit or operator card is suspended in terms of section 25 or cancelled in terms of section 27".*

[17] Subsections (7) and (8) raise an issue which in my view, can properly be dealt with in the main application. That is, whether the decision by the representations officer, to reject the infringer's representations in the absence of an election to go to court or to wait for the enforcement to be triggered in terms of section 18, and or failure to pay in terms of the infringement notice upon rejection of the representations, adversely affect

the infringer's right. To want to deal with the issue at this stage, in my view, would be to anticipate the outcome of the main application.

[18] The provisions of sections 17, 18 and 19 referred to in paragraphs 9, 11, 12, and 17 of this judgment do not make it obvious that the decisions by representations officers in rejecting the infringers' representations are not administrative actions. Administrative action means any decision taken or a failure to take a decision by an organ of state, when exercising a public power or performing a public function in terms of the legislation which adversely affects the rights of any person and which has a direct. external legal effect. [Underlining is my emphasis]. I refrain from expressing a final view on this aspect.

[19] The application before me is interlocutory and the terms of the relief sought are:

" 1. That the following persons be joined as respondents to the application under the above case number:

- 1.1 Mr Reuben Mannafela as fifth respondent;*
- 1.2 Adv HT Mbatha as sixth respondent;*
- 1.3 Mr JB Jacobs as seventh respondent;*
- 1.4 Ms M Lippert as eighth respondent;*

2. That the applicant be granted leave to join to these proceedings any such further so-called representation officers whose identity may be established with specific reference, but not limited, to the representation officers known by the following employee and/or internal identification numbers:

- 2.1*
- 2.2*
- 2.3*

3. The first and fourth respondents are ordered to forthwith and by no later than five (5) days after date of service of this order to make known to the applicants' legal representatives the names and particulars of the

representation officers who are identified by the following employee and/or internal identification numbers:

- 3.1
- 3.2
- 3.3

4. *That the costs of this application for the joinder of the aforesaid representation officers be costs in the review application, alternatively, and in the event of any of the respondents opposing same that such respondent be ordered to pay the costs.*

5. *Further and/or alternative relief'.*

The applicants seek to join the said representations officers to the main application in that they have taken the decisions in terms of which they rejected the representations made by the applicants.

[20] The dispute between the parties, in my view, is the subject of several questions, which are best suited to be argued during the hearing of the main application. For example, is the infringer's right adversely affected when his or her representations are rejected and he or she pays the penalty and fee imposed for the infringement in terms of section 24(2) dealing with the demerit points system? Is the infringer's right adversely affected when his or her representations are rejected and penalty and fee for the infringement are paid and the agency updates the national contraventions register and record of the demerit points incurred by the infringer in the national contraventions register as contemplated in section 18(8) of the Act? Is the representations officer's decision final and thus amounting to administrative action seen in the light of the nature of the enquiry the representations officer is expected to launch in terms of section 17(5) read with subsection (4) thereof, and the fact that the register in dealing with the enforcement, does not consider the merits of the rejection of the representations, but only the procedural compliance as envisaged in section 20(2) of the Act? Is the infringer's right adversely affected after rejection of his representations if he or she elects not to go to court or to wait until enforcement order is issued in terms of section 20,

particularly seen the light of section 17(2)(c) read with section 20(1) dealing with the updating of the national contraventions register and recording of demerits as provided in paragraphs (a) and (b) of subsection (1)?

[21) Consequently an order is hereby granted in terms of prays 1, 2, 3 and 4 of the notice of motion quoted in paragraph 19 above and the fourth respondent to pay the costs of the application as envisaged in the alternative in prayer 4 of the notice of motion.

M F LEGODI

JUDGE OF THE HIGH COURT

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