

IN THE HIGH COURT OF SOUTH AFRICA

[GAUTENG DIVISION, PRETORIA]



16 / 7 / 15

CASE NUMBER: 64250/2012

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
16 / 7 / 15	
DATE	SIGNATURE

In the application of:

LETABA TAXI ASSOCIATION

FIRST APPLICANT

NAPHUNO LONG DISTANCE TAXI
ASSOCIATION

SECOND APPLICANT

and

THE REGISTRA OF THE DEPARTMENT
OF TRANSPORT LIMPOPO

FIRST RESPONDENT

LIMPOPO PROVINCIAL TAXI COUNCIL

SECOND RESPONDENT

THE HEAD OF THE DEPARTMENT OF
ROADS AND TRANSPORT

THIRD RESPONDENT

MEMBER OF THE EXECUTIVE THE
DEPARTMENT OF TRANSPORT
LIMPOPO

FOURTH RESPONDENT

THE OFFICE OF THE PUBLIC
PROTECTOR

FIFTH RESPONDENT

MOPANI DISTRICT TAXI COUNCIL

SIXTH RESPONDENT

OPERATING LICENSING BOARD:
DEPARTMENT OF ROADS AND
TRANSPORT LIMPOPO

SEVENTH RESPONDENT

THE OAKS TAXI ASSOCIATION

EIGHTH RESPONDENT

JUDGMENT

A.J. LOUW AJ

[1] This application started off as an urgent application that was enrolled for hearing on the 13th November 2012. On that date it was struck off the roll with costs. In due course the Applicants filed a notice of intention to amend and the final relief sought by the Applicants are set forth the amended Notice of Motion at page 106 of the paginated papers and in terms whereof the following relief is sought:

"1.1 That the Respondents be interdicted from continuing in the deregistration of The Applicants and The Eighth Respondent as Taxi Associations and streamlining of their routes.

1.2 That the Respondents be interdicted from merging the Applicants and The Eight Respondent as one Association.

1.3 *That the Respondents be interdicted from taking and/or withdrawing the permits or operating licences of The Applicants members.*

1.4 *That the Respondents be ordered to Honour and enforce the settlement agreement entered into and by and between the Applicants and The Eighth Respondent on the 15th August 2006 and which was made an order of Court by Honourable Justice SHONGWE on the 15th August 2006.*

2. *That the Costs of this Application be paid jointly and severally by the opposing party or parties.*

3. *Further and/or alternative relief."*

[2] The matter was enrolled on the unopposed roll for hearing on the 20th November 2013 at which time Kollapen J postponed the matter *sine die* and reserved the costs because of the fact that the Eighth Respondent appeared to oppose despite it never having filed a formal notice of intention to defend. Since then no opposing affidavit was filed by the Eighth Respondent.

[3] In fact none of the Respondents appeared at the hearing of the matter, despite the notice of enrolment being delivered to them. Specifically the Eighth Respondent received the notice of set down at the offices of

its attorneys of record on the 17th February 2015. The First, Third, Fourth and Seventh Respondents filed a notice to abide on the 3rd December 2012.

[4] Of importance is a memorandum of the Seventh Respondent dated the 23rd November 2012. In paragraph 3 of the memorandum the Seventh Respondent points out that the Seventh Respondent only became aware of the order of Shongwe, DJP dated 15 August 2006 on 8 November 2012. This is also the order of court referred to in prayer 1.4 of the amended notice of motion.

[5] In terms of the court order of the 15th August 2006 (as evidenced by the settlement agreement that was made an order of court) the following order was issued:

“2.

The members of both the Letaba Taxi Association as well as The Oaks Taxi Association are allowed to use the routes as described in their respective public transport permits.

3.

The members of both Taxi Associations are allowed to use the respective routes, assigned to them, in the schedules to the Provincial Gazette Extraordinary, Notice 35 of 2004, Limpopo Provincial Government, Department of Transport, No. 980 dated 8 April 2004 as amended from time to time.

4.

Members of both Taxi Associations are allowed to load and offload passengers in Masokisi Village but may not use it as their starting Point (A).

5.

Each party will pays (sic) its (sic) own costs.”

- [6] In view of the order of Shongwe DJP of the 15th August 2006 (hereinafter referred to as “the August 2006 order”) the Seventh Respondent decided to abide by the August 2006 order and also decided to suspend a recommendation of the First Respondent dated the 24th October 2012.

[7] The application arose from the fact that, despite the August 2006 order, the First Respondent purported to give notice of the deregistration of the First Applicant as well as the Eighth Respondent in terms of a letter dated the 5th November 2012, the terms whereof reads as follows:

"1. Notice is hereby given of the deregistration of Letaba and The Oaks Taxi Association as a sequel to the notice issued to you dated 03 October 2012.

2. Valid permits/operating licences holder affected by this deregistration will continue to be entitled to the right contained in their licences but ceased to belong to the deregistered associations.

3. The Operating Licensing Board (OLB) will call the affected valid permits/operating licence holders to a hearing relating to the authority contained in their permits/operating licences."

[8] In terms of a letter also dated the 5th November 2012 the Third Respondent appears to say that there was no decision that the two associations are deregistered but only a notice of intention to do so. I quote paragraph 3 of the said letter:

"3. The meeting never referred to any decision and as a matter of

fact as at the time of the meeting reference was made to a notice served to your clients indicating the Registra intention to deregister Letaba and The Oaks taxi associations and register valid operating licence holders in one taxi associations under new conditions.”

In my view the First and Third Respondents' letters are somewhat confusing and at the very least an impression was created that the First Applicant is deregistered. The Third Respondent recommended temporary operating licences to operators of the First Applicant and the Eighth Respondent in line with amended routes.

[9] As can be expected, the Applicants then approached the court firstly for urgent relief and in view of the striking from the roll order, in the ordinary course of litigation for the relief quoted herein earlier.

[10] The founding affidavit on behalf of the Applicants says that the First Applicant has been in existence since approximately 1976 and thereafter the Second Applicant was also formed to cater for long distance taxis whereas the First Applicant only caters for local taxi operations. After 1995 some members of the First Applicant broke away and formed the Eighth Respondent. The First Applicant were given their own routes. The members of the Eighth Respondent were allocated different routes. By 2000 conflicts arose between the

Applicants on the one hand and the Eighth Respondent on the other hand. This resulted in the issue of a summons by the Applicants resulting in the August 2006 order. The Applicants complied with the August 2006 order whereas the Eighth Respondent did not comply with the August 2006 order as the Eighth Respondent started to operate taxis on the routes that had been allocated to the Applicants. The complaint is then made that the other Respondents failed to ensure compliance by the Eighth Respondent with the August 2006 order resulting in various approaches to this court by the Applicants.

[11] It appears that the governmental Respondents listed in this matter failed to address the matter appropriately and decisively. Allegations of corrupt activities are made by the Applicants. I do not find it necessary to make a finding in this regard. What is clear is that the First, Second, Third, Fourth and Seventh Respondents failed to execute their obligations properly and in compliance with the August 2006 order.

[12] As a result of the threatened deregistration of the Applicants and the proposed change of routes to the detriment of the Applicants, the Applicants approached this court for the relief sought.

[13] It is clear that the relief is not opposed and I find no reason not to grant the First and Second Applicants the relief that they seek in the amended Notice of Motion.

[14] Although the memorandum of the 23rd November 2012 purports to say that the Applicants' application is premature I cannot agree with that view. A further complaint is stated in paragraph 13 of the 23 November 2012 report, namely that there are operators in both the First and the Eighth Respondents who operate on the routes without valid operating licences. That is a matter to be dealt with in terms of the applicable legislation. It would not constitute a basis for the deregistration of any of the First and Second Applicants on the one hand or the Eighth Respondent on the other hand. Appropriate civil or criminal steps must be taken so as to ensure a continued lawful operation by the Applicants on the one hand and the Eighth Respondent on the other hand.

[15] In the circumstances I am of the view that a proper case for the relief in the Amended Notice of Motion is made out. There is no basis to merge the First and the Eighth Respondents, a step which is contrary to the August 2008 order.

[16] In one respect I am of the view that the Applicants are not entitled to relief and as I understood Mr Motloba also did not ask for the particular relief, and that is the relief in prayer 1.3 of the amended Notice of Motion as quoted above. That prayer applies for an interdict preventing the Respondents from taking and withdrawing the permits or operating licences of the Applicants' members. On the facts of the matter the

Applicants might have been entitled to a more limited order of the nature applied for. As prayer 1.3 is formulated, it is much too wide and would forever prevent the withdrawal of operating licences of the members of the Applicant, even in circumstances where it lawfully ought to be done. I am accordingly of the view that Mr Motloba correctly did not apply for the relief in prayer 1.3

[17] I will accordingly make an order in terms of prayers 1.1, 1.2 and 1.4 of the amended Notice of Motion.

[18] As regards costs Mr Motloba requested a costs order for the enrolment of the 20th November 2013 when the Eighth Respondent appeared and that resulted in a *sine die* postponement of the Applicants' application. In addition Mr Motloba requested me to make a costs order against the Eighth Respondent as the Eighth Respondent is the cause of the enrolment of the matter on the opposed roll for the 4th May 2015.

[19] In view of the fact that the Eighth Respondent (although not having filed a formal notice of intention to defend) appeared on the 20th November 2013, a costs order for the 20th November 2013 must be made in favour of the Applicants against the Eighth Respondent.

[20] As regards the opposed costs of the application as such, I cannot accede to Mr Motloba's request as none of the Respondents, including

the Eighth Respondent, indeed opposed the application. None of the Respondents filed notices of intention to defend. Some of the Respondents as referred to above filed a notice to abide with a decision of the court. The Eighth Respondent, appeared on the 20th November 2013 which appearance resulted in a *sine die* postponement of the application, but thereafter neither filed a notice of intention to defend nor thereafter ever appeared in the matter again. In the circumstances prayer 2 of the amended Notice of Motion does not allow for any costs order against the Eighth Respondent, excluding for the appearances of the 20th November 2013.

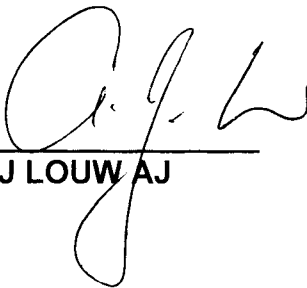
[21] In the result the following order is made:

1. The First to the Eighth Respondents are interdicted from deregistering the First and Second Applicants and the Eighth Respondent as taxi associations and are interdicted from streamlining the respective routes of the First and Second Applicants and the Eighth Respondent.
2. The First to the Eighth Respondents are interdicted from merging the First and Second Applicants and the Eighth Respondent as one taxi association.
3. The First to the Eighth Respondents are ordered to honour and

enforce the settlement agreement that was entered into by and between the Applicants and the Eighth Respondents on the 15th August 2006 and which settlement agreement was made an order of court by the Honourable Shongwe, DJP on the 15th August 2006.

4. The Eighth Respondent is ordered to pay the opposed costs of the 20th November 2013.
5. Subject to the order in prayer 4 no costs order is made.

SIGNED AT PRETORIA ON THIS 16th ^{July} DAY OF ~~JUNE~~ 2015.


AJ LOUW AJ