

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case No.: 5204/2013

In the matter between:

THAHAMESO NTSWANATSATSI THUSANANG
TAXI ASSOCIATION

First Applicant

SIPHIWE ISAAC SITHOLE

Second Applicant

and

QWAQWA UNITED TAXI ASSOCIATION

Respondent

CORAM:

LEKALE, J

HEARD ON:

13 JUNE 2014

JUDGMENT BY:

LEKALE, J

DELIVERED ON:

26 JUNE 2014

- [1] This is essentially an application for leave to appeal an order handed down in an urgent application between the parties on the 19th December 2013. The application is out of time and, as such, the applicant should and effectively does, *ante omnia*, apply for condonation of the delay involved. There is no appearance for the respondent party although it was served.

- [2] On the 19th December 2013 the applicants moved this court, on an urgent basis, for interdictory relief against the respondent. After hearing the motion, which was opposed, I dismissed the same with costs and pointed out that reasons would be furnished on request by either party.
- [3] On the 17th February 2014 the applicants filed a notice in terms of Rule 49(1)(c) of Uniform Rules of Court requesting reasons. On the 18th February 2014 I caused a letter to be directed to the applicants advising them that their request did not comply with the provisions of the relevant rule and, as such, could not be acceded to.
- [4] On the 7th April 2014 the applicants filed an application for leave to appeal incorporating, if necessary, an application for condonation as a contingency measure. In the affidavits filed in support of the application, the applicants maintain that when the motion was dismissed the court indicated that “**reasons to be provided later**”. The deponent further points out that, from the 6th January 2014 to the 20th January 2014, he attempted in vain to contact the court to establish if the reasons were ready. On the 28th January 2014 he learned from my clerk that I had been on recess until the 27th January 2014 and that I was busy preparing reasons in the matter. On the 13th February 2014 his office established from my clerk that the reasons were ready and that same as well as the file had been taken back to the general office. They, however, found the file without the

reasons and were informed by my clerk, on enquiry, that the relevant file was mistaken for another file and that no reasons would be provided because no request for reasons had been made in terms of Rule 49 of Uniform Rules of Court. On the 14th February 2014 his office requested a copy of the transcriptions of the judgment and order from the service provider but learned, towards the end of February 2014, that no recording of the judgment and order could be found. That his office has been advised by their senior counsel that the application for leave to appeal is, in fact, not out of time and as such condonation is not necessary.

- [5] The transcribed record has since been filed and it is clear therefrom that on the 19th December 2013 I ruled that “**reasons to be furnished on request by either party**”.
- [6] The leave to appeal scheme created by Rule 49 envisages that reasons for judgment would be available by the time leave to appeal is sought. This much is apparent from the *proviso* to Rule 49(1)(b) which limits the time for making an application for leave to appeal to 15 days after the date on which the reasons or the full reasons for the order are given.
- [7] Written reasons are indispensable when a matter serves on appeal. As the court in **Botes and Another v Nedbank Ltd** 1983 (3) SA 27 (A) at p. 28 pointed out:

“It is elementary that litigants are ordinarily entitled to reasons for a judicial decision following upon a hearing, and, when a judgment is appealed, written reasons are indispensable. Failure to supply them will usually be a grave lapse of duty, a breach of litigants' rights, and an impediment to the appeal process.”

(Quoted with approval in **Strategic Liquor Services v Mvumbi NO and Others** 2010 (2) SA 92 (CC) at par. [15]).

- [8] In the instant matter no written reasons for the judgment have been prepared and given. Such a state of affairs constitutes a serious impediment to the appeal process. The applicants only seek condonation, if necessary, in respect of the 15 day period relating to application for leave to appeal as well as such leave. In my view no application for leave to appeal may be entertained and granted in the circumstances of the present matter where the applicant is out of time for requesting reasons. Written reasons serve as a jurisdictional fact for an application for leave to appeal.
- [9] As the applicants have correctly and effectively been advised the application for leave to appeal herein is not late and condonation is, thus, not necessary insofar as the 15 day period for applying for leave only starts to run after the reasons or full reasons for judgment have been furnished. What was late in this matter was an application for reasons. To entertain such an application for leave at this stage would allow and

encourage parties to circumvent the provisions of Rule 49(1) (c) with regard to the 10 day time limit for requesting reasons. A party, in the position of the applicants in this matter, would be able to apply for leave to appeal without first having applied for reasons in the hope that by so doing he would, in effect, be forcing the court's hand to give reasons after the prescribed time period simply because such reasons are indispensable to the appeal process.

- [10] The application for leave to appeal is, thus, premature for want of compliance with the provisions of Rule 49(1) (c) and, as Mr Maritz for the applicants correctly submits, where the court is not prepared to bypass the rules, falls to be dismissed.

ORDER

- [11] The application for leave to appeal is struck off the roll.

L. J. LEKALE, J

On behalf of applicants:

Adv N Maritz
Instructed by:
Savage Jooste & Adams Inc
PRETORIA
c/o AP Pretorius & Partners
BLOEMFONTEIN

On behalf of respondent:

No appearance

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