

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case Number: 460/2013

In the matter between:

OLEHILE CALVIN MAROGOA

APPLICANT

and

SOUTH AFRICAN NATIONAL TAXI COUNCIL

1ST RESPONDENT

PROVINCIAL TAXI COUNCIL

2ND RESPONDENT

HEARD ON:

30 MAY 2013

JUDGMENT BY:

MHLAMBI, AJ

DELIVERED ON:

18 JULY 2013

INTRODUCTION

[1] The Applicant approaches the court for an order in the following terms:

[1.1] That the resolution of the 28th March 2012, in terms whereof the 2nd Respondent's Provincial Executive Committee resolved to serve the Applicant with a Notice of Suspension be declared unlawful and invalid;

[1.2] That the 2nd Respondent's General Secretary's Notice of Suspension dated 02nd April 2012, in terms whereof the Applicant was suspended be declared unlawful and invalid;

- [1.3] That the Applicant's suspension by the Respondent/s in terms of the Notice mentioned in paragraph 2 above together with all subsequent decisions and actions be declared unlawful and invalid;
- [1.4] That the Respondents be directed to re-instate the Applicant into his position as a National Executive Member and/or a General member of the Respondents and their substructure and/or Affiliates;
- [1.5] That the Respondents be interdicted from interfering with the Applicant in the execution of his duties or responsibilities as a member of the Respondents and/or all their sub-structure and/or affiliates;
- [1.6] That the Respondent/s be directed to pay to the Applicant all his remuneration and/or allowance retrospective to the date of his suspension, and to continue to do so in terms of the Constitution and/or Rules and/or policies of the Respondents;
- [1.7] Directing the First and/or Second Respondent/s to pay the costs of this Application individually and severally on attorney and client scale, the one paying the other to be absolved;
- [1.8] Further and/or alternative relief.
- [2] A Notice of Intention to oppose was filed by both First and Second Respondents on 25 February 2013, but no answering affidavits were filed. Consequently Applicant set the matter down for hearing on 30 May 2013 on the unopposed roll.
- [3] **BACKGROUND**

On 2 April 2012 a letter from the General Secretary of the South African National Taxi Council (SANTACO), Free State, was addressed to the chairperson/secretary of All Regional Structures and Associations which reads as follows:

“Re: Notice of Suspension

We regret to inform you that in a special meeting held on the 28th March 2012, the PEC resolved to serve Mr O. C. Marogoa with a Notice of Suspension due to his continued unacceptable conduct. The PEC held two previous meeting trying to resolve this matter without any success.

The said PEC meeting of the 28 March 2012 then resolved as follows regarding Mr. Marogoa’s conduct.

- (i) That his conduct constitutes a bridge of our Code of Conduct.
- (ii) That his conduct brought the PTC into disrepute.
- (iii) That as an NEC Member, his case be handed over to the National Structure to handle.

Thank you for your consideration”.

[4] According to the Applicant, he did receive this letter as well as subsequent correspondence from the Secretary General of the First Respondent advising the Applicant of the rescheduling of the disciplinary action to be held at 10h00 on 22 June 2012.

[5] On 22 June 2012, the disciplinary hearing was held.

[6] On 17 July 2012 the Applicant addressed a letter to the Deputy Secretary General enquiring about the verdict. The letter reads as follows:

“Re: Disciplinary Hearing

On the 22nd June 2012 I was called in for disciplinary hearing, short notice as it was, I complied by attending.

It is now eighteen (18) working days and I need to know when will I be informed of the verdict as per hearing.”

[7] Another letter of enquiry dated 1 August 2012 was addressed to the President of the First Respondent. No response was received to both letters:

[8] Unable to elicit a response, Applicant approached his attorneys who addressed a letter of demand to First Respondent. Parts of the letter read as follows:

“After consultation and perusal of all the documents submitted to us and the Law as well as your own Constitution, we advised him that your conduct and/or that of the institution is both unfair and unlawful.

We, in the light of all of the above, have instructions to demand from you and/or your office, as we hereby do, not only the upliftment of the alleged suspension with immediate effect, but also a copy of the code of conduct and the record of the alleged hearing within five(5) days of receipt hereof, failing which, further action will be taken against you and/or the institution without further Notice, in which event you and/or the institution will be liable for all costs incurred in relation thereto.”

[9] The grounds upon which this application is based are briefly set out in paragraph 6 of the founding affidavit as follows:

[9.1] He is a taxi owner operating six (6) taxi's and has been in the industry for more than thirty (30) years.

He is an Executive member of both the Respondents and as such entitled to be informed and attend all meetings of the Respondents. He was not informed and consequently never attended meetings.

[9.2] The Respondents are governed by a Constitution which binds and enjoins them to observe its policies. The Respondents failed to observe and adhere to these policies.

[9.3] He was suspended by the Provincial Council and not the National Executive Council of the First Respondent as required by the Constitution.

[9.4] He was neither furnished with the particulars of the allegations against him nor afforded the opportunity to present his case before the alleged suspension. The notice to attend the hearing was too short and never afforded him the opportunity to prepare. He was also not furnished with a charge sheet.

[9.5] He has, to date, not been informed of the outcome of the hearing.

[9.6] He has, since date of suspension, not received any remuneration and/or allowance.

[10] During the disciplinary hearing which was held on 22 June 2012, he was informed that the verdict would be communicated to him in due course. Despite addressing two letters dated 17 July 2012 and 1 August 2012 to the national body, no response was forthcoming.

[11] **EVALUATION**

[11.1] In my view, it stands like a pole above water that the Applicant, who willingly subjected himself to and attended the disciplinary hearing, is disgruntled because of the failure of the Respondents to furnish him with the outcome of the disciplinary hearing.

[11.2] Clause 7 of Santaco's Constitution reads as follows:

"7.1 The NEC may terminate or suspend the membership of any Member where such Member has failed to comply with the provisions of this Constitution or is guilty of conduct which has brought or is likely to bring SANTACO into disrepute, provided that:

7.1.1 Such Member shall be furnished with written particulars of such alleged failure or conduct;

7.1.2 Such Member shall be afforded the opportunity of presenting its/his/her case;"

[11.3] During argument, I pointed out my concerns as to the relief sought to Mr Khang, who acted on behalf of the Applicant. Having reserved judgment, I caused a letter to be addressed to Mr. Khang, inviting him to make submissions as to whether the facts in the affidavit do not warrant an order on the following terms:

"Compelling Respondents to furnish the Applicant with the verdict of the disciplinary hearing that was held on 22 June 2012 within 2 (two) weeks from the date of the order, failing which the Applicant may approach this Court on the same papers, duly amplified, if so advised, for an order setting aside the suspension.

If so, whether the Court is entitled to grant such an order in the circumstances.

The submissions mentioned above should be filed within 7 (seven) days from date of this letter, failing which the Court would proceed to give judgment.”

[11.4] To date, no response has been received from Mr Khang.

[12] **CONCLUSION**

I am not convinced that the facts set out in the affidavit warrant an order as per the prayers in so far as the suspension in the instant matter is preventive as opposed to punitive and the disciplinary hearing has already taken place. The constitutional clause relied upon to assail the suspension herein regulates punitive suspensions. It is so that the main thrust of the Applicant's dissatisfaction is the failure to deliver and communicate the verdict of the disciplinary hearing to the Applicant.

He is entitled to be informed of the outcome to enable him to decide on his future actions. The intransigence of the Respondents cannot be entertained as the Applicant is entitled to know his fate.

[13] **COSTS**

In the result, the costs should follow the event.

[14] **ORDER**

I therefore make the following order:

- (a) First and Second Respondents must furnish the Applicant with the verdict of the disciplinary hearing that was held on 22 June 2012 on/before 6 August 2012, failing which the Applicant may

approach this Court on the same papers, duly amplified if he is so advised, for an order setting aside the suspension.

- (b) Both Respondents, jointly and severally, the one paying, the other to be absolved, to pay Applicant's costs.

J.J. MHLAMBI, AJ

On behalf of applicant: Mr M Khang
Instructed by:
Mphafi Khang Inc
BLOEMFONTEIN