

REPUBLIC OF SOUTH AFRICA

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



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

Date: 23/2/2012

Case number: A1000/10

In the appeal matter between;

N.G MABUNDA

First Appellant

(First Respondent a quo)

M.M JACKSON

Second Appellant

(Second Respondent a quo)

J CHAUKE

Third Appellant

(Third Respondent a quo)

B SHIVAMBU

Fourth Appellant

(Fourth Respondent a quo)

F MALULEKE

Fifth Appellant

(Fifth Respondent a quo)

And

M.N DALSON

Respondent

(Applicant a quo)

JUDGMENT

BAQWA A.J

- [1] This is an appeal against part of the order handed down by the magistrate in the Magistrate's Court for the district of Hlanganani on 2

March 2008 and for which written reasons were given on 17 September 2010.

[2] This matter had come before the court a quo by way of urgent application by the Respondent who sought an order against the five Appellants.

[3] Respondent sought and obtained an interim order dated 18 December 2009 in which the Appellants were prohibited from:

3.1. Off-loading passengers from a motor vehicle with registration number BYM 507 L being a vehicle that Respondent operated as taxi between Bungeni Taxi Rank and Giyani OBC through licence number LLP LOL 23835/L.

3.2. In any way, interfering with the Respondent or any of his employees while the Respondent was in the process of conveying passengers from Bungeni Taxi Rank to Giyani Taxi Rank and OBC Taxi Rank, or vice versa as provided in the above-mentioned operating licence.

3.3. Threatening the Respondent or his employees and/or drivers while Respondent or his employees/drivers were in the process of conveying passengers from the Bungeni Taxi Rank to Giyani Taxi Rank at Shoprite Taxi Rank and OBC Taxi Rank, or vice versa in line with the aforementioned operating licence.

3.4. the Respondent also applied for costs on an attorney and client scale but eventually costs were awarded on the basis that each party pay its own costs.

[4] The interim order was granted subject to a rule-nisi returnable on 9 February 2010. This rule was subsequently extended on several occasions for various reasons. It was eventually heard on 2 March 2010 on which date it was discharged as follows:

"The rule nisi is discharged. Respondents are ordered to desist from taking the law into their hands. Each party is to pay their own costs".

[5] On 3 March 2010 and in terms of Rule 51(1) of the Magistrate's Court Act the Appellants requested the Magistrate to furnish reasons for judgment which reasons were furnished on 17 September 2010. In those reasons the final order is couched as follows:

1. That the rule nisi is hereby discharged.
2. That the Respondents are ordered to desist from dragging passengers ordering passengers out of the vehicle of the applicant (BYM 507 L) or in any other way, taking the law into their own hands; with regard to the vehicle of the applicant mentioned above.
3. That each party shall pay its own costs."

[6] In the urgent application the court **a quo** correctly found that ;

6.1. The Respondent was a taxi owner who had several taxis in his fleet.

6.2. Respondent operated his taxis **inter alia** along the Giyani-Bungeni public road and that route fell under the "control" of Hlanganani Taxi Association.

6.3. The Respondent was a member of that Taxi Association and that he hired drivers to operate his taxis.

6.4. During or about November 2009 Respondent bought an additional vehicle with a view to increasing his fleet of taxis. The registration numbers of the Respondent's new vehicle are BYM 507 L and that the make of the vehicle was a Toyota Quantum.

6.5. After he had purchased the motor vehicle Respondent encountered intransigence on the part of some authorities of the Hlanganani Taxi Association when he tried to obtain documents to operationalise the vehicle as a taxi. Persons who appeared to obstruct Respondent's progress in this regard were the Appellants.

6.6. The obstruction activities culminated on 20 November 2009 where members of the Hlanganani Taxi Association who were acting under the directions of or in collaboration with some or all of the Appellants ordered passengers out of the vehicle in question.

6.7. Respondent was under the impression that he was being victimised because he had failed to support the First Appellant for a leadership position in the Taxi Association.

6.8. The Respondent had reported the said actions of the Appellants to Waterval Police to no avail as the police viewed the matter as an internal squabble between members of the Taxi Association.

[7] Further, the court **a quo** accepted in the urgent application the Respondent's averment that those events occurred whilst he was operating his taxi in a manner compliant with the law. The court **a quo** concluded in particular, correctly in my view, that :

7.1. "the applicant in making those averments, and upon the balance of probabilities, succeeded in proving a prima facie clear right"

See Setlogelo v Setlogelo 1914 AD 221

7.2. That "this prima facie clear right of the Applicant stood to be protected at law.

See Msunduzi Municipality v Natal Joint Municipal Pension/Provident Fund 2007(1) SA 142 N".

7.3. The court **a quo** also found from the facts that an injury had been and was continuing against the Respondent and that the Appellants were inflicting an irreparable harm against the business interests of the Respondent.

7.4. Consequently, and correctly in my view, the court found that the balance of convenience tilted in favour of the Respondent and granted interim order.

- [8] In their response on the return day of the **rule nisi** the Appellants did not address the issue of forcibly off loading passengers as alleged by the Respondent. They instead challenged the legality of the taxi operation run by the Respondent through the use of the vehicle BYM 507 L.
- [9] The Respondent had to prove a clear right for the **rule nisi** to be made final. He instead conceded that he could not obtain certain documents to fully legalise his taxi operation regarding motor vehicle BYM 507 L due to some administrative impediments. The **rule nisi** was accordingly discharged.
- [10] The appeal is against paragraph 2 and 3 of the order discharging the **rule nisi**. Paragraph 2 interdicts the Appellants whilst paragraph 3 orders each party to pay its own costs.
- [11] The court **a quo** took the view that it had the power to impose the terms contained in paragraph 2 Of its order interdicting the Appellants from engaging in the acts specified therein. In my view the court misdirected itself in coming to that conclusion.
- [12] The correct position is that any terms imposed against granting or refusal of an order have to be reasonable.

See Hillman Bros West Rand (Pty) Ltd v Van Den Heuvel 1937 WLD 41

12.1. The **rule nisi** was discharged as a result of the fact that the court **a quo** found the Respondent did not possess a right that stood to be protected with regard to his taxi operation. If this was so, it follows that the Respondent could not therefore lawfully continue to operate his

taxi. In the absence of such an operation the order in paragraph 2 was academic and could therefore not be a reasonable order in the circumstances.

12.2. The court **a quo** further misdirected itself in ordering each party to pay its own costs. The Respondent had brought an application against the Appellants well knowing that he did not possess the requisite documents to operate his taxi. The costs order should accordingly have been awarded against him.

[13] In the result I propose that the following order be made:

13.1. The appeal is upheld and the judgment handed down by the Magistrate on 2 March 2008 and 17 September 2010 is set aside and substituted with the following:

- "(1) That the **rule nisi** is hereby discharged.
- (2) That the Applicant pay the wasted costs."

I agree.


BAQWA S.A.M
ACTING JUDGE OF
THE HIGH COURT

I agree and it is so ordered.


FABRICIUS H.J
JUDGE OF THE HIGH
COURT

Case no.: A1000/2010

Heard on: 23/02/2012

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Date of Judgment: 23 February 2012 at 10:00am.

In the High Court of South Africa