

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 3108/2011

In the matter between:-

<u>QIBING TRANSPORT ASSOCIATION</u>	1 st Appellant
<u>A.T. MPITI</u>	2 nd Applicant
<u>M.A. MAKHETHA</u>	3 rd Applicant
<u>P.J. RAMATHEBANE</u>	4 th Applicant
<u>T.P. PHOMANE</u>	5 th Applicant
<u>B. KHAMALI</u>	6 th Applicant
<u>T.G. LELALA</u>	7 th Applicant
<u>N. MAKOTI</u>	8 th Applicant
<u>P.A. SHALE</u>	9 th Applicant
<u>M.P. MIFI</u>	10 th Applicant
<u>M.L. MOKOENA</u>	11 th Applicant
<u>T.W. LIPHOLO</u>	12 th Applicant
<u>M.V. SELEKE</u>	13 th Applicant
<u>W. PHETHUKA</u>	14 th Applicant

and

<u>REGISTRAR OF PUBLIC TRANSPORT</u> (Free State Province)	1 st Respondent
<u>FREE STATE OPERATING LICENSING BOARD</u>	2 nd Respondent
<u>MOHANAPUSO TAXI COMPANY LIMITED</u>	3 rd Respondent
<u>M.T. MOTSIE</u>	4 th Respondent
<u>N.D. MPEDI</u>	5 th Respondent
<u>P.J. MAKHELEDISE</u>	6 th Respondent
<u>M.E. TSEKELO</u>	7 th Respondent
<u>Z.P. LEMPE</u>	8 th Respondent

<u>S.I. NDLOVU</u>	9 th Respondent
<u>G.I. GUAI</u>	10 th Respondent
<u>M.M. MALEFANE</u>	11 th Respondent
<u>N. MOLEFE</u>	12 th Respondent
<u>P.E. TSIE</u>	13 th Respondent
<u>T.P. KHUTO</u>	14 th Respondent
<u>N.K. MOAHLOLI</u>	15 th Respondent
<u>M.L. MOEKETSI</u>	16 th Respondent
<u>M.E. TSHABALALA</u>	17 th Respondent
<u>S.S. MOLOTSI</u>	18 th Respondent
<u>G.P. LENCOE</u>	19 th Respondent
<u>H.E. MANGESI</u>	20 th Respondent
<u>H.E. KAIBANE</u>	21 st Respondent
<u>D. MAJOE</u>	22 nd Respondent
<u>M.A. PHUME</u>	23 rd Respondent
<u>E.D. RASEBOKA</u>	24 th Respondent
<u>T.A. MAGOJE</u>	25 th Respondent
<u>M.J. MAFEREKA</u>	26 th Respondent
<u>M.E. MAPUTLE</u>	27 th Respondent
<u>T.J. MAHLATSI</u>	28 th Respondent
<u>E. MAKLEIN</u>	29 th Respondent
<u>M. MOTSETSE</u>	30 th Respondent
<u>M.A. MPAPA</u>	31 st Respondent
<u>G. NOMANA</u>	32 nd Respondent
<u>M. KHOABANE</u>	33 rd Respondent
<u>B.P. KORIBE</u>	34 th Respondent
<u>J.P. MOLOTSI</u>	35 th Respondent
<u>M.S. RAPITA</u>	36 th Respondent
<u>W. GWILIKA</u>	37 th Respondent

<u>S.S. MOLELEKOA</u>	38 th Respondent
<u>M.P. MOROENG</u>	39 th Respondent
<u>T.J. STENE</u>	40 th Respondent
<u>D. LETEANE</u>	41 st Respondent
<u>M. MORAKE</u>	42 nd Respondent
<u>M.J. MOKONE</u>	43 rd Respondent
<u>L.H. LEPOTA</u>	44 th Respondent
<u>M.K. TEELE</u>	45 th Respondent
<u>T.D. SETHOLE</u>	46 th Respondent
<u>K.H. LOWALALA</u>	47 th Respondent
<u>K.K. MOLETE</u>	48 th Respondent
<u>M.I. MAMOME</u>	49 th Respondent
<u>N.R. NTUKA</u>	50 th Respondent
<u>F.T. MATUWANE</u>	51 st Respondent
<u>S.C. MOTSAMAI</u>	52 nd Respondent
<u>E.M. SILO</u>	53 rd Respondent
<u>M.K. MEREKO</u>	54 th Respondent
<u>M. MOLETE</u>	55 th Respondent
<u>N.E. MAPUTLE</u>	56 th Respondent
<u>M. MALEFANE</u>	57 th Respondent
<u>P. KAIBANE</u>	58 th Respondent
<u>J.P. MOLOTSI</u>	59 th Respondent

HEARD ON: 1 MARCH 2012

JUDGMENT BY: CHESIWE, AJ

- [1] The first applicant, Qibing Transport Association, which is duly registered in terms of the National Land Transport Act, Act No. 5 of 2009 (NLTA), with its principal place of business situated at No. 17 De Bruin Street, Wepener.

The second to 14th applicants are members of the first applicant. They operate their taxi routes from Wepener to Bloemfontein, Johannesburg, Klerksdorp, Carltonville, Westonaria, Rustenburg and return. They operate these routes by virtue of their operating licences which were issued by the first respondent.

- [2] The first respondent is the Registrar of Transport, a public transport registrar who is duly appointed by the MEC for Public Works, Roads and Transport in the Free State Province, with its principal place of business situated in Bloemfontein, Free State Province.

- [3] The second respondent is the Free State Operating Licensing Board, an operating licensing board with its principal place of

business in Bloemfontein, Free State Province.

[4] The third respondent is Mohanapuso Taxi Company Limited, a company duly registered in terms of the company laws of the Republic of South Africa with its principal business situated in Welkom, Free State Province.

[5] The fourth to fifty ninth respondents are members of the third respondent and they are taxi operators on the routes from Wepener to Bloemfontein, Johannesburg, Klerksdorp, Carltonville, Westonaria, Rustenburg and return.

[6] The applicants brought an application wherein they seek relief against the second and third respondents

6.1 to withdrew all temporary public carrier permits operating licences which authorises the fourth to fifty ninth respondents to operate on the same routes as them, i.e. Wepener to Bloemfontein, Johannesburg, Klerksdorp, Carltonville, Westonaria, Rustenburg and return;

6.2 that the fourth to fifty ninth respondents be interdicted and restrained from operating on the abovementioned routes.

- [7] The Qibing Transport Association and Mohanapuso Taxi Company Limited are rival taxi associations from as far back as the late nineties (1990's) for some time due to the irregularities of the taxi business and so-called taxi wars. There was continues conflict between Qibing Transport Association and Mohanapuso Taxi Company Limited. The parties entered into several agreements. One of their agreements was that the taxi associations and their members will operate jointly on all routes except for the local operation which was reserved for the applicants.
- [8] The agreements and members did not comply with the agreements. The third respondent obtained interdicts from this Honourable Court and the order was granted on 27 April 2010. From thereon the conflict and disputes for the routes continued.
- [9] The applicants claim that the Wepener route is legally reigstered in their names and the respondents also claim that they are registered to operate from Wepener. In line with the National Taxi Task Team (NTTT) the Free State Provincial Government embarked on a process of demo.....

the taxi industry. The first respondent is task with the responsibility of capturing the data of all the taxi associations and their members. The second respondent is tasked with the responsibility of granting of operating licences to the members of the taxi associations.

[10] To resolve this conflict the Department embarked on a verification process in order to regulate the taxi industry in the Free State Province. During the verification process the taxi operators were required to verify routes they used to operate on for 180 days retrospectively from the date of the application. The verification process revealed that some of the routes operated by the third respondent and its members were not captured in its members' permits. The verification process also showed that the first applicant and its members operated locally in Wepener and nearby areas. The fourth to fifty ninth respondents operated long distance to various areas, such as Rustenburg, Klerksdorp, Vereeniging, Johannesburg, etc.

[11] Advocate Mashavha, on behalf of the applicants, in his oral submission and heads of argument, argued that the routes the

applicants are currently operating on, were currently allocated to them by the second respondent. He submitted that the intention to regulate and register these routes was to ensure that no member encroaches on the taxi route of another association. He indicated to Court that the routes in the licence permits are clearly defined in the annexures “ATM3” and “ATM4” (page 138 and 139 of paginated pleadings).

[12] Advocate Mashavha submitted that the first and second respondents erroneously issued operating licences to the fourth to fifty ninth respondents and that these licences must be set aside. He argued that these licences are the cause of the conflict between the associations and their members. He indicated that it will be advisable of each party and its members to operate on their allocated routes. He further submitted that the applicants have a clear right to operate on the mentioned routes and that the applicants must be granted the relief sought.

[13] Advocate Mene, on behalf of the first and second respondents, submitted in his oral submission and heads of argument, that the applicants seek that the first and second respondents be ordered to withdraw all temporary public carrier permits licences

which authorises fourth to fifty ninth respondents to operate the route from Wepener to Bloemfontein, Johannesburg, Klerksdorp, Carltonville, Rustenburg, Westonaria and return. He submitted that it is common cause that the mentioned temporary permit licences have lapse after three months. He explained that licences are usually issued for a period of three months and their parties must re-apply again for renewal.

- [14] Advocate Mene submits that the case against first and second respondents is, as no live issue exists which requires the court to deal with. He disputed that the licences were issued erroneously. He submitted that the applicants failed to prove that the licences were issued erroneously. He stated that the applicants, when discovering that there was an error in the licences, they should have followed the process as laid down in section 79(4) (1) of the National Land Transport Transition Act, 22 of 2000 (“NLTT”) and not embark on an interdict application. Advocate Mene submitted that the application against first and second respondents should be dismissed with costs.

[15] Advocate Burger SC, on behalf of third to fifty ninth respondents, in his heads of argument and oral submission, argued that all the respondents operate in the routes as allocated to them in the documents “ATM3” and “ATM4”. He submitted that on the papers there is no indication that there was an error made on the part of the first and second respondents when the licence permits were issued. In his argument he made reference to **TOWNSEND PRODUCTIONS (PTY) LTD v LEECH AND OTHERS** 2001 (4) SA 33 (C). He submitted that the application has no relief in this matter. He further submitted that the respondents are entitled to operate on all nine routes and that the application of the applicants be dismissed with costs.

[16] From the affidavits before me it is clear that there is a factual dispute and it was such that only the authorities who issued the permits would be able to shed light on whether the applicant and/or the respondents’ valid permits for the routes already mentioned.

Counsel for the first and second respondents submitted that the applicants and the respondents had valid permits, but the

licence permits which authorises the fourth to fifty ninth respondents, lapsed in December 2011.

[17] From the affidavits it is clear that the Department embark on a verification process in order to properly regulate the taxi industry in the Free State Province. During the verification process, the taxi operators were required to verify routes they used to operate on 180 days retrospectively from the date of the application.

[18] It appears on the documents that the verification process revealed that some of the routes operated by Mohanapuso Taxi Company Limited were not captured in its members' permits. The verification process also showed that most of the Qibeng Transport Association operated long distance to various destinations. This was due to the fact that the parties had previously entered into an agreement whereby Qibeng Transport Association was allowed to operate routes which were operated by Mohanapuso Taxi Company Limited. This agreement was entered into on 6 June 2000 and is annexed to the applicants' founding affidavit as annexure "ATM5".

[19] There were various agreements prior to the annexure "ATM5".

The purpose of the other agreements was merely to resume the conflict between the parties. However, the applicants at this stage alleged that they entered the agreement because they were by the first respondent that if they do not sign their operating licences will not be renewed.

[20] It is rightly so noted that after a period of three years the applicants only complained in August 2011 that they were forced to sign the agreement.

During oral submission none of the legal representatives took this issue any further nor was there any further evidence adduced to corroborate the allegation as raised by the applicants. However, the affidavit of Olefile Bradley Dibotelo acting Director of second respondent at paragraph 24.3, p. 172, stated that the applicants should have challenged the said agreement and have it declared null and void. The mentioned affidavit further the annexure "ATM4" was an administrative error which was feed to the National data base. This document does not reflect the true state of affairs and it is

annexed as “OBD 1 – 5” and “OBO 6 – 10” it indicated the correct routes of the members of Qibeng Transport Association.

- [21] It is regrettable that the third to fifty ninth respondents did not proceed with an application for review when it was discovered that an error occurred during the verification process. In deciding whether an applicant has exhausted the internal remedies or it is obliged to do so prior to the institution of the review proceedings, it must be decided whether there is any internal remedy available to the applicant.

In **CITY OF CAPE TOWN v READER AND OTHERS** 2009 (1) SA 555 (SCA) the Appeal Division stated that in order to decide whether there is an internal remedy available to a party, one has to look at the relevant statute.

In terms of section (1) of the Promotion of Administrative Justice Act, Act 3 of 2000, (hereinafter referred to as PAJA) provides that:

“Any proceedings for judicial review in terms of Section 6(1) must

be instituted without unreasonable delay and not later than 180 days after the date, subject to subsection 2(6) on which any proceeding instituted in terms of internal remedies as contemplated in subsection 2(a) have been concluded or where no such remedies exists on which the person was informed.”

- [22] In my view this is an administrative matter and the second respondent should have immediately resolved the issue of the error that was discovered at the verification process. If it was resolved at that stage by the first and second respondents, this matter might not have been before this Honourable Court.

Although the licence permits have lapsed in December 2011 and the dispute is now only academic, when the application was lodged, the licence permits were then still in existence.

- [24] The second respondent claims that the licence permits were issued based on the information given by the fourth to fifty ninth respondents. Therefore no error could be proven on their side. The second respondent denied that any error was committed and in any event they are currently in the process of correcting

the information on their data base. The respondents cannot be blamed for operating on a route that they were issued with by the second respondent. With the difficulties experienced by the Board of the verification process it cannot be said the fourth to fifty ninth respondents be blamed for the state of affairs at the Licence Board second respondent.

- [25] Consequently I am of the view that the Licence Board should keep proper records of all the allocated routes, to prevent a situation where conflict will arise due to an administrative error. Although no evidence on the records show that any violence emptied, there is an ongoing confrontation with members of the applicants and the third respondent. The current situation would be resolved if members of the applicant operate on their allocated route and members of the third respondent also operate on their allocated routes.

It is common cause that the interdict is against the withdrawal of the temporary permits and that the fourth to fifty ninth respondents are not to operate on the route from Wepener to Bloemfontein, Johannesburg, Klerksdorp, Carltonville,

Westonaria, Rustenburg and return, that these permits have expired and the matter is It would therefore be academic to grant such an order.

[25] With regard to costs, it is trite that the costs follow the result which means the successful party should be awarded costs in its favour. The applicants asked for costs if the application is opposed. The first and second respondents prayed for dismissal of the application against them with costs in their favour. The third to fifty ninth respondents also prayed for costs against the applicants.

[26] I am of the view that it would be just and appropriate not to award costs to any of the parties or litigants, but instead to order that each party pays its own costs.

ORDER

In the circumstances the following order is made:

- 1. Application for interdict is dismissed.**
- 2. Each party is ordered to pay its own costs.**

S. CHESIWE, AJ

On behalf of applicants:

Adv. M.J. Mashavha

Instructed by:

Qwelani Theron Van Niekerks Attorneys
BLOEMFONTEIN

On behalf of 1st and 2nd
respondents:

Adv. B.S. Mene

Instructed by:

State Attorney
BLOEMFONTEIN

On behalf of 3rd to 59th
respondents:

Adv. A.H. Burger SC

Instructed by:

Naudes Attorneys
BLOEMFONTEIN

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