

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 1035/2012

In the matter between:-

THAHAMESO NTSWANATSATSI
THUSANANG TAXI ASSOCIATION

Applicant

and

QWA QWA UNITED TAXI ASSOCIATION

Respondent

HEARD ON: 26 APRIL 2012

JUDGMENT BY: DAFFUE, J

DELIVERED: 17 MAY 2012

INTRODUCTION

[1] On 15 March 2012 applicant launched an urgent application whereupon a rule *nisi* was issued with return date 12 April 2012 in terms whereof respondent was called upon to furnish reasons why final orders should not be made. Paragraphs 2 and 3 of the rule *nisi* read as follows:

“2. A rule *nisi* is issued calling upon the Respondent to furnish reasons, if any, on **THURSDAY, 12 APRIL 2012**, as to why the following order should not be made:

2.1 That the Respondent and its members be interdicted

and restrained from preventing the Applicant and/or its members in any way to make use of the Setsing Taxi Rank, Phuthaditjaba , Free State Province;

2.2 That the Respondent and its members be ordered to allow the Applicant and/or its members to make use of the Setsing Taxi Rank, Phuthaditjaba, Free State Province;

2.3 That the Respondent and its members be interdicted and restrained from threatening, intimidating, harassing or assaulting the Applicant's members and/or its employees;

2.4 That the Respondent and its members be interdicted and restrained from interfering with the Applicant's use of the Setsing Taxi Rank, Phuthaditjaba, Free State Province;

2.5 That the Respondent be ordered to pay the costs of this application on an attorney and client scale.

3. Directing that prayers 2.1 to 2.4 above will serve as an interim interdict with immediate effect pending the finalisation of this application."

[2] On 12 April 2012 the rule *nisi* was extended and the application postponed to 26 April 2012. The application is opposed. Opposing and replying affidavits have been filed and the matter

is ripe for adjudication.

THE PARTIES

- [3] Applicant is a taxi association with its main place of business situated at the Old Post Office building in Kathlehong. The respondent is also a taxi association and its main place of business is at Office No. 2, Century Building, Setsing, Phuthaditjhaba, Free State Province. Mr. Els appeared on behalf of applicant and Me De Kock for respondent.

THE ISSUES

- [4] The following issues must be adjudicated:
- 4.1 Whether respondent and/or its members are entitled to prevent applicant and/or its members to utilise the Setsing Taxi Rank for the loading and off-loading of passengers by taking the law into their own hands;
 - 4.2 Do applicant and its members have a right, contractual or otherwise, to utilise the Setsing Taxi Rank for the aforesaid purposes and if so, whether they are entitled to an interdict and the confirmation of the rule *nisi* issued on 15 March 2012.

PRINCIPLES TO BE APPLIED IN ADJUDICATION OF THE APPLICATION

[5] The starting point in adjudicating motion proceedings for final relief is the following *dictum*:

“...where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondents together with the admitted facts in the applicant's affidavits justify such an order. ... Where it is clear that facts, though not formally admitted cannot be denied, they must be regarded as admitted.”

See **STELLENBOSCH FARMERS' WINERY LTD v STELLENVALE WINERY (PTY) LTD** 1957 (4) SA 234 (C) at 235 E – G. This *dictum* has been qualified over the years in several judgments. In **PLASCON-EVANS PAINTS LTD v VAN RIEBEECK PAINTS (PTY) LTD** 1984 (3) SA 623 (AD) at 634J – 635C the Appellate Division recognised that the denial by a respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or *bona fide* dispute of fact. In such cases and if the court is satisfied with the inherent credibility of the applicant's factual averments, it may proceed on the basis

of the correctness thereof and include these facts among those upon which it determines whether the applicant is entitled to final relief. See also **WIGHTMAN t/a JW CONSTRUCTION v HEADFOUR (PTY) LTD AND ANOTHER** 2008 (3) SA 371 (SCA) at 375E – 376B and **FAKIE NO v CCII SYSTEMS (PTY) LTD** 2006 (4) SA 326 (SCA), para. [55] and [56] at 347G – 348B.

FACTS NOT IN DISPUTE AND/OR TO BE ACCEPTED FOR THE REASONS ADVANCED

[6] The application will be adjudicated based on the following:

6.1 The applicant and the respondent are two rival taxi associations whose members transport passengers between Phuthaditjhaba and Gauteng. Until early 2010 applicant operated from the Mokodumela Taxi Rank, a private taxi rank owned by it. This taxi rank is situated in Qwa Qwa.

6.2 On 28 April 2010 a written agreement was entered into between applicant, respondent and three other taxi associations. In terms hereof applicant agreed to migrate its operations from the Mokodumela Taxi Rank to Setsing

Taxi Rank since the latter had been designated as an official taxi rank. The parties agreed that the written agreement constituted their full agreement and that no variation thereof would be effective unless in writing and signed by them. They also agreed that it might be terminated by a party giving 30 days' notice of its intention to terminate. In the event of a dispute arising, such dispute had to be referred for conciliation in accordance with the provisions of the written agreement.

- 6.3 None of the parties has been appointed to mete out sanctions and/or to act as a watchdog, *inter alia* to ensure compliance with any applicable legislation.
- 6.4 A month later and on 26 May 2010 a meeting was held between applicant and respondent, an entity referred to as JBQ and the Free State Public Transport Registrar. The purpose of the meeting was to discuss several aspects relevant to the written agreement referred to above. Those are set out in item 4 paras 1 – 14. Although applicant and respondent agreed to certain issues, it is apparent from the minutes that there was clearly no *consensus* in respect of all the topics discussed and no agreement has been entered into between the

parties as anticipated.

- 6.5 It is clear from the objective facts that the written agreement dated 28 April 2010 referred to above has not been varied and even if that was the case, such variation was never reduced to writing and signed by the parties.
- 6.6 During 2010 and 2011 several disputes occurred between applicant and respondent and the authorities were called in to intervene. It is unnecessary to deal with those disputes, save to state that apparently there was severe tension between applicant and respondent. Applicant avers that this tension caused respondent to prevent it and its members to make use of the Setsing Taxi Rank. Although the reason or motive as alleged by applicant is denied, respondent admits that applicant and/or its members are being prevented from utilising the taxi rank.
- 6.7 On 27 January 2012 applicant wrote a letter to respondent informing it that in future its rights to make use of applicant's private taxi rank in Kathlehong would be curtailed for reasons advanced and furthermore that applicant's members would in future not make use of respondent's forms or passengers lists for listing of

passengers from Qwa Qwa.

- 6.8 Applicant's letter triggered the further events. On 1 February 2012 applicant was informed in writing that all vehicles belonging to members of applicant had to vacate the Setsing Taxi Rank with effect from 2 February 2012. It was also recorded that these vehicles would only be allowed to load passengers at the rank "upon proof that they came with a passenger full load from Germiston/Natal Spruit". Applicant was directed to ensure that its members loading passengers from Qwa Qwa continued to make use of respondent's forms and passenger lists.
- 6.9 Although respondent denies that its members threatened applicant's members and/or forcibly removed them and their vehicles from the Setsing Taxi Rank and/or interfered with the rights of applicant's members to make use of the Setsing Taxi Rank, and continued with such illegal activities, it is admitted that respondent refuses to allow applicant's members to utilise the taxi rank. Respondent's right to prevent applicant's members from using the Setsing Taxi Rank is founded upon its viewpoint that applicant's members are only allowed to operate from

the Setsing Taxi Rank on condition that they are duly authorised and registered operators and in possession of valid operating licences.

6.10 Applicant's averment that its members suffer irreparable harm in the form of financial losses insofar as their vehicles are no longer allowed to make use of the Setsing Taxi Rank is neither admitted, nor denied. Applicant's allegation that it is not allowed to make use of its privately owned rank (as before) as it is not an officially designated taxi rank is also neither admitted, nor denied.

DISPUTED FACTS

[7] The following facts are in dispute:

7.1 The extent of respondent and its members' actions in order to prevent applicant's members to make use of the Setsing Taxi Rank. Applicant's allegations are somewhat vague although it is stated that members of respondent chased away its members and queue marshals and threatened and intimidated them to such an extent that they had no option than to vacate the Setsing Taxi Rank. This caused the executive committee of applicant to visit the taxi rank whereupon members of respondent made

their intentions clear to fight with applicant's members. The police arrived at the scene to restore peace. Respondent's deponent denies that any grievance or complaint was lodged with his organisation and states that he personally called the police to prevent conflict. It is clear that serious unrest occurred at least at the stage when applicant's executive visited the taxi rank.

7.2 On applicant's version and despite several attempts to encourage respondent to allow its members' vehicles to make use of the taxi rank, such attempts were unsuccessful. Respondent's version is that those members of applicant with valid operating licences are allowed whilst those that fail to produce licences are not allowed. Respondent's version is denied in reply insofar as it is applicant's case that all vehicles of all its members are disallowed to make use of the taxi rank. This is in line with respondent's letter of 1 February 2012.

7.3 Several documents have been attached to the replying affidavit, being electronic printouts by the Department of Public Transport, Roads and Works, Johannesburg Office, in an attempt to show that applicant's members do have authority to transport passengers between Gauteng

and Qwa Qwa. It is also confirmed under oath by applicant's deponent that all its members are in possession of operating licences, a fact that is disputed by respondent. Me De Kock on behalf of respondent made it clear in her argument that the electronic printouts relied upon by applicant are most definitely not valid operating licences as the documents do not contain the information required by the relevant regulation issued in terms of the National Land Transport Act 5 of 2009.

EVALUATION OF THE EVIDENCE AND THE ARGUMENTS OF COUNSEL

[8] Me De Kock submitted that the application should be dismissed with costs. She relied in her argument solely on applicant's alleged non-compliance with the first requisite of final interdicts and submitted that it has not shown a clear right. Her submission is based on the premise that applicant has failed to prove that its members are in possession of valid operating licences. That being the case, applicant has not shown a clear right to a final interdict. She did not address any of the other two requirements for a final interdict.

[9] Mr. Els submitted that applicant and its members are entitled to utilise the Setsing Taxi Rank in accordance with the written agreement dated 28 April 2010 referred to above. He submitted that although some of the allegations contained in the founding affidavit pertaining to threats and interference are denied, respondent on its own version fails to allow members of applicant to make use of the Setsing Taxi Rank. He furthermore argued that respondent does not have a right to prevent applicant and its members from making use of the Setsing Taxi Rank on the basis that applicant's members (or some of them) do not hold valid operating licences. Even if that is the case, which he did not concede, it is a matter for the authorities to ensure that appropriate measures are taken against such members and if necessary, to impound their vehicles. Finally he submitted that applicant's members are suffering irreparable harm and will continue to suffer such harm if they are not allowed to make use of the Setsing Taxi Rank. These taxi operators must utilise the officially designated taxi rank and may not use any privately owned taxi rank for their business purposes. Applicant does not have any other alternative and satisfactory remedy available and therefore as

Mr. Els submitted all the requirements for a final interdict had been met and the rule *nisi* should be made final.

[10] The written agreement entered into between the parties does not expressly provide for aspects such as

10.1 a right to and/or obligation imposed on any of the parties thereto and respondent in particular to ensure that all taxi owners and members of the various associations making use of the taxi rank are indeed properly licensed;

10.2 a member of an association that is not in possession of a valid operating licence may not make use of the taxi rank, although it may be argued that it is an implied term of the written agreement that all members must be duly licensed;

10.3 in the event of any member not in possession of a valid operating licence, or someone who is not prepared to present his licence at the request of respondent or one of its officials, such person can be prevented from making use of the taxi rank without the intervention of court procedure.

[11] If the written agreement is considered it does not provide to any party the right to take the law into its own hands and no such obligation is imposed on any party as well. The agreement deals with aspects such as breach of contract and the arising of any disputes and the manner in which these must be dealt with. Provision is also made for termination of the agreement by a party by giving 30 days' notice of its intention to do so. Respondent is not the custodian of the Setsing Taxi Rank in accordance with the written agreement and also not the watchdog of the transport authorities with the right and/or obligation to decide which members of the contracting taxi associations may or may not make use of the Setsing Taxi Rank.

[12] It is clear that the parties have to work together in order to make use of the same facilities, i.e. the Setsing Taxi Rank, but that there is insufficient co-operation, probably because of the fact that they are rival taxi associations and the members thereof trying their best to get the edge over others in order to load as many passengers as possible to make their businesses viable. The ongoing dispute between the parties about taxi routes that I do not have to adjudicate upon and applicant's decision

pertaining to its privately owned taxi rank in Kathlehong which negatively affected respondent and its members, triggered the action taken by respondent and its members in the beginning of February 2012. Acting as they did, they took the law into their hands and this cannot be tolerated.

[13] Respondent admits preventing applicant and its members from making use of the Setsing Taxi Rank, it being the official taxi rank that applicant's members are obliged to use. When considering respondent's aim, its version that it and its members did not threaten, intimidate or harass applicant's members is so untenable and improbable that it can safely be rejected. It is also irreconcilable with the volatility generally associated with taxi disputes where violence is apparently an acceptable means of solving such disputes. As mentioned me De Kock did not present any argument in respect of the last two requirements for final interdicts and wisely so. I am satisfied that applicant has made out a proper case for a final interdict.

[14] Applicant seeks costs on an attorney and client scale. In his oral argument mr. Els did not argue for such an order and

effectively conceded that party and party costs only should be granted. There is no reason to grant costs on attorney and client scale.

ORDER

[15] Therefore the following orders do issue:

1. Paragraph 2.5 of the rule *nisi* dated 15 March 2012 is amended by deleting the words “on an attorney and client scale”.
2. So amended, the rule *nisi* is confirmed.

J.P. DAFFUE, J

On behalf of applicant:

Adv. J. Els
Instructed by:
E G Cooper Majiedt Inc
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On behalf respondent:

Adv. D. de Kock
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