

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No. : 5778/2009

In matter between:-

PIET RALETING

APPLICANT

and

KOPANO TSHEPO TRANSPORT SERVICES

RESPONDENT

HEARD ON:

9 DECEMBER 2010

JUDGMENT BY:

K.J. MOLOI, J

DELIVERED ON:

3 FEBRUARY 2011

JUDGMENT

MOLOI, J

- [1] The applicant is a taxi operator and is a member of the respondent, a taxi association. On 23 November 2009 the applicant launched an application for a final interdict against the respondent to compel the respondent to allow the applicant to operate his 23-seater Volkswagen Crafter motor vehicle with registration letters and numbers DMB502FS in terms of the public operating licence entitling

him to convey for reward 23 passengers on the Welkom/Johannesburg and Welkom/ Ficksburg routes and prohibiting the respondent from limiting the number of passengers to (15) and associated relief.

[2] The application was opposed by the respondent on several grounds and this court dismissed the application with costs on 9 December 2010. On 11 January 2011 the applicant requested the reasons for such dismissal in terms of the provisions of Rule 49(1)(c) of the Uniform Rules of the High Courts. What follows is a response to that request.

[3] The applicant, just like all the other members of the respondent, had been operating the passenger conveyance business under public operating licences to convey the maximum of (15) passengers at a time from Welkom to Johannesburg and from Welkom to Ficksburg using the taxi ranks controlled by the associations known as Jofeldta and WFK, respectively, under the agreement they had with the respondent. During 2008 and with the approval and recommendation of the respondent, the applicant acquired a larger motor vehicle with the capacity to convey 23 passengers

and obtained a public operating licence authorising such conveyance.

[4] From the onset the officials of the respondent denied the applicant the right to convey more than 15 passengers at a time. The applicant did almost everything possible to be allowed to convey 23 passengers at a time to no avail. This gave rise to this application as the approval and recommendation of the respondent to the acquisition of a larger vehicle and a public operating licence was seen by the applicant as authority for the conveyance of more than 15 passengers and, indeed, 23 passengers at a time, which, of course, is denied by the respondent. The denial, consequently, created a dispute of fact the resolution of which dispute would require referral to oral evidence as envisaged in Rule 6(5)(g) of the Uniform Rules of Court as the matter could not be disposed of on papers alone.

[5] I stated above that the applicant did almost everything possible to have the dispute resolved save for referral of the dispute to arbitration as required by the Constitution of the respondent to which the applicant, as a founder member, is subject and

bound. The grievance procedure prescribed by the Constitution and form an addendum thereto describes in article 2 thereof under

“...Interpretation and Requirements” in sub-article 1 a grievance as *“any dissatisfaction of feeling of having being wronged on the part of member or group of members regarding membership and matters pertaining to the duties, action and participation of a member or group of members of the association”,*

and states under “Operators” in article 1.1 (f) that *“members must respect and adhere to the Constitution”*. In article 3.5(a) under “Arbitration” the constitution provides *“if a conflict cannot be resolved by mediation the parties must (my underlying) refer the matter for arbitration in terms of the arbitration act 1965”,* (sic). The launch of the application without having taken the arbitration step by a founder member who may be presumed to have been involved in the drafting of the constitution would be premature and on that score alone the application had to be dismissed.

[6] The respondent had also raised non-joinder as a point *in limine* in that the applicant had not joined Jofeldta and WFK as parties to the application. It argued that the two associations had a direct and substantial interest in the matter in that the agreements between itself and the two associations respectively, forbade the conveyance of more than 15 passengers per vehicle at a time from their ranks in Welkom and it was on that basis it acted as it did vis-a-vis the applicant. The applicant contended that no such agreement existed as it was not reduced to writing as though an oral/verbal agreement was no agreement at all. Despite this the applicant in its reply appended an affidavit by a former chairman of the respondent, one Jacob Litaba Nkobo who deposed as follows in paragraph 5.1 to support his denial of the existence of an agreement to limit the number of passengers to 15:

“I am not aware of any agreement between the respondent and WFK or the respondent and Jofeldta in terms of which members with 23 seaters are only allowed to carry 15 passengers at a time”, and at 5.2:

“I am also operating a 15 seater taxi on the

Welkom/Ficksburg route. I attended a meeting at the offices of WFK between only members of the respondent and WFK that operates on the Welkom/Ficksburg route. Heated discussions took place during this meeting as WFK did not want members of the respondent to operate their 23 seaters at full capacity on this route, while members of WFK are operating their 23 seaters at full capacity on this route. No agreement was reached during this meeting. No further meeting was held with WFK”, and at 6:

“At this stage Jofeldta is operating their 23 seaters from Johannesburg to Welkom at full capacity, but will only load 15 passengers on the return leg from Welkom to Johannesburg, see hereto two passengers lists of Jofeldta, marked Annexure ”C1 and C2”. If the current officials of the respondent reached an agreement with Jofeldta, they never informed the members of the respondent that they reached an agreement and furthermore had no mandate from the members of the respondent to enter into such an

agreement. If any such unauthorised agreement was reached between the members of the respondent and Jofeldta, it was only entered into after the beginning of 2009, therefore some time after Mr Raleting purchased his 23 seater vehicle”.

The above averments do not deny the existence of the agreement alleged by the respondent more that it confirms the direct interests of the two associations in the matter. They, on the contrary, confirm the necessity to join them and reaffirms the dispute that could not be solved on papers alone.

- [7] The respondent furthermore attached to its opposing affidavit extracts from the minutes held on 24 October 2008, 1 June 2009, 17 June 2009, 25 June 2009, and 10 July 2009 where the issue of the number of passengers to be limited to was pertinently discussed and resolutions taken. This did not only refute the doubts expressed by Mr Nkobo in his supporting affidavit of the applicant’s denial but more than anything else indicated that the applicant lacked a ‘*clear right*’ to obtain a final interdict as that was a pre-requisite to such an-interdict

and his application was doomed to fail. This fact is also borne out by the fact that at no stage since the applicant acquired the larger vehicle was he ever allowed to convey passengers in excess of 15. As a holder of a public operating licence the applicant is authorised to convey 23 passengers legally provided he meets the requirements of the association he voluntarily chose to be a member.

[8] As a consequence the application must fail and it is accordingly dismissed with costs.

MOLOI, J

On behalf of the applicant:

W.J. BOTHA

HEFFER ATTORNEYS

Attorneys for the Applicant

Profinsa House, First Floor

Cnr Tweedelaan and Pres.

SteynStr

BLOEMFONTEIN

9300

On behalf of the Respondent:

HONEY ATTORNEYS

Attorneys for the Respondent

Honey Chambers

North Ridge Mall

Euufees Road Helican Hiehgt

BLOEMFONTEIN