

IN THE HIGH COURT OF THE SOUTH AFRICA
[NORTH GAUTENG HIGH COURT, PRETORIA]

Case Number: 215/08

In the matter between:
STINKWATER EERSTERUS TAXI ASSOCIATION (SETA)

Applicant

vs

SAMUEL GEZANI MTHOMBENI
MALULU PETRUS SEPOGOANE
MATHUKGU PETRUS SIBIYA
MAKOKA J. MAHABA
NTOMBIFUTHI SWEETNESS MAKOU
REGISTRAR OF GAUTENG PROVINCE
REGISTRAR OF NORTH WEST PROVINCE
GAUTENG PROVINCE OPERATING LICENCE BOARD

1 Respondent
2nd Respondent
3rd Respondent
4th Respondent
5th Respondent
6th Respondent
7th Respondent
8th Respondent

NORTH EST PROVINCE OPERATING
LICENCE BOARD

9th Respondent

GA MOKONE TAXI ASSOCIATION

10th Respondent

REASONS FOR ORDER

Delivered on: 04 March 2009

POTTERILL (AJ)

[1] The Applicant brought an application against first to fifth respondents interdicting and prohibiting them from transporting passengers on the following routes:

From Kapanong taxi rank situated in Hammanskraal, through Kekana, Tamboville, Sekampaneng, Temba City, Suurman, Diloppe, Refentse, Stinkwater, Mogogela Eersterus, F4 to Mabopane Station and return.

[2] From the affidavits before me it was clear that there was 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 had valid permits for the routes. On the papers before me both the applicant and respondents *prima facie* were in possession of valid permits.

[3] By agreement between the parties the matter was postponed to 8 September 2008 to join the Registrars of the Provinces of North West and Gauteng as sixth and seventh respondents and the licensing boards of the Provinces of the North West and Gauteng as eighth and Ninth respondents. Furthermore the Ga-Mokone Taxi Association was joined as the Tenth Respondent. These parties were to file affidavits from which it could be ascertained or a decision could be made whether the Applicant and tenth respondent were authorized to use the above route and have valid permits to operate on the route. The parties agreed that each party was to pay their own costs for the postponement.

From all the affidavits it is clear that in terms of section 34(2) and 41(2)(a)(iii) that an applicant for an operating licence should be a member of a registered association.

The sixth respondent (The registrar of Public transport for the province of Gauteng) filed an affidavit in which in paragraphs 13.2 and 13.3 it is stated that the first - fourth respondents' ARTA forms *"do not even emanate from the office of the Gauteng Registrar, neither does it form part of the records of the First Respondent's file in the Gauteng Transport Register. The authenticity of this document(s) is, as a result questionable."* / annex hereto marked "SL3" being a copy of the actual document which originates from the Registrar's office. This document was generated after the Tenth Respondent had indicated an interest in the routes indicated thereon. ..The last two columns of annexure "SL3" which states "NO CODE" indicates that the Registrar did not allocate any codes to the routes concerned as there was a "As far as our records are concerned Ga-Mokone Taxi association has not been authorized/allocated/registered to operate on the route from Kaponeng Taxi Rank to Mabopane Taxi Rank."

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[6] As far as the fifth respondent is concerned the situation is summed up by the sixth respondent in paragraph 23.2:

"The case of the Fifth Respondent is totally different from that of the First. Second, Third and Fourth Respondents in that she was never a member of the applicant. According to her, she had applied for membership to the Applicant and was told by the Applicant, in writing, that her application for membership is approved on condition that she pays an amount of R50 000.00 for joining fee...She states that she did not have R50 000.00 and, therefore, decided to join the tenth Respondent as she was informed that the said association operates on the same route as the route on her permit. However her right to operate will depend on the outcome of the investigation to be earned out by the Eight Respondents"

[7] The contents of sixth respondent affidavit is confirmed by Maffa Statson Dingaan a public transport assessor appointed and employed in the office of the Registrar of Transport Gauteng Province.

[8] In the Eight Respondent's affidavit (Gauteng transport Operating Licence Board) in paragraph 11 the court is informed that first to fourth

respondents all have permits but not permits for the route in dispute. Fifth respondent " as made one application for a transfer of a permit from M J Mnyakeni ... The said permit seems to be valid with an authorization to operate on the route from Kopanong Taxi Rank to Mabopane Railway Station Taxi Rank and return....However the fact that the permit had, at some stage prior to the transfer to the Fifth Respondent, its route amended from Soshunguve to Bloed Street to the route from Kopanong Complex to Mabopane Station raises some concern and the board will carry out an investigation... The fate of the permit will be determined by the outcome of the investigation."

[9] The seventh respondent (the Provincial Taxi/Transport Registrar for the province of North West) states that after it received notification of termination of membership of the first to fourth respondents they were individually informed of their deregistration as members of the applicant. The Board is the only authority who can cancel the licenses.

[10] The Ninth Respondent (the North West Transport Operating Licence Board summarizes the applicant's position as follows in paragraph 6.3: *"I respectfully submit that it is clear from the annexed report that the route is recognized as*

that operated by SETA, ie the Applicant in this matter." The position of first to fourth respondents is put out in paragraph 10.3:

" I respectfully submit that subsequent to the North West Registrar's deregistration of the First, Second, Third and Fourth Respondents as members of the applicant all these Respondents permits which authorized them to operate on the route from Kapanong taxi rank to Mabopane station automatically lapsed in terms of section 120 of the National Act in that they failed to obtain membership of another registered or provisionally registered association operating on the route in question."

[11] The first to fifth and tenth respondents then proceeded to file a replying affidavit to sixth and eighth respondents' affidavit. Their main contention was that first to fifth respondent and tenth respondents did have written permissions issued by eighth respondent to operate on the route in question and the written permissions were attached.

[12] The eighth respondent then filed a supplementary affidavit categorically stating that the attached written permissions were all fake for one and/or all of the following reasons:

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[12-1] Neither a copy of the written permission nor the supporting documents for the application of the said written permission could be found in the records of the Eighth respondent,

[12-2] The handwriting on the written permission does not belong to any of the authorized personnel in the department.

[12-3] The route print-out annexed to the written permission was not generated from their system as the font and colouring is totally different.

[12-4] There is no record in their system of the would-be applications or they belong to other people, not the respondents.

[12-5] The receipt number is fake or relate to other transactions.

[13] The sixth respondent then filed a further affidavit noting the admission of the tenth respondent that in their initial application for registration the route from Kopanong Taxi Rank to Mabopane Station was not included in the route operated by the tenth respondent. Tenth Respondent also admits that the route in dispute is in fact registered by the Registrar North West as the route operated by the Applicant. They dispute as being

inconceivable that the former Registrar would have allowed two rival taxi associations to register for the same route due to potential violence between the associations. They submit that the tenth respondent is not authorized and registered to operate the route.

[14] The tenth respondent in response to the supplementary affidavit of the sixth respondent then files another affidavit in which it avers that the route was successfully verified in favour of the tenth respondent. One Mr Paul Mnisi who had

authority to represent and/or act on behalf of the Registrar's Office had signed the verification. Also responding to eighth respondent's further affidavit they aver that they instructed a consultant to obtain the written permissions, but they have not been successful in reaching the consultant.

[15] The first to fifth respondents requested a further postponement to enable them to call as a witness the previous registrar. This was denied and the reasons therefore are on record.

[16] The ostensible real dispute of fact that existed on the papers before the sixth- ninth respondents were joined is resolved. The allegations of the first to fifth respondents and tenth respondents ballooned as the affidavits went along. At first they submitted the ARTA forms entitled them to the route. When these ARTA forms were successfully reduced to a nullity

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they then proceeded to allege that they had written permissions. When these written permissions were exposed as fake they have to resort to calling a previous registrar or to obtain affidavits to verify signatures. This is never put before court and the consultant who obtained the permissions also does not come to light. The allegations by the first to fifth and tenth respondents are so untenable that I am justified in rejecting them merely on the papers. From the crux of the lengthy papers set out above it is common cause that the route in dispute is in fact registered by the Registrar North West as the route operated by the Applicant. All the authorities categorically state that the tenth respondent is not authorized or registered to operate the route. The first to fourth respondents were deregistered and do not have valid written permissions. The fifth respondent also has no written permission. Granting the order is in fact stating the obvious.

[17] Accordingly the first to fifth and tenth respondents are prohibited from transporting on the following routes:

From Kapanong taxi rank situated in Hammanskraal, through Kekana, Tamboville, Sekampaneng, Temba City, Suurman, Diloppe, Refentse, Stinkwater, Mogogela Eersterus, F4 to Mabopane Station and return.

S. POTTERHILL
ACTING JUDGE OF THE HIGH COURT