

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

Case No. : 7139/2008

In the matter between:-

MTHANDASO RADEBE 1st Applicant

SEBAKENG SHADRACK PHAKOE 2nd Applicant

STIBA HOSEA LEFI 3rd Applicant

versus

THE FICKSBURG TAXI ASSOCIATION 1st Respondent

E M MOKHELE 2nd Respondent

MOTABUDI DAVID FETHETSANE 3rd Respondent

ORIA RAMOTSO 4th Respondent

HEARD ON: 5 MARCH 2009

JUDGMENT BY: K.J. MOLOI, AJ

DELIVERED ON: 19 MARCH 2009

[1] The applicants, members of the first respondent, sought a two-fold order from this court. First, against the first respondent, a duly constituted taxi association (hereinafter referred to as “the association”) to compel it to comply with the association’s constitution and the relevant statutory provisions. Secondly, against the second to fourth respondents (hereinafter referred to as “the respondents”),

also members of the association, to be prohibited from acting in a manner inconsistent with the association's constitution and the relevant statutory provisions. The application was argued on behalf of the first and third applicants only as the second applicant had passed on in the meanwhile and no executor had been appointed to represent his estate as yet.

- [2] In terms of the constitution of the association the association must take all reasonable steps to prevent any breach of its code of conduct and any other misconduct by its members and to take disciplinary action whenever necessary in the interests of its members. The association's constitution further implores it to protect and secure the interests of its members, to take all necessary steps to preclude misconduct on the part of its members and their drivers and to report such misconduct to the authorities when necessary. It may also take legal action against any person who act contrary to the interests of its members. The members of the association must, in terms of its constitution, comply with the code of conduct and the grievance procedure, to refrain from threatening or intimidating any person, to refrain from

interfering with the queue marshalls and drivers and avoid violent incidents and interference with the rank facilities.

- [3] The applicants alleged that the association regulated certain routes and its code of conduct contains certain procedures to be followed by all the taxi operators who qualify as its members. The executive committee of the association must see to the compliance with the code of conduct for the benefit of the members of the association and allocate routes accordingly. The respondents, who are executive members of the association, at different times and for reasons that are not forming the basis of their qualification of membership of the association, prevented them from operating their taxi businesses along the routes already allocated to them and thus virtually stopped their operations. At various times they reported the incidents to the chairperson of the association personally and through their legal representative in terms of the association's code of conduct and grievance procedure without getting any joy. The prescribed procedures of the association were not followed by the executive to their detriment. All their complaints were not attended to despite the several meetings held and correspondence exchanged

and despite them providing the necessary proof of ownership of their vehicles to counteract the reasons given for their unwarranted exclusion from normal operations of their taxis.

- [4] On behalf of the association and the respondents the chairperson of the association disputed the *locus standi* of the applicants in this court on the basis that they did not follow the prescribed procedure of lodging their complaints. He also raised several other defences against the substance of the applicant's allegations which the court does not deem necessary to deal with fully for the purposes of this judgment. He, for instance, disputed the letter of authorisation for the first applicant to acquire a new taxi. He further disputed that the applicants are, in fact, the owners of the taxi vehicles they operated before they were stopped. This despite the fact that the association initially authorised and allocated routes on which the applicants operated until they were prohibited to do so by the respondents. He also stated that the first applicant was prohibited from operating his taxi because he was in fulltime employment of a municipality and could not personally operate a taxi as a result. This, again, is not a requirement for membership of the association

according to its constitution. He also denied the association was unwilling to resolve the complaints of the applicants. Since the complaints were raised and meetings held no resolution of the problems had been found and no reports were made to the authorities as required by the association's own code of conduct and grievance procedure. This is more than enough proof of such unwillingness and failure to execute the duties imposed by the association's constitution.

- [5] On behalf of the association and the respondents it was submitted that the prayers go beyond the powers of the court as they seek that the court resolve the dispute between the parties and that the court could not do so without investigating the dispute which is the competency of the association alone according to the constitution. This view does not find support from the facts, to my mind, as the prayers relate directly to what the constitution implores the executive to do and which it fails and/or neglect to do.

- [6] A taxi association is defined as a

“group of persons formed primarily in relation to the operation of any mode of public transport service and (b) whose object is to promote the interests of its members”:

Section 1 of the Free State Public Transport Act, No. 4 of 2005.

The constitution of the association sets out its aims and objectives as

“(a) to protect, secure and promote the interests of the members of the Association.”

Paragraph 3.2 of the constitution of the association.

The operating licences of the applicants issued under the provisions of the National Land Transport Act, No 22 of 2000 clearly and unambiguously authorises the applicants to operate the taxi business on the indicated routes. The conduct of the association in failing to protect the applicants’ rights against the conduct of the respondents is contrary to its constitution and the Free State Public Transport Act, No. 4 of 2005. The conduct of the respondents is not only against the constitution of the association, its code of

conduct and grievance procedure but is also illegal as they have no powers nor right to act as they did.

[7] Consequently the following order is made:

1. The association (first respondent) is directed to immediately take all steps reasonably necessary to:

1.1 protect the interests of the applicants and allow them to operate their taxis in terms of the operating licences issued to them and their membership in terms of the association's constitution;

1.2 ensure that there is no unlawful or unfair competition with the taxi services offered by the applicants in terms of the operating licences issued to them.

1.3 prevent the second to fourth respondents from interfering in any way whatsoever with:

1.3.1 the queue marshalls appointed by it in respect of the Einde Street taxi rank in Ficksburg in the performance of their duties as such.

1.3.2 the ranking facilities at the aforementioned taxi rank.

1.3.3 the utilisation by the applicants of the routes, networks and taxi ranks which the first respondent operates or controls, which includes the Einde Street taxi rank in Ficksburg.

2. The second to fourth respondents are prohibited from in any way whatsoever:

2.1 interfering with the queue marshalls appointed by the first respondent in respect of the Einde Street taxi rank in Ficksburg in the performance of their duties as such, or causing or allowing same to be done;

2.2 interfering with the ranking facilities at the aforementioned taxi rank or causing or allowing same to be done;

2.3 interfering with the utilisation by the applicants of the routes, networks and taxi ranks which the first respondent operates or controls, including the Einde Street taxi rank in Ficksburg, or indeed causing or allowing same to be done;

- 2.4 threatening, inducing or intimidating any persons whatsoever into taking any action which is not permitted by the first respondent's constitution, or causing or allowing same to be done.
3. The second to fourth respondents are ordered to henceforth obey and adhere strictly to the association's code of conduct.
4. All the respondents are ordered to pay the costs of this application jointly and severally, the one paying the others to be absolved.

K.J. MOLOI, AJ

On behalf of first and third applicants: Adv. C.A. Human
Instructed by:
Du Toit Louw Botha Inc
BLOEMFONTEIN

On behalf of respondents: Adv. P.J. Loubser
Instructed by:
E G Cooper Majiedt Inc
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