

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 2968/2009
3357/2009
3389/2009

In the matter between:-

**MOHOKARE LONG DISTANCE TAXI
ASSOCIATION**

1st Applicant

MORNING STAR TAXI ASSOCIATION

2nd Applicant

and

**THE MEC: DEPARTMENT OF COMMUNITY
SAFETY AND TRANSPORT, FREE STATE
PROVINCE**

1st Respondent

**THE PROVINCIAL REGISTRAR, TRANSPORT,
FREE STATE PROVINCE**

2nd Respondent

MR SHUPING

3rd Respondent

MR MOLISE

4th Respondent

HEARD ON: 30 JULY 2009

DELIVERED ON: 3 DECEMBER 2009

JUDGMENT BY: SIMELANE, AJ

[1] On 12 June 2009 an order was granted by the Honourable Mr. Justice C.J. Musi, in terms of the provisions of rule 6(12) and section 35 of Act 62 of 1955, for condonation for not complying with the limits prescribed by Rules of Court.

[2] On the same day a rule *nisi* issued calling upon the respondents to show cause, if any, on Thursday 25 June 2009 at 09h30 why an order should not be granted in the following terms:

- (a) that the respondents be prohibited from preventing the applicants or members of applicants to do their business as taxi owners and/or drivers;
- (b) that the respondents be prohibited from preventing the members of the applicants to do their business as taxi owners and/or drivers from a plot known as Border Box, Maseru Bridge, district of Ladybrand, Free State Province;
- (c) that the respondents or any of the respondents' officials be prohibited from attacking, intimidating or interfering with members of the applicants' or their business as taxi owners or taxi drivers;
- (d) that the respondents, jointly and severally be ordered to pay the costs of this application. The orders contained in paragraphs 2(a) to (c) to operate as

interim interdicts with immediate effect pending the outcome of the application.

[3] On 25 June 2009 the rule *nisi* was extended to 30 June 2009 when the arguments began. It was argued *in limine* that the representatives of both the applicants and respondents did not have either *locus standi* or authority to act for the parties. It was argued further that the applicants had not complied with the provisions of section 35 of Act 62 of 1955 and that the court erred in granting condonation to the applicants.

[4] In my view, the arguments *in limine* called for closer scrutiny. The parties were, therefore, requested to file supplementary Heads of Argument dealing with that. These were to be filed by the 13th August 2009.

[5] There are three applications as the numbers indicate above. The main application is number 2968/2009. The other two are the application for condonation and an application for contempt of court. Argument was raised in court whether these should be dealt with individually or reference could be made to all of them during argument. The ruling of the court

was that during the argument on the main application reference to other applications could be made as the applications are interrelated. *In limine* it was argued by counsel for the respondents, firstly, that James Moses (representative of the 1st applicant) had no authority to act on behalf of the 1st applicant. Secondly, that the 1st applicant had no *locus standi* to bring the application to court. James Moses avers that he is the chairperson of the Executive Committee of First Applicant and authorised to act on behalf of the applicant and depose to the founding affidavit. The reply to this averment by Mr. Michael Nthuping, on behalf of the respondents, is anything but clear. It runs as follows:

“Save to deny that the applicant is a member of a registered association; the contents of these paragraphs are admitted.”

- [6] The inference is inescapable that the chairpersonship of James Moses or his authority to act (on behalf of first applicant) is not disputed.
- [7] The respondents argued that James Moses had resigned as chairperson of the first applicant and that there were no

resolutions reinstating him as chairperson of the first applicant. In its replying affidavit the first applicant produced in cases 3357/2009 and 3389/2009 the relevant resolutions reinstating James Moses as chairperson.

[8] Then the next question is the *locus standi* of the first applicant to bring the application in case no.2869/2009 to court. The argument is that first applicant has less the required number of members provided for in the Act.

[9] This argument brings forward a very interesting observation. The first applicant argues that it has been conducting business at the Border Box Taxi Rank for many years - more than twenty years. It argues further that it has enough membership and that the membership complies with the provision of the Act. There is no documentary evidence supporting the lack of membership of the first applicant.

[10] The first applicant further argues that the second respondent i.e. the Provincial Registrar has de-registered it. The question arises: Why would the Provincial Registrar take steps to de-register a taxi association that does not exist?

The inference is that the reason behind this is that because the first applicant is refusing to abandon the Border Box Taxi Rank and join the Manyatseng Taxi Rank.

[11] The conclusion the court came to in this regard is that James Moses has authority to act on behalf of the first applicant and that first applicant has *locus standi* to bring the present applications to court.

[12] I now turn to the granting of condonation by the court to the first applicant for not complying with the provisions of section 35 of Act 62 of 1955. It was argued before me that the Honourable Mr. Justice C.J. Musi misdirected himself in granting an order condoning such non-compliance. It was further argued that this court has authority to set aside that order. I do not agree. The relevant section 35 reads as follows:

“35 interim interdicts against the state.

Notwithstanding anything to the contrary contained in any law, no court shall issue any rule *nisi* operating as an interim interdict against..... unless notice of intention to apply for such rule.....

was served upon the said..... at least 72 hours or such lesser period as the court may in all the circumstances of the case consider reasonable, before the time mentioned in the notice for hearing of the application.”

[13] It is further argued that this provision is peremptory. I agree. However, the provision itself makes it clear that the court may accept a lesser period which it deems reasonable in the circumstances of the case. It can be accepted that C J Musi J allowed a lesser period on this basis when granting the interim order.

[14] I now come to the issue of Mr. Michael Nthuping’s authority to act on behalf of the MEC. It is argued by the first applicant that Mr. Michael Nthuping has no authority to act on behalf of the MEC and other respondents. This argument is based on the fact that the opposing affidavit under case no. 2968/2009 was signed by Mr. Michael Nthuping on the 23rd June 2009, but the letter authorising Mr. Michael Nthuping reads as follows:

“Kindly note that I have ‘authorized’ the acting Provincial Transport Registrar Mr. Michael Nthuping to act on behalf of the

Department in his official capacity and oppose any court application that is brought by Mohokare and Morning Star Long Distance Taxi Associations against the Department.”

[15] Counsel for the respondents was, during argument, at pains to explain what the effect of the word “authorised” is. In my view, the word authorised was put in parenthesis purely for purpose of emphasis and this does not detract from its ordinary meaning.

[16] In the premises, both points *in limine* are dismissed and each party to pay their own costs.

The parties are free to arrange new dates for the hearing of the merits of the applications.

A. SIMELANE, AJ

On behalf of applicants:

Adv. A.J.R. van Rhyn SC
With him:
Adv. P. du P. Greyling
Instructed by:
Cobus le Roux Inc
BLOEMFONTEIN

On behalf of respondents:

Adv. S.E. Motloun
Instructed by:
State Attorney
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