

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

Case No.: 2165/2008

In the matter between:

TEFU BEN MATSOSO

Applicant

and

THABA'NCHU LONG AND
SHORT DISTANCE TAXI ASSOCIATION

Defendant

HEARD ON:

28 AUGUST 2008

DELIVERED ON:

25 SEPTEMBER 2008

MOCUMIE J

[1] This is an opposed motion. The applicant brings an application for an order that:

“(a) The respondent and its members, be restrained from preventing applicant to operate on route codes FSBC073THALDTA (Tweespruit) and FSBC072THALDTA (Mafikeng);

(b) Respondent pays the costs of the application.”

[2] Applicant is doing business as a minibus taxi operator and a member of the respondent, the Thaba' Nchu Long and Short Taxi Association ("THALSTA"), a voluntary association of minibus taxi operators, with its offices situated at Shoprite Complex, Thaba' Nchu, Free State.

[3] In his founding affidavit applicant states that he was originally issued with what was termed a taxi permit in 1972. This PUBLIC permit was converted to a minibus operator's licence in August 2001 to comply with the newly introduced legislation. He was issued with licence No BFN 5521162. He states further that *"at the time of the said application, I had to apply for the verification in regard to certain specified routes which I was operating on at that stage. Because I was indeed operating on such routes, I applied for a permit in regard to the following routes: FS070 (Botshabelo), FS073 (Tweespruit), FS072 (Mafikeng) and FS076 (Welkom)."*

Annexure "A" to the founding affidavit. It is not in dispute that applicant was issued with a new operating licence incorporating these routes.

[4] In order to appreciate the legal context within which this application for interdictory relief is brought it is instructive to refer to the following remarks by **Navsa JA** in **Mzamba Taxi Owners Association v Bizana Taxi Association** 2006 (2) SA 154 (SCA) paras 15-17 where the learned judge says:

“[15] It is necessary at this stage to examine the statutory framework within which minibus taxi operators are obliged to operate.

[16] The Road Transportation Act 74 of 1977 (the RTA) provides for the control of certain forms of road transportation and for matters connected therewith. The authority to operate a minibus taxi within or across particular geographical areas is granted by local boards established in terms of the RTA (see s 7). This is done by issuing a public permit. Section 21 deals with the conditions governing the issue of a permit. Section 21(3)(e) provides that the permit should specify:

'(T)he points between and the routes upon which or the area or areas within which the motor vehicle to which it refers may be used in road transportation,

and if any restriction is imposed in connection with any transportation upon any portion of such a route or routes or in any area or areas or in any portion of such area or areas, the points between or the area within which such restriction shall be applied and conditions thereof.

[17] *The National Land Transport Transition Act 22 of 2000 (the NLTTA) was enacted to provide for the transformation and restructuring of the national land transport system of South Africa and matters incidental thereto. Section 2 provides, inter alia, the measures to give effect to national policy concerning the first phase of the transformation and restructuring process and to achieve a smooth transition to a new system, applicable nationally.”*

[5] In the Free State province the provisions of the Free State Public Transport Act 4 of 2005 which repealed the Free State Interim Passenger Transport Act No 16 of 1998 are applicable. The preamble of this Act reads as follows:

“To provide for a public transport system as part of an integrated system of land transport for the Free State, compatible with the

National Land Transport System and the Land Transport Systems of the other provinces; to repeal the Free State Interim Passenger Transport Act; to bring provincial public transport legislation in line with Chapter 2 of the National Land Transport Transition Act, 2000 (Act 22 of 2000) and to replace Chapter 3 of that Act as regards public transport matters that are dealt with in this Act; and to provide for connected matters.”

A study of the provincial and national legislation shows that there is no conflict in their texts relevant to this matter. I will accordingly merely refer to the national legislation where apposite.

- [6] The National Land Transport Transition Act 2000, was subsequently amended in 2006: Act 26 of 2006 (*“the 2006 Amendment Act”*). The 2006 Amendment Act requires minibuss taxi operators to convert or further convert their operating licences issued under the 2000 Act to meet the requirements ushered in by the current amendment. The applicant applied for the same four routes as he previously did and on 7 March 2007 a license under number LFSL89852/7 was issued in his

name in respect of the following routes:

FSBC070, destination Reahola complex;

FSBC073THALDTA, destination Tweespruit;

FSB072THALDTA, destination Mafikeng; and

FSB076THALDTA, destination Welkom.

- [7] In order for the applicant to obtain the licence and operate the routes referred to in para 3 (above) he required the recommendation of the respondent. He avers that the respondent gave the required recommendation in that:

“At the time of such application referred to, the Respondent recommended the granting, removal, amendment or transfer of the permit concerned in regard to the routes as specified and in particular in regard to Mafikeng and Tweespruit routes. Such recommendation, signed by the chairperson of the Respondent and endorsed by the Respondent itself, is annexed hereto as annexure “C3”.”

- [8] Applicant states that during March 2007 he attempted to ferry commuters to their destinations in accordance with his operating licence but was prevented from doing so by some

members of the respondent. He then wrote several letters to the respondent asking for its intervention. These letters to which the respondent responded are attached to the papers as annexures “D2”,”E2”,”G2” and “H2”. The attitude of the respondent in their response was essentially keeping applicant in suspense by intimating that the respondent will revert to him.

- [9] On 4 September 2007 all parties attended a meeting with the Provincial Taxi Registrar appointed in terms of section 15 of the Free State Interim Passenger Transportation Act. The meeting was arranged by the respondent. The powers and functions of the Registrar are set out in section 54 of the National Act as follows:

“A Registrar - (a) receives and, in accordance with this Act and applicable provincial laws, considers and decides on applications for the registration or provisional registration of associations based in the province and their members, and of any non-members so based;

(b) in the circumstances determined in this Act, decides on and effects the suspension or cancellation of such a registration

of any association or any of its members or any non-member in accordance with such laws;

(c) keeps records of all other information required to maintain the National Transport Register.”

The Free State province has its own registrar. There is no indication that during this mediation effort the registrar found applicant's licence wanting nor did he make any adverse decision against him. Even after this intervention members of the respondent persistently prevented the applicant from plying his trade.

[10] The hapless applicant thereafter wrote several further letters to the respondent pleading for its positive intervention. Two meetings were arranged to resolve the impasse. Applicant refused to participate in both meetings because the executive committee had co-opted into its ranks non-members one of whom physically restrained him from transporting passengers. He accordingly objected to the matter in which the committee was constituted. On 11 September 2007, in his absence, the executive committee of the respondent resolved that applicant

will not be permitted to operate the routes in issue (Tweespruit and Mafikeng) except when called upon to do so by his competitors. Applicant was informed of this resolution in a letter dated 13 September 2007. Despite the so-called concession by respondent by November 2007 applicant had not been invited to transport commuters. On 15 November 2007, two months later, applicant went to the taxi rank to enforce his right to transport commuters on the approved routes in order to earn a living. He was physically prevented from exercising his aforesaid right.

[11] Another letter dated 20 November 2007 attached as annexure “O2” to the founding affidavit was sent to applicant. The letter reiterated what was stated in the letter of 13 September. It is common cause or at least not in dispute that since this resolution of 11 September 2007 applicant has not been able or allowed to operate the Mafikeng and Tweespruit routes due the conduct of the respondent or its members.

[12] The respondent’s case is that applicant has never operated the Mafikeng and Tweespruit routes. Secondly, that he

misrepresented the true state of affairs to the Department of Transport responsible for issuing the operators certificates for the routes in dispute.

- [13] The relief sought by applicant is for a final interdict. The requisites for a final interdict are set out in **Setlogelo v Setlogelo** 1914 AD 221 at 227 as follows:

“The requisites for the right to claim an interdict are well known; a clear right, injury actually committed or reasonably apprehended, and the absence of similar protection by any other ordinary remedy.”

See also **V & A Waterfront Properties (Pty) Ltd and Another v Helicopter & Marine Services (Pty) Ltd and Others** 2006 (1) SA 252 (SCA) at 257G-H.

- [14] Mr Snellenberg, on behalf of the respondent, conceded that the first two requisites of a final interdict were met. It is the third requisite, he argued, that was not satisfied. He contended that the refusal to allow applicant the right to

transport commuters on the disputed routes was a decision of the respondent as a voluntary association. He maintained that such decision, whether wrong or irregular, should not be lightly interfered with by a court of law as voluntary associations have powers derived from their own governing statutes to regulate the industry within which they operate.

[15] The respondent submitted further that a final interdict was not the only appropriate remedy available to the applicant considering the fact that there was a dispute of fact not soluble on papers. He argued that applicant was aware of the potential dispute of fact and yet opted to proceed on motion and not by way of action. Mr Snellenberg maintained that applicant could also as an alternative have applied for an interim interdict pending a review of the respondent's decision preventing or refusing him the opportunity to conduct business in accordance with his licence.

[16] Respondent derives its powers from the Standard Constitution (of Local Taxi Association) (*"the Constitution"*) which it adopted as its own and marked Annexure "O1" to the papers. The

Standard Constitution is a 19-page document divided into 16 parts. What is significant therewith is that nowhere does it vest the respondent with any power to, *inter alia*, prevent or disallow a member from carrying on his or her trade as provided for in an ostensibly valid licence. In fact after deliberations and several meetings the respondent clearly accepted that applicant's licence was what it purported to be. Hence the resolution of 11 September 2007 which purported to allow limited room to applicant to operate on the approved routes.

- [17] A perusal of the Act, in terms of which the applicant was granted his licence, reveals that there is no provision which empowers the respondent as a voluntary body to set aside or alter a decision of the Department, nor can the rules embodied in the constitution of a subordinate body such as the respondent's ever trump national or provincial legislation. Instead the Act makes provision for a procedure which an aggrieved person should follow in the event that such person is not satisfied with a decision.

[18] Section 129 provides for appeals to the Transport Appeal Tribunal by any person or association adversely affected by an act, direction or decision of a board, in the manner and within the time prescribed including: (a) a person who has applied to that board for the grant, renewal, amendment or transfer of an operating licence; (b) the holder of an operating licence issued by that board; (c) a person who has submitted representations to that board objecting to or supporting an application published by that board under section 37.

[19] In my view respondent should have exhausted its own internal remedies including appealing against the challenged decision as set out in section 129 if it was not satisfied with the decision of the department granting the applicant the licence to operate the routes in dispute. The respondent's submission that the applicant could have taken the actions of the respondent on review is flawed. It is the respondent that should have taken the decision of the Department of Transport and or the Registrar on review as it was the respondent that was not satisfied with the decision. The respondent's argument that applicant's licence was obtained improperly can also not stand

as it is in conflict with its earlier assumption that applicant has to be regarded as being in possession of a valid certificate. In any event the respondent's claim of impropriety is unsubstantiated and unfounded; a mere defence mechanism because it took the law into its own hands.

[20] I am not persuaded that there is a genuine dispute of fact in this matter. The respondent admits that applicant has an operating licence granted in respect of the routes in dispute. The respondent's argument that applicant was not prevented from transporting commuters is not only far-fetched but also patently false. It is also in direct conflict with what respondent states in its opposing affidavit at p.73 para 44.7 that *"(iii) The applicant's taxi was refused entrance to the platform in the interest of himself, the operator as well as the other members in order to facilitate [sic defuse] the situation without the risk of the matter escalating into violence"*. Clearly when applicant insisted on conducting his business as he was entitled to he was prevented from doing so. Adopting the approach set out in **Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd** 1984 (3) SA 623 AD at 635C i.e. taking into account the facts as stated by the

respondent together with the facts alleged by the applicant that are admitted by the respondent I am satisfied that applicant made out a proper case for a final interdict.

[21] In the circumstances I make the following order:

Order

- 1. Respondent (The Thaba’Nchu Long and Short Distance Taxi Association) and its members, are interdicted and restrained from preventing applicant to operate his minibus taxi trade on routes FSBC073THALDTA (Tweespruit) and FSBC072THALDTA (Mafikeng).**
- 2. Respondent is to pay the costs of the application.**

B. C. MOCUMIE, J

On behalf of Applicant: Adv. J. J. F. Hefer

Instructed by
Mcintyre & Van Der Post
BLOEMFONTEIN

On behalf of Respondent: Adv. N. Snellenberg
Instructed by
Naudes
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