

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

Case No. : 4801/07

In the matter between:

TSWELOPELO DRIVING SCHOOL CC 1st Applicant

PRESTPROPS 1266 BK t/a K53 BESTUURSKOOL 2nd
Applicant

PRESTPROPS 3315 BK t/a BLIND SPOT 3rd Applicant
DRIVING SCHOOL

and

MEMBERS OF THE EXECUTIVE COUNCIL FOR 1st Respondent
PUBLIC WORKS, ROADS & TRANSPORT,
FREE STATE PROVINCE

HEAD OF DEPARTMENT: DEPARTMENT OF 2nd Respondent
PUBLIC WORKS, ROADS & TRANSPORT

CONTROL PROVINCIAL INSPECTOR: 3rd Respondent
THABO MOFUTSANYANA DISTRICT

CONTROL PROVINCIAL INSPECTOR: 4th Respondent
FEZILE DABI DISTRICT

HEARD ON: 8 NOVEMBER 2007

JUDGMENT: EBRAHIM, J

DELIVERED ON: 6 DECEMBER 2007

- [1] This is an application for interim relief pending the finalisation of review proceedings concerned with a decision taken by the first, second, third and fourth respondents (“the respondents”) to place an embargo on the testing and/or issuing of drivers licences to persons who do not reside within the province of the Free State.
- [2] All three applicants (“the applicants”) are duly registered closed corporations conducting business as driving schools and as such, involved primarily in the instruction of persons, *inter alia*, in the driving of a motor vehicle. On the papers, as far I have been able to make out, there is no dispute that the applicants provide courses which are very valuable to prospective drivers in the sense that such courses place the latter in a position to pass the prescribed driving test held at various testing centres in the province of the Free State by personnel and examiners who are obliged to act under powers resorting in the first and second respondents.
- [3] It is common cause that during 2005 concern was raised in

the Department of Public Works and Transport about the backlog of drivers and learners licence test appointments which had accumulated resulting in a turnaround time of approximately three to five months instead of the desired period of seven days in the Free State. Subsequent meetings held by interested parties led to a decision taken by the respondents on 18 May 2007 that persons who resided outside the province of the Free State would not be given appointments for driving tests within the province's testing centres. There is a dispute of fact on the papers as to whether and during when this decision came to the knowledge of the applicants. For the purposes of adjudicating this matter, I have accepted, without deciding finally, in favour of the applicants that this decision came to their knowledge only on 16 August 2007 when the first applicant was informed that the testing centre in Bethlehem would in future not test any applicants from outside the Free State Province.

[4] It is common cause that subsequently the second and third

applicants also became aware of the position, which necessitated the bringing of review proceedings on 20 September 2007. No request for interim relief formed part of the review application and it is undisputed that the respondents refused to consent to any form of interim relief allowing clients of the applicants from outside the Free State to be tested for drivers licences within the province. That refusal was communicated to the applicants on 3 October 2007 and on 5 October 2007 it came to their knowledge that an attempt to obtain a driving test appointment for a client from outside the Free State failed at the Welkom testing ground. The applicants consequently lodged this application on 9 October 2007 on grounds of urgency for an order that the respondents be interdicted from refusing to test persons from outside the Free State Province pending the finalisation of their review application (“the main application”).

- [5] Against this background two issues arise for consideration. The first is whether this application for interim relief is urgent and the second is whether the requirements for interim relief

have been satisfied by the applicants. I deal with these *seriatim*.

5.1 Urgency

The legal principles and requirements applicable in urgent applications and the approach to be adopted are set out in the dictum in the following decisions:

LUNA MEUBEL VERVAARDIGERS (EDMS) BPK v MAKIN AND ANOTHER (t/a MAKIN'S FURNITURE MANUFACTURERS) 1977 (4) SA 135 (W); **GALLAGHER v NORMAN'S TRANSPORT LINES (PTY) LTD** 1992 (3) SA 500 (W); **CALEDON STREET RESTAURANTS CC v D'AVIERA** [1998] JOH 1832 (SE).

The respondents contend that no urgency has been shown on the facts by the applicants and that, should this Court be inclined to find that the matter had become urgent, such urgency as there was, had been self created by the applicants. I do not agree. The applicants, although experienced in the practice of business, are clearly lay persons when it comes to the intricacies of the law. On the evidence it is clear that as soon as they became aware of the consequences of

the decision taken by the respondents, they took immediate steps to revise the situation by launching the main application and, thereafter engaging the respondents in discussions to secure some form of indulgence pending the obtaining of a final decision on the main application. It is true that, thereafter, the applicants appear to have dragged their heels as it was only six days after they were informed of the respondents' refusal to consent to interim relief on 3 October 2007 that this application was launched. I do not, however, view this as a show of laxity on the part of the applicants or as a failure to understand and appreciate the urgency of the compromised situation that they were in. In my view, whether the application was issued on any of the days immediately succeeding 3 October 2007 or on the 9th October 2007 is irrelevant in the greater scheme of things for it is abundantly clear from the evidence that the applicants, appreciative of the predicament they were in and of the possibility of serious financial losses to follow, took

steps in September 2007 to redeem the situation by launching the main application albeit ill advisedly without coupling thereto a request for interim relief. Thereafter matters followed their natural course until 3 October 2007, when the applicants realised that they would have to approach this Court for urgent relief. That they were not advised to include a prayer for the interim relief at the time when the main application was launched cannot be blamed on the applicants. As I have already said, the applicants are not legally trained and were guided by their legal representatives who saw fit at the time the main application was launched to omit any prayer for interim relief. This does not indicate a lack of their appreciation of urgency on the part of the applicants. I rule therefore in favour of the applicants that the matter was correctly enrolled in terms of the provisions of Rule 6(12) of the Uniform Rules of the High Court.

5.2 The second issue presents the applicants with

insurmountable difficulty. An applicant for interim relief must, on a balance of probabilities,

5.2.1 establish a *prima facie* right to the relief sought;

5.2.2 show that he will suffer irreparable harm if the relief sought is not granted;

5.2.3 show that the balance of convenience is in his favour; and

5.2.4 show that he has no satisfactory alternative remedy.

See **WEBSTER v MITCHELL** 1948 (1) SA 1186 (W).

It is necessary to analyse these requirements in the light of the proven facts in this case.

5.3 A *prima facie* right:

In order to decide whether the applicants have shown a *prima facie* right, it is first necessary to show that the

applicants have a right which entitles them to the protection of this Court. This is central to the enquiry and it is only once this has been established that the nature of that right becomes essential to the enquiry. On the evidence before me the applicants have failed to demonstrate that they have any protectable interest or right in these proceedings. This is so for the simple reason that no contract, alternatively agreement, verbal or otherwise, has been shown to exist between the applicants and the respondents which enjoins the latter to test the clients of the applicants who have been taught and instructed in the technique of driving by the applicants. Any such contract between the parties would in any event be illegal and *contra bonos mores*. The only party against whom the applicants have any rights are its clients with whom they have entered into an agreement to offer driving instruction in return for a certain sum of money. The terms of that agreement, however, have nothing to do with the respondents and there is nothing in the evidence to indicate anything to

the contrary.

The applicants have therefore not demonstrated that they have the requisite *locus standi* to bring this application. As a general rule the requirements to establish *locus standi* in *judicio* are the following:

- (a) The applicant for relief must have an adequate interest in the subject matter of the litigation. This is not a technical interest but a direct interest;
- b) The interest must not be too far removed;
- c) The interest must be actual not abstract or academic;
- d) The interest must be current and not a hypothetical one.

See **MARS INCORPORATED v CANDY WORLD (PTY) LTD** 1991 (1) SA 567 (A) at 575 H – I;

TRAKMAN NO v LIVSHITZ AND OTHERS 1995 (1) SA 282 (A) at 287 B – F;

KOMMISSARIS VAN BINNELANDSE INKOMSTE v VAN DER HEEVER 1999 (3) SA 1051 (SCA) at 1057 G – H.

Put a different way the applicants must demonstrate a direct and substantial interest in the subject matter of this application. The fact that the applicants may suffer a loss of profits and accordingly have a purely financial interest in the matter, is not sufficient to confer *locus standi* on them in the circumstances of this case. As authority for the proposition that the applicants have a sufficient interest in the relief sought by virtue of having been invited to make representations prior to the respondents taking the decision to stop testing persons from outside the Free State Province, Mr. Reinders referred me to the decision in **TRANSVAAL CANOE UNION AND ANOTHER v BUTGEREIT AND ANOTHER** 1986 (4) SA 207 (T).

The facts of that case are, however, distinguishable from those of the present. In that case the Union sued in its capacity as a legal persona on behalf of certain canoe clubs

who were its members. The Union on behalf of its members had as one of its functions the fostering and organising of the sport of amateur canoeing clubs in the river area concerned and that function was directly affected by the attitude of the respondent that its members were trespassing on her property through which the river flowed. The Union's interests were directly involved in the litigation and it was empowered in terms of its Constitution to litigate to safeguard those interests. In the present case the applicants have not sued as members of any particular union in association having a legal persona of its own in respect of a common interest which has been threatened and in order to safeguard which, they are empowered in terms of a Constitution to litigate. Applicants have sued in their capacities as close corporations individually in order to safeguard their respective personal financial interests which have been threatened by the possible loss of clientele as a result of the decision taken by the respondents not to test clients of theirs from outside the Free State Province, a decision wholly outside their capacity to control or influence.

- [6] The application is accordingly dismissed and the applicants are ordered to pay the respondents costs which costs are to include those costs attendant upon the employment of two counsel.

S. EBRAHIM, J

On behalf of applicants: Adv. S.J. Reinders
Instructed by:
Naudes
BLOEMFONTEIN

On behalf of respondents: Adv. Kessie Naidu SC
Instructed by:
State Attorney
BLOEMFONTEIN

/sp