

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

Case No. : 164/2003

In the case between:

MORNING STAR MINIBUS HIRING 1st Applicant
SERVICES FICKSBURG (PTY) LTD

MORNING STAR MINIBUS HIRING 2nd Applicant
SERVICES (PTY) LTD

PETER LUCKY MOLEBATSI 3rd Applicant

MESHACK LESOLE MKWANE 4th Applicant

SUBERCAB TRANSPORT ASSOCIATION 5th Applicant

TEBOHO VINCENT NTSOERENG 6th Applicant

PETER MOSOETSA 7th Applicant

and

MELODITA TAXI ASSOCIATION 1st Respondent

D M FETETSANE 2nd Respondent

M D SEUTLA 3rd Respondent

I S SELLANE 4th Respondent

D M NTSO 5th Respondent

M T MAVUSO 6th Respondent

G M MHLABI 7th Respondent

M MHLABI 8th Respondent

CORAM: EBRAHIM J

HEARD ON: 14, 15, 17 SEPTEMBER 2004;
13, 14, 15 DECEMBER 2004;

10 FEBRUARY 2005

JUDGMENT: EBRAHIM J

DELIVERED ON: 5 MAY 2005

- [1] The first applicant is the owner of premises described as “Onderverdeling 2, 3 en 4 van Erf 377, geleë in die distrik Ficksburg, provinsie Vrystaat”. The property is situated on the corner of Toorn- and Endstreets in Ficksburg. It has been registered into the name of the first applicant. All this is common cause as also the fact that the first applicant operated a taxi rank for the benefit of its members, that is the second to the seventh applicants, from these premises. This rank was referred to in evidence as the private taxi rank.
- [2] The first respondent and its members, that is the second to the eighth respondents, operated from what is known as the public taxi rank in Ficksburg which is situated almost directly opposite the private taxi rank.

[3] On the 17th January 2003 the applicants brought an application on an urgent basis to this court for a spoliation order as well as certain interdictory relief. I refer to the notice of motion which sets up the relief claimed as follows:

“1. Dat die aansoek as een van dringendheid aangehoor sal word en dat die Agbare Hof die nienakoming van die Hofreëls met betrekking tot vorm en betekening sal kondoneer.

2. Dat respondente opgeroep word om redes aan te voer, indien enige, by genoemde Agbare Hof op Donderdag 27 Februarie 2003 om 09h30 waarom die volgende bevel nie verleen sal word nie:

3. Dat respondente gelas word om hulle summier van die perseel geleë te Gedeeltes 2, 3 en 4 van Erf 377, h/v Toorn- en Eindstrate, FICKSBURG te onttrek en die ongestoorde besit en gebruik daarvan aan applikante terug te oorhandig;

4. Dat respondente verbied word om in te meng met die huurmotoraktiwiteite van tweede tot sewende applikante en/of die op- en aflaai van tweede tot sewende applikante van hul huurmotorpassasiers of van die lede van tweede en vyfde applikante, te die perseel in paragraaf 3 verwys;

5. Dat respondente verbied word om tweede tot sewende applikante of die lede van tweede en vyfde applikante en/of hul passasiers en/of hul

huurmotorbestuurders aan te rand en/of te intimideer en/of te dreig om hulle aan te rand of te beseer en/of hul huurmotorvoertuie te beskadig;

6. Dat eerste respondent gelas word om toe te sien dat sy lede gevolg gee aan die bevel in paragrafe 3 en 4 gemaak;
7. Dat die Adjunk Balju FICKSBURG gelas word om toe te sien dat uitvoering gegee word aan die bevel in paragraaf 3 gemaak;
8. Dat respondente gelas word om die kostes van hierdie aansoek te betaal, gesamentlik en afsonderlik, die een betaal die ander kwytgeskeld te word;
9. Dat die bevel in paragrafe 3 tot 6 gemaak sal dien as tussentydse interdik met onmiddellike werking;
10. Dat die bevel hierin verleen aan respondente beteken sal word; en
11. Verdere en/of alternatiewe regshulp."

[4] A rule *nisi* was subsequently granted returnable on the 27th February 2003. The rule was extended on a number of occasions until on the 4th December 2003 the matter was referred for oral evidence on the following issues:

- "1. Die aangeleentheid word vir mondelinge getuienis

verwys rondom die volgende aspekte.

- (a) Die vraag of respondente die perseel geleë te Gedeeltes 2, 3 en 4 van erf 377, h/v Toorn- en Eindstrate, Ficksburg vanaf 3 Desember 2001 beset het en applikante die gebruik daarvan ontnem het.
- (b) Die vraag of respondente ingemeng het met die huurmotoraktiwiteite van tweede tot sewende applikante en/of die op- en aflaai van tweede tot sewende applikante van hul motorpassasiers of van die lede van tweede en vyfde applikante te die perseel in par 1(a) verwys.
- (c) Die vraag of respondente tweede tot sewende applikante of die lede van tweede en vyfde applikante en/of hul passasiers en/of hul huurmotorbestuurders aangerand en/of geintimideer en/of gedreig het om hulle aan te rand of beseer het en/of hul huurmotorvoertuie beskadig het.”

- [5] According to witnesses called on behalf of the applicants, on Friday the 13th December 2002 members of the first respondent padlocked the gate at the entrance to the private taxi rank, at the same time surrounding the rank thereby depriving the applicants' members from using their own premises for operating their taxis and preventing the applicants' members from loading fee-paying passengers onto their taxis, thus preventing the applicants' members from properly conducting their taxi business activity. It is the applicants' case further that the first respondent wished to divert all taxi passenger traffic to the public rank for the benefit of its members. Consequently prospective passengers for the private taxi rank were chased away from that rank. It is alleged further by the applicants that the respondents sought to accomplish their aims by assaults, threats of assaults in the form of stone throwing and the firing of gunshots as well as intimidation of the first applicants' members, their drivers as well as prospective passengers. Applicants allege that because the respondents padlocked the rank those of their taxi drivers who were inside the rank could not leave the taxi rank on the 13th and 14th

December 2002 or load passengers and transport them to their various destinations. The result was a serious monetary loss to the various members of the first applicant who own taxis and had to pay their drivers as the locking of their rank brought their taxi operation business to a complete halt. First applicant, itself, suffered losses in terms of revenue from the other applicants in respect of their use of the rank and its facilities. A short-term agreement was entered into with the respondents on the 14th December 2002 to enable those applicants whose taxis were impounded inside the private rank to obtain the release of their vehicles. But, applicants allege, at no stage were they allowed by the respondents to make use of the rank for the operation of their taxis after the rank was reopened on the 15th December 2002. The evidence was that applicants were, under pain of threat of intimidation from the respondents, not allowed to operate their taxis from the private rank.

- [6] 6.1 The background history to the struggle between the two taxi associations appears to be steeped in a tussle for passenger traffic. According to the applicants the respondents wish to entrench a system whereby drivers of the taxis of both associations load their passengers in turn at the public rank. According to the applicants this system would not work as the first respondent has been registered for the purpose of its members operating only within the province of the Free State whereas the first applicant is registered for the purpose of its members transporting passengers inter-provincially and cross border. This is disputed by the respondents and has in turn created disputes with regard to the routes operated by the members of the two associations. Because of the undesirability and untenability of the situation continuing whereby first applicant and its members were prevented by the respondents from earning a living, according to them operating from their own taxi rank, the applicants applied for urgent relief on the

17th January 2003.

6.2 According to the applicants, despite the grant of the rule *nisi*, its terms have been ignored from the outset by the respondents and the intimidation from the respondents of the applicants to ensure that the applicants refrained from using and operating their taxis from their own rank continued, making it impossible for applicants to operate their taxi business. It is the applicants' case that whilst the agreement of the 14th December 2002 entered into with the respondents entitles them to operate their taxis from the public rank, they steadfastly have refused to do so in view of the fact that they believe that they are entitled to make use of their own private rank from which to operate their taxi businesses.

[7] 7.1 The respondents have denied assaulting, threatening to assault, throwing stones and firing gunshots at the

drivers of taxis owned by members of the first applicant on the 13th and 14th December 2002. It is conceded by respondents that there had been friction prior to the 13th December 2002 between the two associations and that this was due to a race for passenger traffic as it was perceived that first applicant was gaining an unfair advantage in this regard operating from a separate rank of its own. In oral evidence on behalf of the respondents all allegations of assault and intimidation of the applicants was denied. The respondents also deny having padlocked the gate to the private rank.

- 7.2 According to the third respondent members of the first respondent were present at the public rank on the 13th December 2002 and the 14th December 2002. They were standing around inside their own rank doing nothing when he arrived at the rank. He said he had been summoned to the rank by the second

respondent who informed him the drivers of the two associations were fighting over passengers, but he saw no fighting when he arrived at the rank, nor did he witness any form of violence or intimidation by the first respondents' members or drivers of members or drivers of the first applicant. He also did not see any of the first respondents' members armed with stones or firearms. He said the gate to the private rank was open when he arrived.

- 7.3 According to the second respondent the drivers of the first applicant were touting passengers directing them to their vehicles in the private rank when he arrived at the rank on the morning of the 13th December 2002. According to him this was irregular as the private rank had been shut down for a long time prior to the 13th December 2002 and consequently no loading of passengers was to be done in the private rank. He said he suddenly heard a gunshot and people at the

rank started to disperse. The police were called and when they arrived attempted to enter the private rank, but the gate to that rank was closed by the drivers of the members of first applicant. After 10 to 15 minutes the gates were then re-opened. No more loading of passengers was done from that private rank and a new agreement was entered into between the two associations on the 14th December 2002 to provide for all loading of passengers to be done from the public rank. According to this witness none of the respondents' drivers or members assaulted or intimidated or threatened to assault the applicants' members or drivers or passengers.

- [8] It is the applicants' case that individual members of first applicant signed the agreement dated the 14th December 2002 providing for the loading of passengers from the public rank. According to the applicants the agreement was signed by these individual members in order to enable them to

obtain the release of their vehicles which had been impounded inside the private rank after the members of the first respondent had padlocked the gate to the private rank. After they signed the agreement the respondents' members unlocked the gate to the private rank. According to the applicants these members did not sign on behalf of the entire Morning Star Taxi Association as the first applicant and all its members were vehemently opposed to operating from any rank other than its own private rank in Ficksburg.

- [9] In deciding the issues before me I deal firstly with that relating to whether or not there were any assaults, threats of assault and intimidation of the first applicants' members on the relevant date. In this regard I have been unable to make any favourable credibility findings in respect of any of the so-called eye witnesses to the events of the 13th and 14th December 2002. This is for reason of the fact that because of the nature of the circumstances prevailing at the ranks at the relevant time as testified to by the various witnesses (these were fast moving events involving a crowd of people)

and in view of the length of time which has elapsed since the various witnesses observed the events in question, there were, quite naturally, some discrepancies and contradictions in the testimony on material aspects. In my view, none of the witnesses therefore meet the test required to pass muster in order for their evidence to be accepted. In fact the only conclusion I can come to in regard to these witnesses' testimony on this issue is that, on the probabilities, there must have been aggression exhibited by members and drivers of both associations given the background history to the matter and the issues at stake namely the race to capture as many passengers for themselves as possible. In view of the fact that it is the applicant who carries the onus in these proceedings, I must conclude that the applicant has failed to discharge that onus on a balance of probabilities. Consequently I find that the applicant has not proved that it is entitled to relief in so far as this aspect of the rule *nisi* is concerned.

[10] In so far as the other two issues are concerned, on the

probabilities it is apparent that there would have been no need for the applicants to have launched the present application had they not been deprived of the use of their premises and had their taxi business activities not been interfered with. Indeed the applicants' case in this regard is far more than just inherently probable. To accept otherwise would not make any sense at all, given all the attendant costs involved in launching an application of this nature. There must have been depravation and interference of the kind complained of namely the locking of the gate of the premises of the private rank by the respondents and the consequent refusal to allow the applicants' drivers to make use of their rank to load passengers with resultant financial loss to the applicants. The reasons advanced by the applicants for the signing of the agreement of the 14th December 2002, is, in addition, to my mind perfectly logical and sound. I interpret the conduct of those drivers in signing the agreement to have been due to desperation and the real need to free their vehicles in the hope that they would immediately be able to conduct their business and earn a

living. The following month proved this to be impossible hence the bringing of this application. The details of the method employed to stop applicants plying their trade, whether by threats, intimidation or assault is not relevant for the purpose of deciding these two issues. On the probabilities therefore, I find that applicants have succeeded in making out a case for the relief sought in respect of issues (a) and (b) as set out in the court order dated the 4th December 2003 viz that between 13 December 2002 and 14 December 2002 inclusive the respondents took control of the private rank of the applicants, by padlocking the gate thereof and thereafter prevented the applicants and drivers or members of the first applicant from conducting their taxi business activities by loading and off loading passengers from their own private taxi rank.

- [11] Because the applicants have been partially successful they are entitled to their costs. I have not been called upon to decide the issue of urgency in these proceedings and I refrain from doing so.

The order I make is the following:

1. The rule *nisi* is confirmed in the following respects:

“1.1 Dat respondente gelas word om hulle summier van die perseel geleë te Gedeeltes 2, 3 en 4 van Erf 377, h/v Toorn- en Eindstrate, FICKSBURG te onttrek en die ongestoorde besit en gebruik daarvan aan applikante terug te oorhandig.

1.2 Dat respondente verbied word om in te meng met die huurmotoraktiwiteite van tweede tot sewende applikante en/of die op- en aflaai van tweede tot sewende applikante van hul huurmotorpassasiers of van die lede van tweede en vyfde applikante, te die perseel in paragraaf 1.1 verwys;

1.3 Dat eerste respondent gelas word om toe te sien dat sy lede gevolg gee aan die bevele in paragrawe 1.1 en 1.2 gemaak;

2. The sheriff, Ficksburg is ordered to ensure that effect is given immediately to the order made in paragraph 1.1

hereof and that this order in the terms as set out in paragraph 1.1, 1.2, 1.3 and 3 hereof are served on the respondents.

3. The respondents are ordered to pay the costs of the application jointly and separately the one paying the other to be absolved.

S. EBRAHIM, J

On behalf of applicants:

Adv. A.H. Burger
Instructed by:
E G Cooper & Sons Inc
BLOEMFONTEIN

On behalf of respondents:

Adv. J.J.F. Hefer
Instructed by:
McIntyre & Van der Post
BLOEMFONTEIN

/sp