

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

Case No.: 945/2004

In the matter between:

BENJAMIN MOLLO

Applicant

and

QWALDPTTA

First Respondent

THE REGISTRAR OF TRANSPORT

Second Respondent

CORAM: **RAMPAL, J**

HEARD ON: **29 APRIL 2004**

DELIVERED ON: **10 JUNE 2004**

[1] The matter first came to this court by way of an urgent application on Friday, 26 March 2004, before Beckley, J who granted the rule nisi returnable on Thursday, 29 April 2004. On the return day I heard argument for and against the rule nisi. Having heard argument, I reserved judgment and extended the rule nisi until Thursday, 10 June 2004.

[2] The applicant is a taxi service provider of Phuthaditjhaba in Qwa-

Qwa here in the Free State Province. He owns two minibus taxis. Both taxis operate on the route between Phuthaditjhaba and Vereeniging. The one taxi is a Nissan E20 with registration number BRZ501FS. The other is a Nissan E20 with registration number BRC275FS. These two taxis have valid public permits which authorise them to convey passengers for reward.

- [3] The first respondent is Qwaldptta an acronym of Qwaqwa Long Distance Passenger Transport Taxi Association. The first respondent is a merger of two associations. The one founding taxi association was called Qwaqwa Long Distance Taxi Association. The other constituent taxi association was called Qwaqwa Passenger Transport Taxi Association. Prior to the merger, the applicant was a member of the former.
- [4] The second respondent is the Registrar of Transport appointed in accordance with the provisions of the Free State Passenger Transport Act No. 16 of 1998.
- [5] The relief sought by the applicant is a final interdict whereby the respondents are restrained: firstly, from preventing two minibus

taxi belonging to the applicant from loading passengers at Setsing Taxi Rank, Phuthaditjhaba in Qwaqwa and, secondly, from intimidating the two drivers thereof.

[6] In his founding affidavit the applicant averred that on Tuesday, 17 February 2004, the agents of the first respondent prohibited his two taxis from loading passengers at Setsing Taxi Rank. He was called upon to appear before the disciplinary committee of the first respondent. He was accused of insubordination in that he bypassed the authorised functionary of the first respondent and personally represented himself before the second respondent without the authority of the first respondent. He was also accused of initiating legal proceedings against the first respondent in the Free State High Court.

[7] On Saturday, 6 March 2004 he attended the disciplinary hearing. He admitted that he personally represented himself before the second respondent but told the disciplinary committee that as a taxi service provider he had the right to approach the second respondent concerning his taxi business operations. He also admitted that Qwaqwa Long Distance Taxi Association together with its

members had the right to challenge the decision of the second respondent in a court of law and he, as a member of Qwaqwa Long Distance Taxi Association, had made the main affidavit on behalf of his taxi association to challenge its deregistration and registration of the first respondent.

[8] As a result of the stance he adopted, the first respondent's disciplinary committee suspended him indefinitely. He was told by the disciplinary committee that his taxis would no longer load passengers from Setsing Taxi Rank.

[9] In his answering affidavit the first respondent averred that there were two distinct and separate taxi associations at Phuthaditjhaba operating from Setsing Taxi Rank on the same long route to Gauteng Province. The two taxi associations were dissolved or deregistered. Their members merged and through such merger the first respondent came into existence.

[10] The first respondent received a complaint that the applicant was communicating with the second respondent on behalf of the member of the first respondent without the authority of the first

respondent. It also emerged that the applicant was using the letterheads of his dissolved taxi association in communicating with the second respondent. As a result of this complaint, the first respondent set the disciplinary proceedings in motion against the applicant. He was called upon to attend the disciplinary hearing on Tuesday, 27 January 2004.

[11] The applicant attended the hearing and informed the members of the disciplinary committee that he was the secretary of Qwaqwa Long Distance Taxi Association and that he took instructions from its chairperson only. He made it known to the disciplinary committee that he did not accept the deregistration of Qwaqwa Long Distance Taxi Association by the second respondent. The matter was then postponed for further hearing. The applicant did not attend the disciplinary hearing later on on 3 February 2004.

[12] He was found guilty of misconduct on Tuesday, 17 February 2004 in his absence. The disciplinary committee found that the applicant was a member of the first respondent despite his contention to the contrary. As such, the disciplinary committee found that he had no right to act for any member of the first respondent. In addition the

first respondent disputed the alleged right of the applicant to represent a dissolved taxi association in legal proceedings. Finally, the first respondent stated that it was empowered to suspend the applicant in terms of the provisions of its constitution.

[13] In his replying affidavit the applicant contended that Qwaqwa Long Distance Taxi Association and its members withdrew in July 2003 from the merger that created the first respondent. He also stated that an application by Qwaqwa Long Distance Taxi Association to have the decision of the second respondent reviewed was still pending before this court. In brief, the stance of the applicant was still that since he was no longer a member of the first respondent, the first respondent did not have any powers to discipline him at all.

[14] It is trite law that a party which seeks relief in the form of a final interdict has to prove the three requisites which are the cornerstones of the final interdict, namely, firstly, a clear right; secondly an injury to such a right actually committed or reasonably apprehended; and thirdly, the absence of similar protection by any other ordinary remedy. (*Vide* **SETLOGELO v SETLOGELO**)

1914 AD 221 on 227 per Innes, JA).

[15] The right of the applicant is not perfectly clear. It is not disputed that the applicant is a taxi service provider. He is the holder of two valid public permits. The first public permit number BFN551772 was issued in Bloemfontein by the second respondent on 29 March 1999 in respect of his minibus taxi BRZ501FS. It authorised him to station this taxi at Setsing Taxi Rank at Phuthaditjhaba and to operate from there to among others towns, Vereeniging in Gauteng Province (*vide* p.19-20 of the court record).

The second public permit number BFN551773 was issued in Bloemfontein on 11 December 2001 in respect of his minibus taxi BRC275FS. It authorised him to station this taxi at the general post office at Witsieshoek and to operate from there to any point situated within a radius of 300 kilometres and to return along the same route (*vide* p.21 – 22 of the court record).

[16] The applicant does not aver that over and above his two taxi permits, Phuthaditjhaba Municipality has granted him as an individual taxi service provider consent for the use of Setsing Taxi Rank. His case is that because he is the holder of two valid taxi permits, he is entitled to use the taxi rank in dispute. Later in my judgment I shall illustrate why

the applicant's contention is flawed. Whereas his right to operate on the route in question is clear, his alleged right to use the rank is somewhat unclear. And it is about the latter and not the former we are here concerned with.

Moreover, it is also unclear to me the operational activities of the applicant's second taxi could have been detrimentally affected by the first respondent's prohibition. Apparently the second taxi was never authorised to load passengers from Setsing Taxi Rank in any event. In terms of its public permit it has to be stationed at the General Post Office and not Setsing Taxi Rank.

[17] I now turn to the second requisite of an injury to a clear right. The first respondent admitted that on Tuesday, 17 February 2004 its agents prohibited the applicant's two taxis from loading passengers at Setsing Taxi Rank. The question which falls to be determined in this second leg of the enquiry is whether the first respondent by so doing infringed the applicant's clear right to station two minibus taxis at that taxi rank and to load passengers from there, assuming of course, that he had established such a clear right, which he has not.

[18] It was the first respondent's defence that the applicant was its member, that he was subject to its disciplinary code, that he violated the constitution which applies to all its members, that he was disciplined and that he was suspended in terms of the constitution. In the premise the first respondent denied that it had

harmed the applicant's right in any manner by suspending him and prohibiting his taxis from using the taxi rank in question.

[19] The applicant's case on the other hand is that he was not a member of the first respondent but a member of Qwaqwa Long Distance Taxi Association; that therefore he was not subject to its disciplinary code; that the constitution of the first respondent did not apply to him; that the disciplinary action taken against him and the suspension imposed on him were invalid and of no force and effect.

[20] Prior to 18 December 2002, the applicant was a member of the Qwaqwa Long Distance Taxi Association which operated from Qwa-Qwa. At that time there was also another taxi association which also carried out passengers conveyance operations from Qwa-Qwa. These rival taxi associations operated on the same route from Phuthaditjhaba to Vereeniging and Johannesburg and back. The two rival taxi associations were so bedevilled by endless conflict that the Free State Provincial Government took the initiative to facilitate the merger between the two rival taxi associations. The merger negotiations brokered through the

Department of Public Works, Roads and Transport were held on 12 December 2002. The historic meeting was chaired by the former MEC for Public Works, Roads and Transport, Mr S.M. Malebo. The two rival taxi associations agreed in principle to amalgamate. Four days later the two rival taxi associations were dissolved and by mutual pact they amalgamated. The new entity or merger created the first respondent on 16 December 2002.

- [21] The intervention of the Free State Provincial Government in the taxi conflict between these two rival taxi associations was not something new. The Free State Provincial Government had done so on previous occasions. See for instance Case No. 4/2002 and 73/2003. The chairing of the first meeting between the two rival taxi associations on 12 December 2002 was in itself an event of great significance within the context of these legal proceedings. Its significance lies in this: It demonstrated the seriousness of the Free State Provincial Government to effectively address the taxi conflict. Fundamental to that, governmental commitment was the attainment of enduring peace. The undeniable and the sole purpose of the merger was aimed at that ultimate objective of securing lasting peace. In my view, that was and still is the official

governmental policy in the Free State Province at least. It is important to bear this in mind as we move along to examine the events.

[22] On 16 December 2002 the first respondent was formed through the negotiations which were pioneered by the Free State Government. The two rival taxi associations were dissolved and deregistered on 18 December 2002. On the same day the first respondent was officially registered in terms of section 18(2) of the Free State Interim Passenger Transport Act, No. 16 of 1998 – see p.23 par 3.8 read with p.40, Case No. 351/2004, Free State Division. Therefore, officially the applicant's former taxi association Qwaqwa Long Distance Taxi Association ceased to exist on 18 December 2002. Subsequently all its members became members of the first respondent and they remain to be. They were registered as such by mutual agreement between the former separate taxi entities. The Free State Provincial Government sanctioned the mutual agreement and gave official recognition to the new merged entity and the status of its individual members.

[23] It seems to me that this is a classical case where the legal maxim

omnia praesumitur rite esse acta applies. The act of cancelling the registration of the applicant's former taxi association and the act of registering the first respondent as a merged new taxi association, were done by an organ of the state. The law presumes them to have been done in a regular manner until the contrary is proven. It had not been done at the time these urgent legal proceedings were launched. Implicit in those vital official acts is the conclusion that the first respondent acquired the exclusive right in respect of the facility called Setsing, to impose certain levies on its members, to collect such levies from its members, and to utilise such funds for the upkeep of the facility, and above all this, to sustain the official or governmental policy of eradicating the endless taxi violence by integrating or bringing together all those taxi service providers who share the same route and the same rank under one umbrella.

- [24] It has to be remembered that the applicant and the other members of the defunct Qwaqwa Long Distance Taxi Association participated in the first general elections of the first respondent after the dissolution of their taxi association. Some of them were elected into the formative structures of the first respondent. The deregistration of the rival taxi associations and the registration of

the united taxi association were the logical and necessary official steps flowing from the bilateral negotiations which eventually culminated in the formation of the merger. The alleged unilateral withdrawal of the applicant or his former taxi association is of no legal force and effect on the merger and its membership, unless and until those two official acts of deregistration and registration had been nullified by a competent court of law.

- [25] Until that happens the applicant remains a members of the first respondent. He is bound by its domestic rules and its constitution. As its member he is liable to be disciplined by the first respondent if he violates its rules. He cannot be heard to say his right has been injured when such harm was occasioned by his own misconduct. His own acts of indiscipline justified his suspension by the first respondent. Apparently there has been no wholesale suspension of all the former members of Qwaqwa Long Distance Taxi Association who are now members of the first respondent. Only the applicant has been suspended. Therefore I have reached the conclusion that there was no actual injury to the applicant's rights, if he had any, committed by the first respondent. It is clear and obvious to me that what the applicant seeks to achieve is to break

the merger apart and to resuscitate his defunct taxi association. Such a move will have adverse impact on the genuine government policy to curb if not to eliminate the prevalent conflict and violence in the taxi industry. I can see no sound reason as to why any outstanding issues pertinent to the merger should not be addressed and resolved without destroying the merger itself. As I see it, the merger is the only hope for lasting peace on the route in question.

- [26] Not so long ago, Qwaqwa Long Distance Taxi Association, of which the applicant claims that he is still a member, brought an application against the first respondent and the second respondent among others, seeking essentially the same relief on behalf of its alleged members in respect of the same taxi terminus we are here dealing with. On Thursday, 12 February 2004, I dismissed that application with costs. I abide by the reasons I advanced for the judgment I gave in that application under Case No. 351/2004. I have once again read the papers filed in that application since in conjunction with those in this application they were relevant to the current application. Counsel for the applicant failed to persuade me to see how I should now arrive at a different conclusion as I did then.

[27] It also appears that there is yet another application pending against the first and second respondents. In this third application brought under Case No. 35/2004 of this court, apparently the applicant is Qwaqwa Long Distance Taxi Association. On the applicant's own version in the instant case, the very foundation of his *locus standi in indicio* to provide a taxi service and to use the rank in question as a member of a dissolved, deregistered or defunct taxi association, forms the subject matter of the review proceedings instituted under Case No. 35/2004. Those proceedings were already pending when the instant proceedings were instituted. Those proceedings were still pending when I presided over the instant proceedings.

Should the outcome of the pending review proceedings be favourable to the applicant's defunct taxi association, the applicant in the instant case will have the same relief which he now seeks in these proceedings. Herein lies the alternative and adequate remedy. This application merely duplicates the issues. The applicant made it known to the first respondent that he did not recognise the jurisdiction of the first respondent over him and that

he did not accept the deregistration of his dissolved taxi association. But the fact of the matter is that officially Qwaqwa Long Distance Taxi Association does not exist any more and the first respondent is officially the sole recognised representative of the taxi service providers who station their taxis at the terminus in question and operate on the route in question.

- [28] The mere fact that the applicant holds a taxi permit, in other words a public permit authorising him to station his taxi at Setsing Taxi Rank, is not an overriding factor. The fact of the matter is that the first respondent is in *de facto* control of the taxi terminus and all its members have to obey its statutory constitution and its rules of discipline notwithstanding that they too have taxi permits allowing them to operate from Setsing Taxi Rank just like the applicant. For instance, if Phuthaditjhaba Local Municipality wants to close Setsing Taxi Rank in order to build a shopping mall and to shift the taxi terminus away, no taxi service provider can successfully stop it from doing so, because in terms of his or her taxi permit he has to operate his taxi business from there. Democracy informs us that at times individual interests have to yield in favour of collective interests of the public. For this reason it is of no relevance at to

who owns the facility in question.

[29] In my view the applicant also failed to prove that third requisite of a final interdict. In terms of the constitution, clause 5.6.2 the members of the first respondent have the right to utilise any taxi rank allotted to, or operated or controlled by the first respondent. Naturally any member who rebels and declares himself a member of a defunct taxi association disqualifies himself from enjoying that right. Whatever harm he may suffer afterwards, is of his own making. It is the duty of the first respondent to protect its members against unlawful and unfair competition by non-members or by members themselves.

[30] It was incumbent upon the applicant to establish all the three requisites for a final interdict. Failure by the applicant to prove one of the three requisites, is fatal to the applicant's case. In the instant case the applicant has failed to establish all of the three requisites. It follows therefore that the relief sought cannot be granted. The application has to fail.

[31] As regards costs, I can see no reason why the general rule should

not apply in the instant case. The successful party is entitled to be awarded the costs. Such costs must be awarded to the first respondent. I am still in the dark as to why the second respondent was cited as a party. No relief was sought from the second respondent. Although the second respondent did not descend into the arena, he was certainly inconvenienced by the whole irrelevant affair. Not only did the second respondent have to read the voluminous papers, but also had his important time spent in attending to the unnecessary service of the founding affidavit by the applicant, the answering affidavit by the respondent and the replying affidavit by the applicant, all of which had nothing to do with him. This kind of conduct must be avoided by the litigants. Disinterested parties should not be cited for virtually unknown reasons.

[32] According the rule *nisi* is hereby discharged. The applicant is ordered to pay the costs of this application.

M.H. RAMPAL, J

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