

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 2479/2025

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 01/4/2025

SIGNATURE:

In the matter between:

FEDERATED LOCAL AND LONG DISTANCE TAXI
ASSOCIATION

1ST APPLICANT

JANE FURSE LONG DISTANCE TAXI ASSOCIATION

2ND APPLICANT

And

MOHLALA DITHOMO MOSES

1ST RESPONDENT

UNKNOWN PERSONS

2ND RESPONDENT

JUDGEMENT

KGANYAGO J

- [1] The first applicant Federated Local and Long Distance Taxi Association (FELLDTA) is a federation of various taxi associations. The second applicant Jane Furse Long Distance Taxi Association (JALDTA) is a member of the first applicant. The second applicant had been placed under administration by the first applicant and Sindane Edward Charles who is the

deponent to the applicants founding affidavit has been appointed as the administrator of the second applicant. The applicants have launched an urgent interdict application against the respondents seeking the following orders:

- “(a) interdicting the respondent from operating his minibus taxi along Jane Furse-Johannesburg route and any route without a valid operating permit;
- (b) interdicting and restraining the respondent from preventing and/or obstructing the members of the applicants and their drivers from engaging in their normal business of transporting passengers along their designated route;
- (c) interdicting and restraining the respondent individually and/or together with any individual/s or organisation/s or person/s from intimidating, threatening or threatening to harm members of the applicant, their employees and are further ordered to desist from unlawfully interfering with the applicants’ business operations in any way;
- (d) interdicting the respondent from forcing members of the applicants to join SA Local and Long Distance Taxi and Bus Organisation (SALLDTBO) or any rival taxi association;
- (e) interdicting the respondent from issuing unlawful instructions to members of the applicants to join SALLDTBO and/or any other rival association of the applicants;
- (f) that the South African Police Services and other law enforcement agencies be requested to assist in ensuring compliance with the terms of this court order in the event of non-compliance by the respondent with the contents thereof”.

[2] According to the time frames fixed by the applicant, should the respondent wish to oppose the applicants’ application, they should notify the applicants’ attorneys in writing on or before 10h00 on Tuesday the 11th March 2025, and to file his answering affidavit, if any on or before 15h00 on 12th March 2025, and the applicants if they wish to reply, to do so by 12h00 on 13th March 2025. The applicant’s application was issued on 10th March 2025 set down on Tuesday the 18th March 2025 at 10h00. The application was served by the deputy sheriff Makhuduthamaga personally on the first respondent on 10th March 2025 at 15h32. According to the sheriff’s return of service, the documents that were served on the first respondent were (i) notice of motion, (ii) founding affidavit and annexures, and (iii) Rule 41A notice.

[3] According to the applicant’s founding affidavit the first respondent used to be a member of the applicants and chairperson of the second applicant. When the first respondent was removed as chairperson, he joined the rival association and the first respondent and cohorts are forcing the members of the second applicant to join SALLDTBO. That SALLDTBO is affiliated to

SANTACO and there is an ugly history between FELLDTA and SANTACO. The respondents are not only forcing applicants' members to join the rival association but have also removed the applicants' stickers from the minibus taxis of the applicants' members and replaced them with stickers of SANTACO and SALLDTBO.

- [4] A meeting was convened by the applicants on 20th February 2025, wherein the members who have joined or defected to the rival association at the behest of the first respondent apologised as they were tricked and forced to join the rival association. SALLDTBO does not have a permit to operate the route between Jane Furse and Johannesburg. Fearing that the respondents' action might lead to conflict and possible violence, the applicants approached the offices of the station commander of Jane Furse on 21st February 2025. The police tried to mediate, but the first respondent did not avail himself despite being contacted by the police station. The first respondent is busy forcing members of the applicants to join his association, and his conduct holds the potential to spark renewed and unavoidable violence which are imminent.
- [5] The first respondent (respondent) is opposing the applicant's application and has served the applicants with opposing papers on 14th March 2025 outside the time periods fixed by the applicant. The respondent did not file the original notice to oppose and answering affidavit with the registrar of the court. The respondent's counsel wanted to hand in from the bar the notice to oppose and answering affidavit on the 18th March 2025 which was the date of hearing of the matter. The applicant's counsel objected to the respondent's counsel handing in the opposing papers arguing that the respondent had served them with the opposing papers out of time without a substantive application for condonation.
- [6] Counsel for respondent submitted that the papers that were served on the respondent by the sheriff did not have time frames within which they were required to serve and file their opposing papers, and his instructing attorney had informed him that before the 14th March 2025 he had come to court to try and file opposing papers more than once, but the registrar of the court had refused to accept the answering affidavit. When it was pointed counsel for the respondent that the answering affidavit was only signed and commissioned on 14th March 2025 and which answering affidavit was he referring to. Counsel for the respondent submitted that maybe his instructing attorney was trying to file an unsigned answering affidavit. When it was further pointed to him that the notice to oppose was also signed on 14th March 2025 and also why the alleged unsigned papers were not served on the applicant's attorneys, he could not answer that and stated he was merely placing on record what his instructing attorney had told him.
- [7] On perusal of the application served on the respondent, it was found that it was not similar to the original application filed by the applicant. On the original application, the time frames fixed

by the applicant appears on the last page of the notice of motion which the applicant's attorney had signed. However, on the application allegedly served on the respondent, the page with time frames was not there, but was there a signed page which on perusal shows that it was the signed last page for the rule 41A notice. The rule 41A notice was not contained in the application allegedly served on the respondent. When it was pointed to counsel for the respondent that the last page which he alleges that it was for the notice of motion, was in fact for the rule 41A notice, he insisted that the application as it stand was the one that was served on the respondent by the deputy sheriff.

- [8] The court gave directives to the applicant's attorney must request the deputy sheriff to depose an affidavit regarding what documents he had served on the respondent, and the matter was adjourned to the 20th March 2025. On 20th March 2025 both counsel for the two parties presented to court two different affidavit from the same deputy sheriff stating different things. What was even more surprising was that signatures on both affidavits looked different. On 18th March 2025, the respondent was not directed to request the deputy sheriff to depose an affidavit, but it was the applicant's counsel who was directed to do so. The court issued a directive that the applicant subpoena the deputy sheriff to come and clarify the court whether indeed it was him who had deposed both affidavit and which documents did he serve on the respondent. The matter was adjourned to the 26th March 2025.
- [9] On 26th March 2025 before the hearing started, counsel for the applicant informed the court for noting that after this matter was adjourned to 20th March 2025, on 19th March 2025 respondent attorney went to magistrate court Nebo on an ex-parte urgent basis and obtained an interim order interdicting the applicants from refusing the respondents to load passengers pending the determination of part B which was for a final interdict. On perusal of the interim order obtained at magistrate Nebo, even though it was obtained on ex-parte basis, it had the effect of a final interdict as there was no rule nisi that was issued and there is also no provision for the anticipation of the interim order. Counsel for respondent submitted he is aware of the application and order of magistrate Nebo, but had no instructions about it.
- [10] The deputy sheriff doctor Phiri had testified that he is one who had deposed both affidavits. The affidavit that was handed in by the applicant's counsel, he had deposed it during the day whilst he was still on duty at Jane Furse. The one handed in by the respondent's counsel he had signed it after hours after he was requested by Mr Kgapola attorney for the respondent. The information that he gave to Kgapola was his names, identity number, date and time of service. The rest of the information contained in the affidavit were from Mr Kgapola. He had read the affidavit and have it signed and commissioned at Nebo police station. Everything was done in a hurry regarding the affidavit prepared by Mr Kgapola.

[11] The deputy sheriff further testified that he is one who had served the applicant's application on the respondent. After serving the application, he had noted the documents that he had served on a job card, and thereafter prepared a return of service. According to his return of service, he had served the respondent with a notice of motion, founding affidavit and annexures, and rule 41A notice. The source document to prepare the return of service was his job card. The documents that he had served on the respondent is the same as the ones that appears on the applicant's original application. He had no reason to remove any document received from the applicant's attorney.

[12] In addressing the court, counsel for the respondent had conceded that he had seen the applicant's rule 41A notice and do not understand why suddenly it is missing from the copy of the application which is in his possession. He submitted that on 18th March 2025 he had a discussion with Mr Rahlagane counsel for the applicant and that anything could have happened. When asked whether he is insinuating that Mr Rahlagane could have tampered with his documents, he could come out clearly but was evasive. However, he submitted that copy of the application that he had handed in to the court was given to him by his instructing attorney stabled together as it is, and was also containing rule 41A notice which is suddenly missing from his copy of the application. Counsel for the respondent conceded that from the 18th March 2025 up to the 26th March 2025, they did not attempt to make any substantive application for condonation as there was still a dispute in relation to whether condonation was necessary or not.

[13] This court is called upon to determine whether the application served on the respondent contained times frames within which the respondent was supposed to file his opposing papers, and whether condonation application for late filing of the papers by the respondent was necessary in this matter. Rule 27(1) of the Uniform Rules of Court (Rules) provides as follows:

"In the absence of an agreement between the parties, the court may upon application on notice and on good cause shown, make an order extending or abridging any time frame prescribed by these rules or an order of court or fixed by an order extending or abridging any time frame for doing any act or taking any step in connection with any proceeding of any nature whatsoever upon such terms as to it seems meet".

[14] It is trite that in urgent applications, it is the applicant who fixes time periods within which the respondent is required to file opposing papers. The respondent is required to comply with the said time period, and if the respondent is unable to comply, and file opposing papers out of the fixed time period, a substantive condonation application must accompany the papers filed out of time. Normally in the answering affidavit there will be a portion dedicated to condonation application. In the matter at hand, the notice to oppose and answering affidavit

was only served on the applicant's attorneys on Friday the 14th March 2025 outside the time frames fixed by the applicant. The respondent's original opposing papers were not filed with the registrar of this court.

- [15] The respondent's counsel had submitted the application served on the respondent did not contain the time frames fixed by the applicant, and hence they were under the impression that that they can serve and file their opposing papers at any time. After serving the applicant, the respondent did not file the original with the registrar of this court and wanted to hand it in court from the bar. There are some elements of dishonesty displayed by counsel for the respondent or from the instructions given to him by his instructing attorney. Counsel for the respondent when asked why the respondent's original opposing papers was not filed with the registrar, he had placed it on record that his instructing attorney had come to the registrar's office more once before the 14th March 2025 to try and file opposing papers but the registrar refused to accept them. When it was pointed to him that the notice to oppose and answering affidavit were only signed and commissioned on 14th March 2025, he stated that maybe his instructing attorney wanted to file unsigned answering affidavit. He made these submissions without instructions from his instructing attorney, whilst a counsel act based on instructions from his/her instructing attorney.
- [16] In urgent applications an unsigned affidavit if the other party is given truncated time period is usually served and filed, and on the date of hearing a properly signed and commissioned affidavit will be handed in. That is done solely to meet the fixed time periods, and also to make the other party aware of what case they are going to meet, and should they with reply, they be able to do so timeously. Counsel for the respondent could not answer why the alleged unsigned answering affidavit was not served on the applicant's attorneys if indeed they wanted to file it with the registrar. The normal procedure is that you first serve the interested party to the proceedings, and thereafter file the original with the registrar of the court. In this case is quite strange that the respondent was more interested in only filing with the court and not serving the party that called him to attend court. It seems that the respondent attorney is not aware that a notice to oppose is signed by the attorney who had prepared it and does not need the signature of his client. Therefore, if in indeed the submission by the respondent's counsel is correct, the notice to oppose should have been signed and served before the 14th March 2025 and not bear the same date with the answering affidavit. If the respondent was served with an application without time frames, why was the respondent's attorney so anxious in trying to file unsigned papers. The only conclusion is that the respondent's counsel or through the instructions from his instructing attorney was trying mislead the court as to the reasons why the respondent's opposing papers were not served and filed timeously, whilst the respondent was served with the application on 10th March 2025.

- [17] The misleading of the court by the respondent's counsel or through his instructions from his instructing attorney did not end there. The respondent's counsel alleges that the application that was served on the respondent did not have time frames within which they were required to file opposing papers. On perusal of the application in possession of the respondent's counsel, is totally different from the one that the applicant alleges that it was the original that was served on the respondent. That led to the court giving directive to the applicant's attorney that the deputy sheriff be called to clarify the court on which documents were actually served on the respondent. The deputy sheriff came and confirmed that he had served the respondent with a notice of motion, founding affidavit and annexures, and rule 41A notice. These are the documents contained in the original application filed by the applicant. The deputy sheriff's version is corroborated by the return of service which he prepared after serving the application on the respondent.
- [18] What appears from the copy of the application handed in by counsel for respondent, is that the application has been rearranged. The last page of the notice of motion was removed and replaced with the last page of rule 41A notice. From the original application the times frames fixed by the applicant's attorney appears on the last page of the notice of motion which the attorney for the applicant had signed, and that is the page that is missing on the copy in possession of the applicant's counsel. By removing the last page of the notice of motion and replacing it with the last page of the rule 41A notice, whoever did that his/her intention was to try and mislead the court that the application that was served on the respondent did not have time frames. However, that person did not do a thorough job, as he/she did not notice that the document attached requires the respondent to indicate whether they are agreeable to matter been referred for mediation, which shows that it was the last page of the rule 41A notice. Even the application itself shows the original staples that was used by the deputy sheriff to bind the documents has been removed and the documents were again stapled together. The deputy sheriff has testified that he had no reason to remove any document from the applicant's application and was not challenged by counsel for the respondent on that version.
- [19] The return of service by the deputy sheriff state that the application was served personally on the respondent after the original document was displayed and the nature and contents explained. The originals will be the signed notice of motion, signed and commissioned founding affidavit, and signed rule 41A notice. Counsel for respondent when asked why copy of the application that was served on the respondent did not contain the rule 41A notice, he wanted to blame counsel for the applicant as the person who might have removed it as he alleges that when he came to court he had seen the rule 41A notice in the copy of the application in his possession, but was surprised that it was missing, and anything could have happened whilst he was having a discussion with the applicant's counsel. His attempt to try and blame counsel for applicant had no merit as according to counsel for the respondent, copy of the application which he had handed it in court was still stapled together same way he

was given by his instructing attorney. Counsel for respondent was asked whether he wishes to call his instructing attorney to come and clarify the court on anything that looks obscure, and he stated that there was no need.

[20] All these shows that the respondent was aware that he was out of time with the filing of his opposing papers and did not have persuading reasons why he was out of time since he was timeously served with the application. The respondent devised a means of trying to mislead the court by rearranging the application and removing the page that contained the time frames within which to serve and file opposing papers. From the time the application was adjourned twice, the respondent did not attempt to prepare a substantive condonation application, but instead opted to launch a parallel application in the lower court well knowing that there is a pending application which deals with the same issues in the high court. This was done with sole purpose of trying to cause confusion, and has also an element of undermining the authority of this court. Since the issue of the ex parte urgent application in the lower court was raised by counsel for the applicant for noting, and counsel for the respondent did not have instructions on that, I will not take it any further but will take that into consideration when dealing with costs.

[21] It is clear that counsel for respondent or through the instruction given to him by his instructing attorney was not honest with this court in the manner in which he wanted represent the respondent. Legal practitioners are officers of the court and are expected to act with integrity, honesty and with diligence at all times. Legal practitioners play an important role in the administration of justice, and a high level of professional standard is expected from them. As officers of the court, legal practitioners are expected to assist the court and not mislead it. The duties of the of an attorney were summarised by Kirk-Cohen J in *Law Society, Transvaal v Mathews*¹ as follows:

“The attorney is a person from whom the highest standard are expected by the profession and this court. if an attorney wishes to digress from that standard he may do so but he must first cast aside his profession by resigning and then pursue his chosen course. He cannot serve two masters. In this regard the standards are admirably dealt with in the founding affidavit as follows:

‘An attorney is a professional man whose independence and freedom in the conduct of his practice are recognised and preserved. Within the limits of the law and rules of the professional conduct an attorney conducts, and in fact should conduct, his practice with a high degree of independence. The

¹ 1989 (4) SA 389 (T) at 395F-396B

profession itself is not a mere calling or occupation by which a person earns his living. An attorney is a member of a learned, respected and honourable profession and, by entering it, he pledges himself with total and unquestionable integrity to the society at large, to the courts and profession ... only the very highest standard of conduct and repute and good faith are consistent with the membership of the profession which indeed only function effectively if it inspires the unconditional confidence and trust of the public. The image and standing of the profession are judged by the conduct and reputation of all its members and, to maintain this confidence and trust, all members of the profession must exhibit the qualities set out above.

The attorneys' profession can only fulfil its obligations to the community and comply with this role in the administration of justice in the land if it inspires and maintains the unconditional confidence of the community and if its members devote their absolute integrity to the conduct of their profession and to the fulfilment of all the requirements demanded of the profession and its members. The integrity of an attorney should inter alia manifest itself in a situation where he must prefer the interest of his client above his own. It is required of an attorney that he observes scrupulously, and complies with the provisions of the Attorneys Act and rules".

- [22] What the respondent's legal representative did in this matter was a deliberate and intentional attempt to mislead the court. The rules of court and practice directive of each division are meant for the smooth running of the court. Any deliberate attempt to ignore them by a legal practitioner, there is no reason why the court should be merciful on that practitioner more especially where the practitioner act with no integrity or honesty. The respondent has not furnished this court with single acceptable reason why they have failed to make a substantive application for condonation for late filing of their opposing papers, but had tried to devise some means to try and mislead the court.
- [23] Taking into consideration the evidence tendered in this matter, and arguments presented, the applicants' objection stand be upheld. Since the respondent were aware that they were supposed to make a condonation application, but deliberately tried to mislead the court, the court find no justifiable reasons why the proceedings should be stayed to enable the respondent to file a substantive condonation application, or to permit them to present their application for condonation from the bar. The matter will be finalised on unopposed basis. The applicants have established that the matter is urgent and will be enrolled as such. On merits, the applicants had satisfied the requirements for granting of a final interdict.
- [24] Counsel for applicants has applied for a costs de bonis propriis due to the conduct displayed by the respondent's attorneys. Costs of this nature are rarely granted. This court had found that

the respondent's attorneys had acted without integrity, as they have rearranged the application served on the respondent with the sole purpose of trying to mislead this court into believing that the respondent's copy did not contain time frames within which to file opposing papers. That in itself amounted to dishonesty. From the beginning counsel for respondent or through the instructions he received from his instructing attorney tried mislead the court regarding the number of times his instructing attorney tried unsuccessfully to file the opposing papers with the registrar of this court. The submission that counsel for respondent made was that it was his instructing attorney who gave him such instructions. However, when given an opportunity to call the instructing attorney to come and clarify the court, he submitted that it was not necessary. With regard to the institution of the parallel case in the lower court, it will be through the advice the respondent received from his attorney. It will therefore be unfair to punish the respondent for the actions of his attorney. This is one of the rare cases where costs de bonis propriis will be appropriate.

[25] In the result the following order is made:

25.1 The applicants' objection is upheld and the respondent's notice to oppose and answering affidavit is rejected as no condonation application for their late filing was made.

25.2 The applicants' non-compliance with this honourable court's practice directive relating to the set down of urgent applications is condoned.

25.3 Non-compliance with the rules relating to service and time periods are condoned and this matter is heard as urgent in terms of rule 6(12).

25.4 The respondent is interdicted from operating his mini-bus taxi along Jane Furse-Johannesburg route and/or any route without a valid operating permit.

25.5 The respondent is interdicted and restrained from preventing and/or obstructing the members of the applicants and their drivers from engaging in their normal business of transporting passengers along their designated route.

25.6 The respondent is interdicted and restrained individually and/or together with any individual/s or organisation/s or person/s, from intimidating, threatening or threatening to harm members of the applicants, their employees and are further ordered to desist from unlawfully interfering with the applicants' business operations in any way.

25.7 The respondent is interdicted from forcing members of the applicants to join SA Local and Long Distance and Bus Organisation (SALLDTBO) or any rival taxi association.

25.8 The respondent is interdicted from issuing unlawful instructions to members of the applicants to join SA Local and Long Distance Taxi and Bus Organisation (SALLDTBO) and or any other rival association of the applicants.

25.9 The South African Police Services and other relevant law enforcement agencies are requested to assist in ensuring compliance with the terms of this court order in the event of non-compliance by the respondent with the contents thereof.

25.10 Costs de bonis propriis is awarded against the respondent's attorney on scale C.

25.11 Copy of this judgment must be sent to the Legal Practice Council (LPC).

KGANYAGO J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA,
LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

Counsel for the applicants	: JL Rahlagane
Instructed by	: JL Rahlagane attorneys
Counsel for the respondents	: Adv Mamogobo
Instructed by	: Thato B Kgapola attorneys
Date heard	: 26th March 2025
Electronically circulated on	: 1st April 2025