



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2025/073647

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

SIGNATURE

10 Jun. 25
DATE

In the matter between:

VILOT TRANSPORT CC

Applicant

and

EMPEDOCLES, JULIAN PETER

First Respondent

TRANS BUS AFRICA CC

Second Respondent

**AMAROSA TRADING (PTY) LTD
t/a THARI BUS SERVICES**

Third Respondent

MOHASOA, DIMAKATSO ARNOLD MICHAEL

Fourth Respondent

JUDGMENT

LABUSCHAGNE J

[1] In the week of 3 to 6 June 2025 the applicant brought an urgent application against the respondents seeking urgent relief to the following effect:

- “2. That the first respondent and second respondent, acting together or independently of each other, be hereby restrained and interdicted from interfering with the business operations of the applicant.*
- 3. That the first respondent and second respondent, acting together or independently of each other, are hereby restrained and interdicted from harassing the employees of the applicant.*
- 4. That the first respondent and second respondent, acting together or independently of each other, are hereby restrained and interdicted from contacting the clients of the applicant, particularly the third respondent, under the pretence that they are in possession of a provisional liquidation order against the applicant.*
- 5. That it is hereby declared that the provisional liquidation order that was granted in favour of the second respondent on 25 February 2025 under case number 2024-113102 does not affect the applicant.*
- 6. That the third respondent is hereby directed and authorised to release the funds due to the applicant for service rendered in terms of the service level agreement.*
- 7. That the first and second respondents are hereby ordered to pay the costs of this application on the attorney and own client scale.”*

- [2] In 2012 the applicant intended entering into an agreement for the rendering of a bus service with the third respondent (Thari), which had a contract with the Department of Transport in the North West Province. It was required of the applicant to obtain a partner with experience in rendering a bus service. The applicant then partnered with Rustenburg Coach Lines and established a joint venture vehicle, Vilot RCL (Pty) Ltd ("RCL"). The applicant contends that Vilot RCL entered into a contract with the third respondent on 7 September 2012 and this contract was terminated on 28 February 2022. The termination flowed from the lapsing of the contract between the Thari and the Department of Transport. The applicant contends that the joint venture then disbanded and that the applicant thereafter, in terms of an oral agreement, agreed with Thari to continue rendering the same service on the same terms as the written agreement between RCL and the third respondent. For purposes of convenience, I will refer to the joint venture vehicle as "RCL" and I will refer to the applicant as "Vilot".
- [3] The second respondent applied for the liquidation of RCL and obtained a provisional order on 25 February 2025. The return date was 14 April but was extended to 10 June 2025. The applicant has applied to intervene in the aforesaid liquidation proceedings and its intervention will be argued on 10 June 2025.
- [4] On 14 March 2025 Mr Kapp, attorney for the first and second respondents and a manager of the second respondent attended at the applicant's depot in Brits. Mr Khounou was on duty. He was told by Mr Kapp that from that day on he shall report to the manager of the second respondent. The deponent of the

applicant, Mr Ebrahim was telephoned, and he also arrived at the premises. Mr Kapp advised him that they have just come from the third respondent where they met with Mr Morelli. He said that they were then notified by Mr Kapp that: *“As of today the applicant is liquidated and that the deponent will be reporting to the manager of Trans Bus Africa CC (the second respondent).”*

[5] Mr Morelli, on behalf of the third respondent refuses to pay the applicant without a court order.

[6] It is apparent that a provisional liquidation order was granted in respect of RCL and not the applicant. It was obtained under case number 2024-113102.

[7] Although Mr Morelli on behalf of the third respondent advised that funds will only be released if a court order to that effect is granted, he filed a notice to abide in the proceedings before me.

[8] The applicant contends that the urgency lies therein that the applicant has been rendering the service for the third respondent without being paid for it for the last few months and that its funds and resources are busy running out. If the routes are stopped, the public will be left in the lurch.

[9] From the answering affidavit it is apparent that the liquidator of RCL is of the view that RCL and the applicant are one and the same entity. That is clearly not the case. There is however cause for confusion arising from the documents that served before me. So, for example, the service level agreement which the applicant contends was concluded between Thari (the third respondent) and RCL in 2012 has confusing provisions. On the first page

an entity called Vilot Transport (Pty) Ltd is identified as the operator. There is no such entity as the applicant is a close corporation. In the body of the agreement, in the clause dealing with chosen *domicilia* (clause 11.1) the subcontractor is identified as RCL.

[10] Assuming that the same entity was intended, the description of the operator on page 1 of the agreement lacks the words “RCL” and could constitute a misnomer. However, it is not the applicant on the face of it as there is express reference to that subcontractor having directors. As the applicant is a Close Corporation with members, this is an indicator that a company was intended to be referred to and not a close corporation like the applicant.

[11] Annexure “AA7” to the answering affidavit is a remittance advice which on the face of it refers to payments made by the third respondent to the applicant. However, in the body of the document reference is made to EFTs to “RCL”. This again is a source of confusion as to who is the contracting party of the third respondent.

[12] The issue of urgency requires further scrutiny. In a document dated 31 March 2025 annexed to the answering affidavit as Annexure “AA14” the third respondent wrote a letter (represented by Franco Morelli), its general manager, and it was addressed to the applicant. It reads as follows:

“Re: Notice of termination of services

We refer to recent communication from your legal representatives, where it is alleged that an oral agreement was concluded between yourselves and our

company, in terms of which you were to render transport services as a subcontractor. We categorically deny the existence of any such oral agreement.

While you assert that your Close Corporation has been providing transport services to us, we are not certain of the identity of the legal entity engaged, as there is no formal agreement in place between our company and yours.

Accordingly, you are hereby formally instructed to cease all services with immediate effect.

We reiterate that no agreement exists between our entities and we do not wish to receive any further services from you.

Yours faithfully

Signed Franco Morelli, General Manager

31/03/2025”

- [13] At the foot of the document is an acknowledgement of receipt of the notice by Eric, a general manager of the applicant. It is also dated 31 March 2025
- [14] The applicant is seeking urgent relief that includes payment by the third respondent for services rendered. From the aforesaid letter it is apparent that Thari has not required those services and in fact insisted on the termination of those services with effect from 1 April 2025.

[15] In light of the denial of liability to the applicant, perhaps influenced by uncertainty as to whether the applicant is the party entitled to payment, the effect of the aforesaid quoted letter is that the applicant has been rendering services to Thari since 1 April 2025 at its own risk.

[16] In light of the clear direction to immediately cease rendering services, and the applicant's subsequent ignoring of that instruction, I am of the view that whatever urgency exists, due to the depletion of the applicant's resources, is self-created.

[17] In light of the aforesaid, the applicant has not established that its application is urgent within the meaning required in terms of rule 6(12) of the Uniform Rules of Court. The applicant may obtain substantial redress in the application in which it seeks to intervene on 10 June 2025.

[18] In the premises I make the following order:

1. The application is struck for lack of urgency.
2. The applicant is to pay the costs on Scale B.



LABUSCHAGNE J

JUDGE OF THE HIGH COURT