

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 13135/2011

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

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SIGNATURE

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DATE

In the matter between:

**VULINDLELA BERGVILLE
LONG DISTANCE TAXI
ASSOCIATION**

APPLICANT

And

**GAUTENG PROVINCIAL REGULATORY
ENTITY**

FIRST RESPONDENT

**SIZWE TRANSPORT TAXI
ASSOCIATION**

SECOND RESPONDENT

J U D G M E N T

MALI AJ

[1] This is an application to review and set aside the decision of the first

respondent of 2 June 2010, that:

1.1. The original members of Vulindlela Taxi Association who are duly registered in KwaZulu- Natal be transferred back to Bergville Taxi Association;

1.2. The Vulindlela Taxi Association members who are registered in Gauteng Province be catered for by the Registrar of Public Transport in Gauteng without losing their rights to operate on the route from Johannesburg to Bergville and back. These members will be registered under Sizwe Transport Taxi Association without losing their right to operate on the route from Johannesburg to Bergville and back;

1.3. The operational agreement that exists between Sizwe and Bergville Taxi Association be extended to cover the members who have returned from Vulindlela Long Distance Taxi Association

[2] The applicant is a Taxi Association an association as defined in Section 1 of the National Land Transport Transition Act, No. 22 of 2000 (“NLTTA”) and Section 2 of the Gauteng Public Passenger Road Transport Act, No. 7 of 2001 (“ the Gauteng Transport Act”).

[3] The first respondent is the Gauteng Regulatory Entity appointed in terms of Section 60 of the Gauteng Transport Act read with Section 53 of the NLTTA. It is also referred as Gauteng Transport Registrar. The second respondent is Sizwe Transport Taxi Association (“Sizwe”). The second respondent is an association as defined in Section 1 of the NLTTA and Section 2 of the Gauteng Transport Act.

[4] The applicants advanced the following grounds of review:

4.1. The transport registrar being an administrator acted under a delegation of power which was not authorised by the empowering provisions; in that the registrations and other matters relating to minibus taxi industry was created and regulated by legislation under Chapter 2 of NLTTA.

4.2. The administrator was not authorised by the empowering provision in that amongst other things; the Gauteng Transport Act does not give the first respondent extra powers to finalise allocation and determine the authentic operator of the route from Johannesburg to Bergville as he purported to unless he is dealing with registration. The first respondent further summarily and without reason divided the members of the Applicant into two and allocated them to two other associations, including the second respondent who does not have a right to operate on the route operated by the applicant. The administrator further ordered that the agreement between the second respondent and another association be extended and to bind them even when they were not parties to the agreement.

4.3. The administrator was biased or reasonably suspected of bias in that the verdict and the reasons for his verdict clearly shows that he did not consider the written submissions and arguments presented at the inquiry because his reasons are unrelated to and totally foreign to the issues raised.

4.4. The administrators' action was materially influenced by an error of law in that the first respondent incorrectly interpreted and misunderstood his powers and functions under the NLTTA and Gauteng Transport Act and the provisions thereto.

4.5. The administrator's action was for a reason not authorised by the empowering legislation, for an ulterior motive, irrelevant consideration were taken into account and relevant considerations were not taken into account, it was taken in bad faith, arbitrarily and capriciously.

4.6. The administrator's action itself is not rationally connected to the purpose for which it was taken, the purpose of the empowering legislation, the information before the administrator or the reasons given for it by the administrator; and that

4.7. The administrators' action is otherwise unconstitutional and unlawful.

[5] The above grounds of review are in line with the provisions of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) ("PAJA")

[6] **In Bato Star Fishing v Minister of Environmental Affairs [citation]**; O' Regan J held that: **An order declaring the administrator's decision invalid;**

“there are no two systems of law regulating administrative action- the common law and the Constitution- but only one system grounded in the Constitution. The courts’ power to review administrative action no longer flows directly from the common law, but rather from the constitutionally mandated PAJA and from the Constitution itself. The grundnorm of administrative law is now to be found in the first place not in the doctrine of ultra vires, nor in that of parliamentary sovereignty, or in the common law itself, but rather in the principles of the Constitution. The common law informs the provisions of PAJA and the Constitution, and derives its force from the latter. The extent to which the common law remains relevant to administrative review will have to be developed on a case- by- case basis as the courts interpret and apply the provisions of PAJA and the Constitution”.

[7] The role of the Courts has always been to ensure that the administrative process is conducted fairly and that decisions are taken in accordance with the law and consistently with the requirements of the controlling legislation. If these requirements are met, and if the decision is one that a reasonable authority could make, Courts will not interfere with the decision.

[8] Counsel for the applicant stated that in June 2005, the second respondent brought a review application to this honourable court against the applicant and the first respondent. The second respondent

sought to review and set aside the decision of the first respondent to register the applicant. The second respondent's complaint regarding the registration of the applicant by the first respondent involved the routes operated and registered by the applicant in particular the route from Johannesburg to Bergville Taxi Rank and return. The second respondent was not operating on that route. On 7 September 2009, Matojane J dismissed the review application with costs.

- [9] The applicant further submitted that on 12 March 2010 the first respondent mysteriously conducted an enquiry wherein it effectively decided to set aside the abovementioned decision. The applicant referred to an extract in annexure "TAM 3" page 41 of paginated documents; the "verdict" which reads as follows:

"The two associations have been having a dispute over the above mentioned route for a long time. This matter had several rulings from the Office of the Registrar, the Appeal Board and the High Court of South Africa (South Gauteng). The recent High Court order could not be implemented based on the misrepresentation of facts."

- [10] It is accordingly contended by the applicant that the actions of the first respondent are irrational and unreasonable as they set aside the court's judgment. As a result the first respondent dissolved the applicant from operating and merged it with the second respondent.

- [11] The applicant further argued that the said judgment by Matojane J had already determined the issues in particular the issue that the Registrar of Transport which is now the Gauteng Provincial Regulatory Entity (the entity represented by the first respondent) was empowered by the Act to exercise its discretion to register the applicants without the required minimum of 30 members. It is important to note that this issue was fully canvassed and properly decided by Matojane J. The court correctly found that the first respondent who was the second respondent in that matter carefully took into consideration that the applicant and the second respondent did not share the same routes.
- [12] The first respondent is not opposing the application. On behalf of the second respondent it was argued in *limine* that the applicants on 14 December 2010 had appealed the first respondent's verdict to the Gauteng Public Passenger Appeal Board ("the Board").
- [13] The Board had dismissed the appeal. Therefore the applicants should have joined the Board in these proceedings. The applicants submitted that the Board does not exist anymore as it was replaced by the first respondent. The second respondent did not challenge this contention by the applicant. Accordingly the point in *limine* fails and falls to be dismissed.
- [14] Counsel for the second respondent further made a detailed argument on how the applicants could not have been registered by the first

respondent as they do not qualify in many respects including that the number of their members did not reach 30. It was further argued that the registration of the applicant by the first respondent was provisional. In this regard the applicants submitted and proved that the first respondent finally registered them.

[15] In my view the issue of registration of the applicant which appears to be the gravamen of this application had been exhausted fully in the judgment of the honourable Matojane J. What is clear to me is that the respondents are not welcoming of the judgment. Actually I put it mildly they should be considered contemptuous.

[16] It is trite law that **any** party who is not satisfied with the court's judgment is entitled to appeal to the higher court. It was open for the second respondents to appeal the alleged non- implementable judgment of the high court order.

[17] Having regard to the above I find that the actions of the first respondent were irrational, unreasonable and not within the spirit of law.

ORDER

[18] In the result the following is ordered:

1. The decision of the first respondent is invalid and accordingly set aside;
2. The first and second respondents are ordered to pay costs, jointly and severally with the one paying the other to be absolved.

MALI AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

APPEARANCES

Counsel for the Applicant	:	Adv G.J. Lidovho
Instructed by	:	Sisa Nhlabathi
Counsel for 2 nd the Respondent	:	Mr M J Mashavha
Instructed by	:	HR Munyai Attorneys
Date of Hearing	:	30 April 2015
Date of Judgment	:	