**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG LOCAL DIVISION, JOHANNESBURG**

**CASE NUMBER: 1481/2020**

| **DELETE WHICHEVER IS NOT APPLICABLE** | |
|---|---|
| 1.REPORTABLE: | YES/NO |
| 2.OF INTEREST TO OTHER JUDGES: | YES/NO |
| 3.REVISED | |
| ..... | ..... |
| **DATE** | **SIGNATURE** |

In the matter between:

**MBOKAZI, DINGINDA PETROS** Applicant

**and**

**ALEXANDRA TAXI ASSOCIATION** First Respondent

**MAYABA, VUSI** Second Respondent

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**JUDGMENT**

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**DIPPENAAR J**

[1] The applicant seeks, as a matter of urgency, final interdicts that: (1) the wrongful decision of the first and/or second respondents to prohibit certain of his motor vehicles from operating under the first respondent be revoked with immediate effect; and (2) the first and/or second respondents be prohibited from interfering in the operation of the applicant's vehicles with immediate effect, together with costs. In the alternative interim interdictory relief is sought.

[2] The respondents oppose the application on various grounds. Pursuant to hearing argument on the issue of urgency, I ruled in favour of the applicant. It is well established that commercial urgency can form the basis of an urgent application[1].

[3] As the applicant primarily seeks final relief, the application must be determined in accordance with the principles enunciated in *Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [2]. For the reasons dealt with later in this judgment, I am not persuaded on the papers that the applicant has made out a case for final relief. I return to this issue later.

[4] In considering the applicant's alternative claim for interim relief, the principles in *Webster v Mitchell*[3] apply. The requirements for interim interdictory relief are trite[4]. They are: (1) a prima facie right, although open to some doubt on the part of the applicant; (2) an injury actually committed or reasonably apprehended; (3) a favourable balance of convenience; and (4) the absence of any other satisfactory remedy available to the applicant.

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[1] Twentieth Century Fox Film Corporation and Another v Anthony Black Films (Pty) Ltd 1982 (3) SA 582 (W) 586F-G
[2] 1984 (3) SA 623 (A) 634-635 and National Director of Public Prosecutions v Zuma, Mbeki and Another Intervening 2009 (2) SA 277 (SCA) para [26]
[3] 1948 (1) SA 1186 (W) 1189
[4] Setlogelo v Setlogelo 1914 AD 21

[5] The applicant's case is that he is a member of the first respondent ("ATA") and the owner of various vehicles which operate as taxis. Four vehicles are identified in the papers. He is also the sole director of an entity styled Hlumkasi Transport Services (Pty) Ltd ("HKS"). HKS is not a party to these proceedings. The second respondent is the chairperson of the first respondent.

[6] It is common cause that the first respondent is regulated by a constitution (the ATA constitution). Although the parties presented different versions of the said constitution, the relevant provisions relied on by the parties are in similar terms.

[7] The background to the application is that the applicant contends that he concluded an agreement with Edgars Fourways for the transport of its employees. The applicant contends that the first respondent has unlawfully interfered in his contractual relationship with Edgars by addressing correspondence to Edgards on 6 December 2019 advising, inter alia, that the executive members of the first respondent would like to take over the management of staff transportation and that all further payments were to be made to the first respondent's account. The applicant became aware of such correspondence on 10 December 2019. He consulted his attorney and correspondence was addressed to the first respondent requesting them not to interfere in the contractual relationship between the applicant and HKS and Edgars on 17 January 2020.

[8] On the same date applicant was notified by his drivers that the second respondent, on behalf of the first respondent had issued instructions not to allow the vehicles registered under the name of the applicant to operate. This triggered the present application.

[9] The respondents dispute the applicant's version of events. On their version, the Edgars Fourways store contract in essence provided for a certain number of taxi vehicles to operate to and from the Edgars store in Fourways. The applicant was initially in charge of collecting payments in operation of this contract and then distributing the monies to the relevant taxi drivers who had operated there. Over time, the applicant

started to effect a monopoly as he would only allow vehicles owned by him to operate in the area and would at times make provisions for members of another taxi association to operate in contravention of the ATA constitution. This caused some of the ATA members to become disgruntled.

[10] Informal disciplinary proceedings were held during which the applicant was made aware that his conduct was improper. He apologised and agreed he would no longer prevent other ATA members from loading passengers at the Edgars Fourways store. It appeared the matter was resolved. During the first week of December, the applicant again interfered with ATA members using the Edgars store as an operating point. A complaint was lodged and the applicant ignored all attempts to communicate with him. An informal meeting was held on 6 December 2019 at which it was the issues were resolved and the parties agreed that the ATA would take over the disbursement of payments to be received in relation to the operations at the Edgars store and specific vehicles, including at least one of the applicant's vehicles which would continue transporting passengers. On receipt of the letter from the applicant's attorneys, the respondents unsuccessfully attempted to make contact with the applicant. As a last resort, the ATA again stopped the applicant's vehicles, which led to the present state of affairs.

[11] The respondents admit the instructions given by them not to allow the applicant's vehicles to operate. It is not disputed that the applicant was not notified of any intention to issue such instructions.

[12] The applicant contends that the respondents have failed to comply with the ATA constitution by terminating his membership and taking a decision not to allow his vehicles to operate without following the grievance and disciplinary procedures prescribed by the ATA constitution and without affording him any opportunity to be heard or exercise any of his rights under the said constitution.

[13] The main focus of the respondents' opposition was that the applicant's membership with it had lapsed and that there was no interference with any contractual relationship between the applicant and Edgars, Fourways as the document relied upon by the application did not constitute a contract. It is not necessary to consider the latter issue in any detail as the applicant has not sought any relief in relation thereto. Suffice it to state that there is a substantial dispute between the parties in relation to the Edgars contract. The former issue forms the nub of the application.

[14] The respondents contend that the applicant has not illustrated any right to relief even on a prima facie basis as he is not a member of the ATA and his membership has lapsed due to his failure to pay his membership fees and complete a membership renewal form. They contend that two amounts were payable, a specified amount in respect of the renewal and a further amount towards the women's league of the association. It is contended that the ATA at no stage renewed membership by merely receiving payment into the association's bank account directly without first having attended their offices for purposes of applying for renewal.

[15] It was undisputed on the papers that membership of the first respondent is for a calendar year and that members are required to renew their membership annually before 31 December. It is further common cause that the applicant has been a member of the ATA for a period in excess of fifteen years.

[16] It is common cause that in terms of the ATA constitution, there is a grace period of 21 days after the due date (31 December) afforded to members to pay the outstanding membership fees, failing which a member will be suspended until his fees are paid.

[17] The applicant on the other hand contends that he paid the necessary amount renewal amount of R1500, which included a renewal fee of R1 200 and R300 for the women's league fee within the 21day grace period and on 20 January 2020. The applicant avers that he sent the ATA proof of payment, on which he had added the

words *"For 2020 Membership Renewal"* in manuscript. On this basis, the applicant denied that his ATA membership had lapsed.

[18] Although admitting that the payment was received, the respondents contend that the payment had been made into the wrong banking account and without a reference as to what the payment related to. The money was paid into an account used by the ATA to pay its daily expenses. It is contended that payment should have been made into a different account, dedicated to receipt of renewal fees. On this basis, it is contended that the payment is irregular and the first respondent has been deprived of the opportunity to ascertain whether renewal ought to have been granted.

[19] The respondents have tendered return of the amount paid by the applicant as it *"is not accepted … as a due and proper renewal".*

[20] There is a further dispute between the parties as to how the renewal of membership was effected. The parties' version of the procedure actually practiced adopted during the applicant's membership differ materially.

[21] The respondents contend that at no stage has it ever renewed membership by merely receiving payment without attending at its offices first for the purposes of replying for the renewal.

[22] This allegation is disputed by the applicant who avers that throughout his membership with the first respondent, the procedure he followed was to pay cash at the ATA offices where he did not complete any renewal forms. A membership card was issued after payment. He contends that the payment of the renewal was sufficient to make him a member of the first respondent. He further pointed out that the ATA constitution did not make it a requirement to attend the ATA offices for payment in order to be legible for membership. Significantly, the respondents did not attach any of his renewal forms to support its case illustrating the procedure to be followed.

[23] The respondents argue that the applicant is thus not deemed to be a member as he has not reapplied for membership but has clandestinely trying to effect payment without informing the first respondent thereof. This argument disregards the fact that the payment issue is one of substance over form. It cannot be ignored that the required payment was indeed made within the grace period afforded by the ATA constitution. On the respondents own version, the effect of non-payment is to suspend the membership of a member until payment is made; it is thus not an automatic termination of membership.

[24] It cannot be said that the various disputes of fact on the papers are not bona fide[5] or that either version can be rejected out of hand as far-fetched and untenable. On the papers these issues are irresoluble.

[25] I am however persuaded that for purposes of considering whether the applicant has illustrated a prima facie right, that on the undisputed facts I have referred to, he has done so, and that there is a triable issue regarding the applicant's membership of the first respondent. If it is ultimately found that the applicant is and was a member at the relevant time, it is common cause between the parties that the ATA's grievance procedures were not followed. The applicant is afforded certain rights under the ATA constitution, which , prima facie, may well have been violated by the conduct of the respondents.

[26] I am persuaded that on this basis, the applicant has illustrated a prima facie right, although open to some doubt.

[27] The applicant contends that he is suffering irreparable financial harm due to the inability to operate the vehicles of which he is the owner, resulting in financial hardship. The respondents do not dispute this or put up any controverting facts, but contend that that financial harm is not a sufficient ground for interdictory relief.

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[5] Considering the approach adopted in Wightman t/a JW Construction v Headfour (Pty) Ltd & Another 2008 (3) SA 371 (SCA) paras [12] and [13]

[28] I disagree. The risk of harm to the applicant if he were not allowed to operate his taxis is self-evident. On the papers, I am satisfied that the applicant has met this requirement.

[29] The respondents have not contended for any prejudice were the interim relief sought to be granted. The applicant contends for prejudice in that he will be unable to derive an income and thus maintain his family or meet his financial obligations of some R11 974.82 payable monthly to Wesbank, which has financed one of his vehicles. The balance of convenience thus strongly favours the applicant.

[30] In considering the balance of convenience, I have applied the test enunciated in *Olympic Passenger Service (Pty) Ltd v Ramlagan*[6], being, the stronger the prospects of success, the less the need for the balance of convenience to favour the applicant; the weaker the prospects of success, the greater the need for the balance of convenience to favour the applicant.

[31] In applying this test, I am satisfied that the applicant has met the necessary threshold.

[32] The respondents further contend that the applicant has an alternative remedy in that he may claim damages against them for any losses suffered in due course. This contention lacks merit considering the facts. I am not persuaded that the existence of a damages claim is a suitable alternative remedy in the circumstances.

[33] For these reasons I am persuaded that the applicant should be granted interim relief. On an interim basis, the applicant sought relief pertaining to the operation of his vehicles. The relief sought in the applicant's notice of motion is cast in wide terms, specifically in relation to an interdict prohibiting the respondents from interfering in the operation of the applicant's vehicles. Such relief would not be appropriate, even on an

[6] 1957 (2) SA 382 D

interim basis as it would deprive the respondents from lawfully exercising their rights in terms of the ATA constitution. At best, the applicant should be protected from any unlawful interference.

[34] It would be appropriate to reserve the issue of costs at this stage.

[35] I grant the following order

[1] Pending the final determination of this application, the decision by the respondents to prohibit the applicant's vehicles bearing registration numbers F[…] GP, X[…] GP, Y[…] GP and B[…] GP from operating under the first respondent and the execution of such decision are suspended;

[3] Pending the final determination of this application, the respondents are prohibited from unlawfully interfering in the operation of the applicant's vehicles bearing registration numbers F[…] GP, X[…] GP, Y[…] GP and B[…] GP

[2] The costs are reserved.

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**EF DIPPENAAR**
**JUDGE OF THE HIGH COURT**
**JOHANNESBURG**

**APPEARANCES**

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|---|---|---|
| **DATE OF HEARING** | : | 28 January 2020 |
| **DATE OF JUDGMENT** | : | 06 February 2020 |

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| **APPLICANT'S COUNSEL** | : | Mr BK Hlangwane |
| **APPLICANT'S ATTORNEYS** | : | MNM & Associates Attorneys<br>Mr Hlangwane |
| **RESPONDENT'S COUNSEL** | : | Adv B Brammer |
| **RESPONDENT'S ATTORNEYS** | **:** | David H Botha, Du Plessis<br>& Kruger Attorneys |