

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 21/31098

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

Date: 26 August 2021

A handwritten signature in blue ink, appearing to be "P. V. S.", is written over a dotted line.

In the matter between:

**PUTCO (PTY) LTD**

Applicant

and

**CITY OF JOHANNESBURG METROPOLITAN  
MUNICIPALITY**

1<sup>st</sup> Respondent

**THE SOUTH AFRICAN NATIONAL TAXI COUNCIL**

2<sup>nd</sup> Respondent

**ALEXANDRA, RANDBURG, MIDRAND, SANDTON  
TAXI ASSOCIATION**

3<sup>rd</sup> Respondent

**ALEXANDRA TAXI ASSOCIATION**

4<sup>th</sup> Respondent

**IVORY PARK TAXI ASSOCIATION**

5<sup>th</sup> Respondent

**MIDRAND TAXI ASSOCIATION**

6<sup>th</sup> Respondent

**RABIE RIDGE TAXI ASSOCIATION**

7<sup>th</sup> Respondent

**RANDBURG LOCAL AND LONG DISTANCE  
TAXI ASSOCIATION**

8<sup>th</sup> Respondent

**MEC FOR ROADS AND TRANSPORT,  
GAUTENG**

9<sup>th</sup> Respondent

---

**JUDGMENT**

---

**MUDAU, J:**

- [1] This application has been brought on an urgent basis in accordance with Rule 6(12) of the Uniform Rules of Court. Putco (Pty) Limited ('Putco') launched this application against the first respondent, the City of Johannesburg Metropolitan Municipality ('the City'); the South African National Taxi Council (second respondent); groupings of minibus taxi associations (third to eighth respondents) and the MEC for Roads and Transport, Gauteng (ninth respondent) cited as a nominal respondent for the Department of Roads and Transport, Gauteng Province ('GDRT').
- [2] The City is a Metropolitan Municipality established in terms of the Local Government Municipal Structures Act.<sup>1</sup> The second to eighth respondents have not participated in these proceedings. The ninth respondent filed a notice to abide the decision of this court. The application is opposed by the City. Putco seeks an interdict against the City incorporating the new bus operating company and concluding or implementing any agreement with the taxi associations about their allocation of shares.
- [3] Paragraph 2 of Putco's Notice of Motion is relevant as it reads:

---

<sup>1</sup> 117 of 1998.



*'2. Pending the final outcome of the dispute resolution process between the Applicant and the First Respondent under section 46 (2) of the National Land Transport Act of 2009, including, under Regulation 7 of the National Land Transport Regulations on Contracting for Public Transport Services, 2009 published under GN R877 in GG 32535 of 31 August 2009 ("the Regulations"), mediation and, if mediation fails, a referral to the appropriate court for settlement of the dispute, the first respondent is interdicted from:*

*2.1 incorporating a bus operating company or other corporate entity for the purposes of Phase 1C(a) of the first respondent's integrated public transport operational plan (also known as "Rea Vaya"); and*

*2.2 negotiating, concluding and/or giving effect to or implementing any agreement with any of the Second to Eighth respondents or any of them in combination regarding their participation in, or shareholding of, a bus operating company or other corporate entity Incorporated for the purposes of Phase 1C(a) of the First Respondent's Integrated Public Transport Operational Plan (also known as "Rea Vaya").'*

- [4] The facts are largely common cause. Putco has been operating scheduled subsidized bus services in the City and large parts of Gauteng for many years. Putco provides these services in terms of an interim contract number 48 of 1997 entered into on 26 March 1997 (subsequently amended on 6 August 1997 and 7 December 1997 respectively) between Putco and the GDRT. This application arises against the background of on-going efforts on the part of the City to establish an integrated public transport network ('IPTN') in its metropolitan area and the relevant negotiations aimed at achieving this goal.
- [5] The City has developed the Integrated Public Transport Operational Plan (IPTOP) with a singular aim of integrating all existing methods of public transport into one network, under the umbrella 'Rea Vaya Rapid Bus System', which is being implemented in phases and on certain identified routes within the Municipality of Johannesburg. This is sanctioned by the National Land

Transport Act ('the NLTA').<sup>2</sup> "The NLTA repealed and replaced the National Land Transport Transition Act<sup>3</sup>, with the aim of furthering the process of transforming and restructuring the national land transport system. The City is rolling out Rea Vaya bus routes in phases as part of its IPTOP. The first two phases, Phase 1A and Phase 1B are done. Rea Vaya buses snake through Soweto and the Johannesburg CBD, their stops dotted along a London Underground-like map. By way of example, Putco became a 26% shareholder in the bus operating company that was incorporated for, and that currently operates the Phase 1B Rea Vaya bus service.

- [6] Phase 1C, which is central to the current dispute is up next for implementation. It will run from the CBD to Sandton along Louis Botha Avenue in an area called North East Quadrant. The City plans to incorporate the bus operating company in October this year. To this end, the City has been negotiating with affected parties such as taxi operators and the applicant to remove or reduce their operational services in exchange for shares in the Rea Vaya bus operating company since 2017. A dispute has arisen between the applicant on the one hand, and the City in the course of their negotiations, which has reached a stalemate.
- [7] Negotiations between the City and Putco broke down because they could not agree on criteria for determining how the new Rea Vaya routes will affect Putco's existing route from Soweto to Sandton, the so-called "affectedness criteria". Putco is unhappy that its level of "affectedness" has been determined

---

<sup>2</sup> 5 of 2009. Section 40 of the NLTA requires a municipality, among other things, to '*take steps as soon as possible...to integrate services subject to contracts in their areas, as well as appropriate uncontracted services, into the larger public transport system in terms of relevant integrated transport plans*'.

<sup>3</sup> Act 22 of 2000.



by the City to be 0.27%, which accordingly constitutes its shareholding percentage based on the outcomes of certain surveys conducted. The City has already agreed with the taxi associations about how many shares they will get in the new company.

- [8] Putco, as indicated, asks for an interdict against the City incorporating the new bus operating company and concluding or implementing any agreement with the taxi associations about their allocation of shares. Putco contends that if the City incorporates the new bus operating system and allocates shares to the taxi associations, there will be no shares left for Putco even if Putco ultimately succeeds in its dispute with the City. It argues further that it will also be left out of important management decisions. Putco contends further that the balance of convenience favours interim relief and that it has no alternative remedy. It maintains that it has a clear statutory right to invoke the dispute resolution process in section 46 of the NLTA, read with Regulation 7 of its regulations. Putco submits that section 46 and its tailored dispute resolution mechanism applies to its dispute with the City.

### **Legislative background**

- [9] The NLTA contains elaborate provisions allocating various responsibilities to the three spheres of government. Consistent with the constitutional imperative of the division of power between the national, provincial and local governments, the NLTA defines a “contracting authority” to mean the National Department of Transport, a province or a municipality.

- [10] In terms of s 11(1)(c)(xxvi) for example, the municipal sphere is responsible, inter alia, for ‘*concluding...negotiated contracts contemplated in s*

41(1) with operators for services within their areas'. Section 41 provides as follows:

*"(1) Contracting authorities may enter into negotiated contracts with operators in their areas, once only, with a view to—*

- (a) integrating services forming part of integrated public transport networks in terms of their integrated transport plans;*
- (b) promoting the economic empowerment of small business or of persons previously disadvantaged by unfair discrimination; or*
- (c) facilitating the restructuring of a parastatal or municipal transport operator to discourage monopolies.*

*(2) The negotiations envisaged by subsections (1) and (2) must where appropriate include operators in the area subject to interim contracts, subsidised service contracts, commercial service contracts, existing negotiated contracts and operators of unscheduled services and non-contracted services.*

*(3) A negotiated contract contemplated in subsection (1) or (2) shall be for a period of not longer than 12 years.*

*(4) The contracts contemplated in subsection (1) shall not preclude a contracting authority from inviting tenders for services forming part of the relevant network.*

*(5) Contracting authorities must take appropriate steps on a timeous basis before expiry of such negotiated contract to ensure that the services are put out to tender in terms of section 42 in such a way as to ensure unbroken service delivery to passengers."*

[11] In contrast, on existing contracting arrangements section 46 of the NLTA provides, in relevant parts as follows:

*"(1) Where there is an existing interim contract, current tendered contract or negotiated contract as defined in the Transition Act in the area of the relevant contracting authority, that authority may—*

- (a) allow the contract to run its course; or*
- (b) negotiate with the operator to amend the contract to provide for inclusion of the operator in an integrated public transport network; or*
- (c) make a reasonable offer to the operator of alternative services, or*



*of a monetary settlement, which offer must bear relation to the value of the unexpired portion of the contract, if any.*

*(2) If the parties cannot agree on amendment of the contract or on inclusion of the operator in such a network, or the operator fails or refuses to accept such an offer, the matter must be referred to mediation or arbitration in the prescribed manner to resolve the issue.*

*(3) The Minister may make regulations providing for the transition of existing contracting arrangements and the transfer of the contracting function in terms of this section or section 41, including the transfer or amendment of existing permits or operating licences to give effect to its provisions in the case of an assignment under section 11(2) ...”.*

[12] In turn, Regulation 7 prescribes the “mediation” process mentioned in section 46(2). It is an expedited process that must end if there is no mediated settlement within 60 days. Then, either party may “institute proceedings in the appropriate court for settlement of the dispute”.<sup>4</sup>

[13] According to Putco, it does not matter that its contract is with the Provincial government. What matters is that Putco’s contract is an “existing interim contract” and that Putco’s routes under its contract take place “in the area of the relevant contracting authority”, being the City of Johannesburg. It contends that the better interpretation is that “negotiations” under section 41 are the same “negotiations” referred to in section 46(1)(b). It contends that the City’s offer to Putco of a paltry number of shares in the new bus operating company, though inadequate, amounts to an “offer...of a monetary settlement”, as envisaged in section 46(1)(c). Putco contends further that to use the words in section 46(2), the City and Putco “*cannot agree on amendment of the contract or on inclusion of the operator in such a network*” and Putco has “*refuse[d] to*

---

<sup>4</sup> Regulation 7 (15)

*accept*” the City’s offer of a “*monetary settlement*” in the form of shares in the bus operating company.

[14] According to the City however, the contract negotiations between the parties are not governed by the provisions of section 46 of the NLTA but are subject to section 41 thereof. Section 41, the City argues, was intended to facilitate the conclusion of new contracts and transformation of the transport industry to include persons or entities that were previously excluded. If any party is not satisfied with the terms of the new contract it may refuse to participate in the proposed contract for a fixed period of 12 years. Section 41, as the parties agree, has no dispute resolution process.

[15] The City contends that section 46 (2) relied upon by Putco finds no application as the City has no existing contract with it. Apart from the considerations relating to the balance of convenience, the application was opposed on the basis of lack of urgency, the absence of any *prima facie* right, no well-grounded fear of irreparable harm, and the presence of alternative remedies in due course. Counsel for the City submitted that Putco failed to prove that it has a right that was violated. In addition, that the balance of convenience does not favour the granting of an interim interdict.

## Discussion

[16] In order to succeed Putco has to satisfy the authoritative requirements that must present before an interim interdict can be granted. What needs to be established for the application to succeed is a *prima facie* right even if it is open to some doubt, a reasonable apprehension of irreparable and imminent harm to the right if an interdict is not granted, the balance of convenience must favour



the granting of the interdict, and Putco as the applicant, must have no other reasonable remedy.<sup>5</sup>

[17] This application boils to down to a singular issue, whether section 41 or 46 of the NLTA finds application in the stalemate between the parties. It is not disputed that the City does not have an existing contract with Putco, but with the Provincial department. This question was settled in *Golden Arrow Bus Services (Pty) Ltd v City of Cape Town and Others*<sup>6</sup>, a matter with facts strikingly similar to those in *casu*. The SCA held, as pointed out earlier, the determination of the appeal depends on the construction of ss 41 and 46 of the NLTA and of the NLTA Regulations. As the SCA stated:

*“These sections deal with entirely different situations. Section 46 regulates the position where there are ‘Existing contracting arrangements’. So the addendum to which GABS and the City are party is subject to its provisions. Section 41 deals with ‘Negotiated contracts’, and therefore governs contracts to be entered into after the commencement of the NLTA between the City and vehicle operator companies such as GABS. That section itself provides that the City may negotiate a contract with an operator only once, and that for a maximum period of 12 years. It thus allows a deviation from the government norm in respect of private services, which is that procurement is put out to tender. In effect, it facilitates the quick implementation of a transport system within a municipality”.*<sup>7</sup>

And importantly:

*“that the parties to the contracts envisaged by s 46 already have rights: the section does not deal with contracts that have yet to be concluded (although it does make provision for the inclusion of an operator in an existing contract). So the resort to mediation or arbitration is not to find a way of creating or imposing contracts on the parties: it is for the purpose of resolving disputes*

<sup>5</sup> *Setlogelo v Setlogelo* 1914 AD 221 at 227; see also *Webster v Mitchell* 1948 (1) SA 1186 W.

<sup>6</sup> [2014] 1 All SA 627 (SCA).

<sup>7</sup> At para 11.

*that may arise when changes to vested rights are proposed. Nonetheless GABS argued that because it was a party to an existing contract with the City (the addendum) it was entitled to rely on s 46(2) in requiring the City to embark upon a mediation, and (at least before the hearing of the appeal) if that failed, to arbitration so that an arbitrator would determine the terms of the negotiated contract”.*<sup>8</sup> (My underlining).

[18] Regulation 7 relied upon by Putco governs the mediation process following disagreements between the parties as intended in section 46(1). Reliance by Putco on a remedy as envisaged in section 46(2) is totally misplaced. It deals with existing contracting arrangements, in this instance between the Province and Putco. To permit its invocation to the current impasse between the parties would be to impose terms on the intended contract via the back door which is not only inimical to the scheme of section 41 as Griesel J (sitting as the court of first instance) found, but section 46 as well. As Griesel J found in relation to the City of Cape Town, the approach which I equally adopt, the City of Johannesburg as a contracting authority in terms of the NLTA is not precluded from concluding a section 41 contract “in the same area or same route” where Putco has an existing contract (Regulation 2 (1) (a)).

[19] The applicant has failed to prove that it has any rights that have been violated and worthy of protection by this court. The application is not urgent inasmuch as Putco has failed to show that the prima facie right relied upon is of such a nature that, if not protected by an interim order now, irreparable harm would result to them, which harm cannot be reasonably addressed in the future on the basis of an existing contract with the Province.

---

<sup>8</sup> At para 14.



[20] Granting the relief sought by Putco will offend against the trite principle of the doctrine of privity of contracts by parties.<sup>9</sup> I find that there is no privity of contract between the City and Putco flowing from the latter's contractual relationship with the Province. Equally, section 46 finds no application against the ninth respondent as the current dispute regarding a new contract has nothing to do with it.

[21] There is no suggestion made that the Province ceded its rights and obligations regarding the existing contract with Putco, to the City. The legal consequences of a cession are trite: a non-party to a contract becomes a party to the rights thereto by way of cession.<sup>10</sup> Putco and the Province have the benefit of their respected rights in relation to Putco's existing routes as per their contract. The balance of convenience overwhelmingly favours the refusal of interim relief in order that the City concludes its section 41 agreements timeously for it to fulfil its statutory mandate as envisaged in section 40 of the NLTA to integrate transport services for the benefit of the general public.

[22] It follows, accordingly, that this application lacks merit. Under all the above-mentioned circumstances, the following order is made:

Order

[1] The application is dismissed with costs, including those of two counsel.

  
**T P MUDAU**  
**JUDGE OF THE HIGH COURT**

<sup>9</sup> *Cosira Developments (Pty) Ltd v Sam Lubbe Investments CC t/a Lubbe Construction and Others* 2011 (6) SA 331 (GSJ) at 336B.

<sup>10</sup> See generally *Lief NO v Dettmann* 1964 (2) SA 252 (A)

Appearances:

For the Applicant: Adv. A E Franklin SC with Adv J Mitchell

Instructed by: Bowman Gilfillan Inc.

For the City: Adv. S. V Notshe SC with Adv. M Kutta

Instructed by: Poswa Inc.

Date of hearing: 13 August 2021

Date of judgment: 26 August 2021