

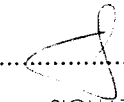
## IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)



30/5/14

CASE NO: 4465/12

(1)	REPORTABLE: YES <del>NO</del>
(2)	OF INTEREST TO OTHER JUDGES: YES <del>NO</del>
(3)	REVISED.
29/5/2014 30/5/2014 DATE	
 SIGNATURE	

In the matter between

GREAT NORTH LONG DISTANCE TAXI ASSOCIATION

APPLICANT

and

MALESELA HANS NGWENYA

FIRST RESPONDENT

MATLAKALA SYDNEY KHAMBANE

SECOND RESPONDENT

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 J U D G M E N T
 

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**MALI AJ:**

[1] This is an application for the final interdict against the First and Second Respondents. The interim interdict was granted by this honourable court on 7 August 2012 ,the order reads as follows:

- 1.1. This order is made with the consent of the Respondents and without any finding that they did anything mentioned in paragraphs 2 to 5 below. It is made pending the final outcome of this application.
- 1.2. That the First and Second Respondents are ordered to refrain from interfering with the taxi operations of the Applicant in Mokopane, Limpopo Province or anywhere else where the Applicant may be operating or operating from.
- 1.3. That the First and Second Respondents are ordered to refrain from threatening the members and employees of the Applicant with violence and/or damages to their and /or its property.
- 1.4. That the First and Second Respondents are ordered to refrain from entering the Shoprite taxi rank in Pretorious Street, Mokopane, Limpopo Province.
- 1.5. That the First and Second Respondents are ordered not to enter the Premise of the Applicant situated at 3A Kappie De Villiers Street,

Mokopane, Limpopo Province.

1.6. The costs are reserved.

### **BACKGROUND**

- [2] On 30 July 2012 both Respondents shouted and threatened to assault the taxi drivers of the Applicant. As a result of this incident the drivers vacated the taxi rank and the passengers who already boarded the taxis alighted from the taxis due to the violent behaviour of the Respondents.
- [3] The Applicant is the Taxi Association. The First and Second Respondents were members of the Applicant until 31 July 2012 when their membership was terminated by the Applicant. Furthermore on 30 July 2012 the date of the incident the First Respondent who was a rank master was under suspension due to unrelated conduct in this matter.

### **APPLICATION FOR CONDONATION**

- [4] The First and Second Respondent applied for condonation. The first Respondent applied for the late filing of the Heads of Argument and the second Respondent applied for condonation for failure to file his opposing affidavit.
- [5] As indicated above the interim interdict was granted on 7 August 2012. On 30 October 2013, due to the Respondents' failure to file the opposing affidavits the

Applicant enrolled the matter on the unopposed roll. Subsequently only the first Respondent filed his answering affidavit. Once he had filed his affidavit the matter was removed from the unopposed roll to be heard on the opposed roll. When the matter was ready for hearing the first Respondent failed to file his heads of arguments. The Applicant then set the matter down for 7 March 2014.

[6] On 26 February 2014 the first Respondent through its Attorney Mr Sello Isaac Makhafola filed an application for condonation. Mr Makhafola's affidavit averred that an Advocate who was briefed on 24 January 2014 to draft the Heads of Argument was involved in a car accident. Mr Makhafola made numerous inquiries with the Counsel about the progress regarding the drafting of the heads from the Counsel without any response. On 20 February 2014 Mr Makhafola briefed the current counsel in the matter, Advocate Badenhorst to draft the Heads of Argument and beg leave for condonation for late filing.

[7] I am satisfied that the First Respondent's failure to file the Heads of Argument on time was not due to his negligence. Adv. Badenhorst who appeared for both Respondents applied for condonation on behalf of the Second Respondent's failure to file opposing affidavit. She stated that she was only briefed a week before the hearing of the application by the first Respondent; however she could not advance any reason for the second Respondent's failure to file its opposing affidavit on time.

[8] Having regard to the above the second Respondent's failure to file its opposing

affidavit and that no further explanation is offered by the counsel, except that the counsel expects the court to hear the second Respondent is a serious flouting of rules. I do not see any merit on the explanation by the Counsel. I therefore refuse condonation for the second Respondent's failure to file his opposing affidavit.

### **APPLICANT'S CASE**

- [9] The Applicant's counsel submitted that on 30 July 2012 the two Respondent disrupted the taxi operations of the Applicant's members. Both Respondents uttered verbal abuse and threatened violence to the drivers and or members. They refused the drivers the opportunity to load the passengers. This incident lasted for about three (3) hours.
- [10] The Applicant's counsel further submitted that the Respondents also threatened the employees of the Applicant, namely queue marshals and the rank master with assault. Thereafter the Applicant approached the local police station for assistance, the Applicant stated that the police refused to assist citing that there was no crime committed and neither blood was flowing. The Applicant then approached this honourable court for the urgent interim interdict.
- [11] The Applicant further argued that the 1<sup>st</sup> Respondent by its own admission in the affidavit stated that he instructed the drivers employed by the applicant to return the vehicles to the Applicant's office. The Respondent did this **to force (my emphasis)** the members of the executive to call a mass meeting, as demanded by

the mass.

[12] The Applicant argued that the first Respondent clearly admits that he interfered with the taxi operations of the Applicant and that the Respondents had no permission or authority to prevent the Applicant's drivers from doing their work. On Respondent's own version he was already suspended as a Rank Master and had no authority over the Applicant's drivers.

[13] The Applicant submitted that it had a clear right to operate its business without any unlawful interference. Furthermore the Applicant has the right to ensure the safety of its members, its employees and its passengers.

[14] The Applicant further submitted that the violent actions and threats by the Respondents amounted to injury actually committed and reasonably apprehended. Furthermore that the Applicant has no further remedy, as indicated above the police refused to assist the Applicant and that it is common cause that the parties are not able to resolve the disputes between them amicably.

### **RESPONDENTS' CASE**

[15] The Respondent's counsel further argued that the fact that the Police refused to attend to the matter the police did not regard the Respondents as threat or obstructing the operations of the Applicant.

- [16] The Respondent's counsel argued that the right must be a legal right and not a financial or commercial interest alone and that the injury must be of a continuing nature and that there must be a reasonable apprehension that it will be repeated. The Respondent further submitted that in this case there is no continuing violation of the Applicant's rights and that according to the Applicant it was a once off incident which took place more than one and a half year ago , which lasted about 3 (three) hours. The Applicant in this regard argued that the time lapse was occasioned by the Respondent's failure to file papers on time an issue which was not disputed by the Respondent.
- [17] With regards to the requirement of other remedies available to the Applicant, the Respondent's counsel submitted that the Applicant should have followed disciplinary procedures and that the Applicant could have claimed damages since commercial interests were at stake.
- [18] I disagree with the Respondent's argument namely, that the Applicant has no legal right. It is my considered view that the Applicant's right to occupy a certain place, in this case a taxi rank is the legal and absolute right. I also differ with alternative remedy argument advanced by the Respondent. The Respondent on his own version admitted using force against the members of the Applicant. The Respondent did not dispute that the public and/or passengers were affected by its acts of violence. It is common cause that the police's refusal to act against the Respondents was based on the lack of criminal offence committed by the

Respondents. It is clear that the police viewed their mandate as being limited to criminal activities. The police did not pronounce on the civil liberties of the Applicant and the affected parties. Furthermore the Respondent failure to appreciate that the Applicant's case is not only based on commercial interests and there are human lives involved and people's lives could have been lost in circumstances of this nature is misleading.

[19] The Respondent further referred to **Payen Components SA Ltd v Bovic**<sup>1</sup> it was held that past conduct does not justify an interdict. The respondent's counsel further argued that the granting of the final interdict will restrict the movement of the Respondent.

[20] Having regard to the fact there are various disputes between the Applicant and the Respondents, there is reasonable apprehension that the Respondents could continue with the undesired manner of solving the issues. It is my considered view that the Respondents would have pursued other avenues including court action to cause the executive of the Applicant to meet with them and the alleged masses without breaching the peace.

[21] It is trite law that in order to succeed in obtaining a final interdict, whether it be prohibitory or mandatory an applicant must establish ; (a) clear right, (b) an injury actually committed or reasonably apprehended, ( c ) and the absence of similar or adequate protection, by any other ordinary remedy.

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<sup>1</sup> 2010(6) SA 182



[22] In *casu* the Applicant has successfully proven that it had a clear right to operate as a taxi association without any interference. Furthermore the Applicant's operating license is not just an economic right it is a legal right. The law of interdict enjoins this court to consider the prejudice that the Applicant stands to suffer and whether it outweighs the prejudice that the Respondent stands to suffer. In this matter the prejudice to be suffered by the Applicant if the interdict is not granted far outweighs the prejudice to be suffered by the Respondent if the interdict is granted.

[23] As stated above there are still unresolved issues between the parties and the Respondents might employ their violent tactics. The first Respondent was not even supposed to be at the taxi rank as per the terms of his suspension. In the event that the final interdict is not granted nothing prohibits the Respondents to repeat his actions, having regard to the fact that he could not even comply with the terms of his suspension.

[24] Furthermore the first Respondent's lack of appreciation of the difference between the criminal conduct and acts of civil interference based on the fact that the police did not find "anything wrong" with his behavior may influence his manner of approach towards the Applicant. However if the interdict is granted in favour of the Applicants, the respondents will not suffer any prejudice, because it is common cause that he is no longer a member of the Applicant. The only business the

Respondents might have at the taxi rank is that of being passengers, an issue which I will address in the order below. I also find that there is no suitable remedy available to the Applicant; this is notwithstanding the respondent's argument that the respondent may be sued for damages and or called for disciplinary enquiry.

[25] It is not in the interests of justice to deny the final interdict; having regard that the cited remedies by the Respondent's counsel could be a long drawn process. Furthermore it is common knowledge that the taxi industry is fraught with violence which inevitable results to loss of lives. Some community members rely on taxis for travelling and they always get caught in cross-fire in the event of taxi violence. In this case even though the dispute was between the parties, however the passengers suffered the final brunt. In **Mphahlele Taxi Association v Lebowakgomo Taxi Owners Association and its Members**<sup>2</sup> Patel AJ as he then was held:

*"Taxi wars are notorious. They often result in full scale violence causing untold injuries to members of taxi associations and members of the public as well as damage to property. In some instances, taxi violence has resulted in the loss of lives not only of taxi owners and drivers but also commuters....."*

In **Moruleng and District Taxi Association v North West Provincial Department of Transport & 27 Others**<sup>3</sup> the honourable Bosielo JA held:

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<sup>2</sup> 2002 JDR 0158 p1

<sup>3</sup> 2011JDR 1160 (SCA) p3

*“For some time the taxi industry across country has been plagued by the so-called taxi wars. These wars, which in many instances resulted in unnecessary loss of lives of innocent people who were caught in the cross- fire, revolve primarily around disputes involving routes.....”*

[26] I am satisfied that the Applicant has succeeded in obtaining a final interdict because all the requirements have been met. There is a clear right, there is injury and there are no other remedies available to the Applicant.

[27] The Applicant had requested that the Respondents be ordered to refrain from entering the Shoprite Taxi Rank in Pretorius Street, Mokopane, Limpopo Province. I find this request unreasonable because the taxi rank is a public place and the Respondents are members of the public. If I grant this request, it will be against the law as it will result to the restriction of the Respondents' movements.

[28] In the result I make the following order;

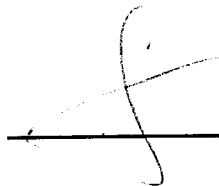
1. That the First and Second Respondents are ordered to refrain from interfering with the taxi operations of the Applicant in Mokopane, Limpopo Province or anywhere else where the Applicant may be operating or operating from.

2. That the First and Second Respondents are ordered to refrain from threatening the members and employees of the Applicant with violence

and/or damages to their and /or its property.

3. That the First and Second Respondents are ordered not to enter the Premise of the Applicant situated at 3A Kappie De Villiers Street, Mokopane, Limpopo Province.

4. That the First and Second Respondents pay costs of the application including costs in the urgent court of 7 August 2012.

A handwritten signature in black ink, consisting of a large, stylized 'M' with a horizontal stroke extending to the right, positioned above a solid horizontal line.

**NP MALI**

**ACTING JUDGE OF THE HIGH COURT**

**APPEARANCES**

FOR THE APPLICANT: ADV P.W. Springveldt

INSTRUCTED BY : Y.Springveldt Attorneys

FOR THE RESPONDENTS: ADV L Badenhorst

INSTRUCTED BY : Makhafola & Verster Incorporated

DATE OF HEARING: 7 March 2014

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