IN THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC OF SOUTH AFRICA]

CASE NUMBER: A1021 / 2013

29/1/16

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

29 / 01 / 2016
DATE

SIGNATURE

In the matter between:

POLOKWANE LOCAL AND LONG DISTANCE	APPELLANT
(TAXI ASSOCIATION (POLLDTA)	
And	
LIMPOPO PERMISSION BOARD	FIRST RESPONDENT
THE PROVINCIAL TAXI REGISTRAR	SECOND RESPONDENT
LIMPOPO PROVINCE	
MEC: DEPARTMENT OF ROADS AND	THIRD RESPONDENT
RSA TAXI ASSOCIATION	FOURTH RESPONDENT

JUDGMENT

MAVUNDLA, J.

[1] The applicant brought an application seeking an interim interdict pending the finalisation of the relief in part B of the application, authorising the applicant and its members whose names appear on annexure "B1", be allowed to travel the route from Polokwane to Johannesburg and return, in addition to the routes allocated to it and as set out in annexure "B2", without having to join the fourth respondent as members. Needless to state that the application was opposed.

[2] The Court *a quo*, per Louw J, did not deal with the merits of the application, but on the 3 June 2013 *mero motu*, after having invited the respective parties to address him on this issue, found that the appellant was a *unversitas*, and does not have *locus standi* to bring the application.

[3] The issue to be determined in this appeal, brought with the leave of the Court *a quo*, is a narrow point whether the applicant, as a *universitas*, has *locus standi* to litigate on behalf of its members in these proceedings, where the individual members have not in their own individual capacity instituted the action nor having filed verifying affidavits.

[4] Although not much turns around the fact that the Court *a quo mero motu*, correctly so, raised the issue of *locus standi*, it needs mentioning, *ex abudanti cautela*, that

Ngcobo J (as he then was), in the matter of *CUSA v Tao Ying Metal Industries and Others*[1] held that:

"Where a point of law is apparent on the papers, but the common approach of the parties proceeds on a wrong perception of what the law is, a court is not only entitled, but is in fact also obliged, *mero motu*, to raise the point of law and require the parties to deal therewith. Otherwise, the result would be a decision premised on an incorrect application of the law. That would infringe the principle of legality."

[5] The grounds upon which the appeal is mustered, are that the Court *a quo* erred in finding that the appellant does not have *locus standi* to institute the application, regard being had to the fact that the appellant, so it was contended, relied on s38 (e) of the Constitution in bringing the application on behalf of its members to assert their rights.

[6] It is apposite to give background facts to this matter and who the parties are. In this regard I quote extensively from the judgment of the Court *a quo*.

"1. During 1997 various taxi associations joined together to form a single association known as the Pietersburg United Local and Long Distance Taxi Association (PULLDATA).PULLDATA disbanded in 2007.

2. A disputed fact is whether the applicant existed prior to the formation of PULLDATA although the applicant contends that it did and was at that stage utilising the route Polokwane to Johannesburg and return. The applicant of course is (POLLDATA) the Polokwane Local and Long Distance Taxi Association.

3. PULLDTA unbundled in 2007.

4. During the existence of PULLDTA its members were entitled to travel on the route from Polokwane to Johannesburg and return..

5 POLLDTA also utilised the Johannesburg route by virtue of the agreements entered into between POLLDTA and the fourth respondent that is the RSA Taxi Association.

[1] 2009 (2) SA 204 (CC)at 225A-B (2009 (1) BCLR 1; [2009] 1 BLLR 1; (2008) 29 ILJ 2461) para 68

6. After the unbundling of PULLDTA a portion of the erstwhile PULLDTA members who held valid operating licences to travel the route between Polokwane Johannesburg and return persisted to operate on the route as POLLDTA. These members are listed in Annexure B to the founding affidavit where we find some 30 alleged members of the applicant. The applicant then further contends that although the first to third respondents dispute that all of those individuals on the list were so authorised. The dispute is irrelevant seeing as the relief sought by the applicant will only relate to these individuals who are able to illustrate with operating licences that they were so entitled. It is further submitted that I therefore need not determine which members were so authorised. I shall come back later this contention.

7. The first respondent, Limpopo Permissions Board, took a decision on the 15 December 2011 to the effect that the applicant's members are no longer entitled to make use of the route between Polokwane and Johannesburg.

8 That decision was set aside during January 2012 by agreement between the firs respondent and the applicant.

9. On or about 2 April 2012 the first respondent informed the applicant of a ruling to the effect that the applicant's members are not entitled to make use of the route between Polokwane and Johannesburg. The decision furthermore entails that should any member of the applicant choose to utilise the said route they must join the fourth respondent."

[7] It is this ruling of the first respondent, conveyed to the appellant on the 2 April 2012; the latter seeks to have reviewed under part B of its application. It needs mentioning that the ruling by the first respondent is an administrative action which is reviewable in terms of PAJA. However, as pointed out herein above, this Court need not engage on the merits and demerits of part B. The applicant does not seek a determination of the merits of the matter and asserts for an alternative relief that the application be referred back to the Court *a quo* for reconsideration. This is subject, obviously, on this Court upholding the appeal and setting aside the decision of the Court *a quo* that the appellant does not have *locus standi* to bring these proceedings.

[8] Section 38 of the Constitution provides, *inter alia*, that: "Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been

infringed or threatened, and the court may grant appropriate relief, including a declaration of rights.

The person who may approach a court are—

(c) anyone acting as a member of, or in the interest of, a group or class of persons;

(e) an association acting in the interest of its members."

[9] The Court *a quo* found that the appellant is a universitas. This means that the appellant is a legal entity capable of suing and sued in its own name. It possesses rights independent from its members. In order for the appellant to bring the action on behalf of its members, it must show that it has a direct and substantial interest in the outcome of these proceedings. By direct and substantial interest is meant a legal interest in the subject-matter of the action which would be prejudicially affected by the judgment. In this regard vide *AAI (SA) v Muslim Judicial Council*[2] .

[10] I find it apposite to cite the matter of *Ex-TRTC United Workers Front v Premier, E. Cape*[3] where the Court held that: "The second consideration, as expressed in the *Burger v Rand Water Board and Another 61* case, is whether there exists a sufficient nexus between the individual members in their capacities as members of the association, and the right that forms the subject-matter of the litigation. Applied to the present matter, the first plaintiff did not, in my view, institute these proceedings to protect or enforce an interest which it had as a body or organisation. Stated otherwise, it does not propose to enforce the rights of its members which they possess by reason of their membership of the association."

[11] The applicant in this matter, similarly, as in the matter Ex-TRTC United Workers Front does not assert any right it has in these proceedings. The right to a particular route arises from the allocation of a licence to operate a taxi. The granting of a licence to an individual is not dependant on his membership to the appellant. The right is not predicated on membership to the appellant. Neither does the appellant allege that it has any right in respect of the licences of its members. The appellant, in my view,

[2] 1983 (4) SA 855 (CPD) at 863C-D.
[3] 2010 (2) SA 114 (ECB), at 131C-D.

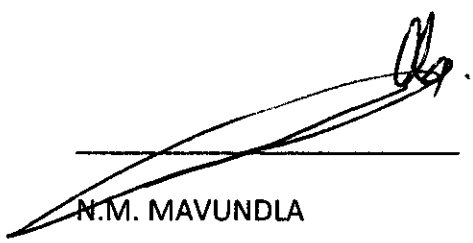
cannot assert any right to any particular route, in its specific individual capacity, let alone on behalf of its members.

[12] Our Courts have held in various judgments that they would not accord a person a right to sue where none exists. In my view, a party seeking to rely on s38 (e) of the Constitution, bears the *onus* of persuading the Court that it does have such right. He must specifically make that averment and buttress it with facts, that he has a right which is threatened and needs to be protected. That right cannot exist in vacuum.

[13] *In casu*, I am of the view that the appellant did not acquit himself, on its papers, of the *onus* resting on it to show that, the rights of its members are intertwined with its right, and as such has a legal interest to bring these proceeding and a standing to do so. I am satisfied that the finding by the Court *a quo* that the appellant does not have *locus standi* cannot be faulted, therefore the appeal stands to be dismissed.

[14] It is trite that the costs follow the event. Not all the respondents filed opposing papers, save the first, second and third respondent who did and were duly represented during the hearing of the matter. Where senior counsel was engaged, I am of the view that it was justifiable to do so, having regard to the fine point in law in this matter. Consequently the appellant must bear all the costs occasioned by the opposition to the matter, including those of senior and junior counsel where applicable, which costs are to be taxed or agreed upon.

[15] In the result the appeal is dismissed with costs including the costs of the employment of two counsel and or senior counsel where applicable.



N.M. MAVUNDLA

JUDGE OF THE HIGH COURT

I agree

C PRETORIUS

JUDGE OF THE HIGH COURT

I AGREE

A.M.L PHATUDI

JUDGE OF THE HIGH COURT

DATE OF HEARING	: 19 / 08 / 2015
DATE OF JUDGMENT	: 29 / 01 /2016
APPLICANTS' ADV	: ADV S. G. GOUWS
INSTRUCTED BY	: DE BRUIN OBERHOLZER INCORPORATED.
1ST-3RD RESPONDENTS' ADV	: ADV M.SM PHASWANE
INSTRUCTED BY	: SHAPIRO & LEDWABA INC
4TH RESPONDENT'S ADV	: ADV R BHEDESI S.C.
INSTRUCTED BY	: STATE ATTORNEY PRETORIA