



IN THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC OF SOUTH AFRICA]

01/07/16

CASE NUMBER: 2015 / 84973

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
01 / 07 / 2016	
DATE	SIGNATURE

In the matter between:

AFRICA PEOPLE MOVER (PTY) LTD

APPLICANT

And

AUTOPAX PASSENGER SERVICES (SOC) LIMITED

1ST RESPONDENT

VENDA JOHANNESBURG TAXI ASSOCIATION

2nd RESPONDENT

THULAMELA LOCAL MUNICIPALITY

3RD RESPONDENT

BUSBUCKRIDGE	TAXI ASSOCIATION	4 TH RESPONDENT
BUSBUCKRIDGE	LOCAL MUNICIPALITY	5 TH RESPONDENT
LIMPOPO	PROVINCIAL REGULATORY ENTITY	6 TH RESPONDENT
GAUTENG	PROVINCIAL REGULATORY ENTITY	7 TH RESPONDENT
MPUMALANGA	REGISTRAR OF TRANSPORT	8 TH RESPONDENT

JUDGMENT

MAVUNDLA J;

[1] On the 3 November 2015 this Court granted the following order, which was marked “X”:

“1.1 That the first respondent is interdicted and restrained from—

- 1.1. inciting any person, in particular taxi operators and its employees to disrupt the applicant’s bus operations;
- 1.2 Inciting any person, in particular taxi operators and its employees to damage the applicant’s buses and premises;
- 1.3 spreading false allegations about the applicant’s bus operations and the applicant’s officials;

- 1.4 intimidating and harassing the applicant's personnel and customers at any of the applicant's premises;
 - 1.5 blockading access to and from the applicant's premise and designated loading zones;
 - 1.6 inciting any person, in particular taxi operators, its employees and security personnel to assault the applicant's personnel and customers and to disrupt the applicant's bus operations;
 - 1.7 preventing members of the public from conducting business with the applicant, in particular using the applicant's busses.
- 2 The first respondent shall issue a public statement in which it denounces violence against the applicant's personnel and customers and disruption of the applicant's business operations.
- 3 That the second respondent, acting through its members or any third party, is interdicted and restrained from—
 - 3.1. preventing the applicant from conveying commuters between Johannesburg and Sibasa;
 - 3.2 preventing the applicant from loading and off-loading commuters in Sibasa and at any other place;
 - 3.3 intimidating and harassing the applicant's personnel;

- 3.4 intimidating and harassing the applicant's passengers and preventing them from boarding the applicant's buses in Sibasa and at any other place;
 - 3.5 removing the applicant's passengers from the applicant's buses so as to prevent them from using the applicant's buses to commute between Sibasa and Johannesburg.
 - 3.6 damaging the applicant's buses;
 - 3.7 intimidating, harassing, assaulting and threatening the applicant's employees whilst conveying commuters to and from Sibasa;
 - 3.8 damaging and vandalising the applicant's properties, including buses;
 - 3.9 barricading, blocking or in any manner restricting or preventing access to and from the applicant's commuters' loading zone in Sibasa; and
 - 3.10 preventing any person and the applicant's buses from entering and exiting the applicant's loading zone in Sibasa.
- 4 The fourth respondent is interdicted and restrained from —
- 4.1 preventing the applicant from conveying commuters between Johannesburg and Mpumalanga;
 - 4.2 preventing the applicant from loading and off-loading commuters in Mpumalanga;
 - 4.3 intimidating and harassing the applicant's personnel;

- 4.4 intimidating and harassing the applicant's passengers and preventing them from boarding the applicant's buses in Mpumalanga and at any other place;
 - 4.5 removing the applicant's passengers from the applicant's buses so as to prevent them from using the applicant's buses to commute between Mpumalanga and Johannesburg;
 - 4.6 damaging the applicant's operating premises in Mpumalanga;
 - 4.7 intimidating, harassing, assaulting and threatening the applicant's employees whilst conveying commuters between Johannesburg and from Mpumalanga;
 - 4.8 damaging and vandalising the applicant's properties, including buses;
 - 4.9 barricading, blocking or in any manner restricting or preventing access to and from the applicant's commuters' loading zone in Mpumalanga.
5. The first respondent, second respondent and third respondent shall pay the applicant's costs of the application, jointly and severally, the one paying the other to be absolved"

[2] At the grant of the order, the Court did not give reasons and indicated that these would be furnished in due course. The Court profusely apologise for the delay in furnishing the reasons. Before dealing with the reasons, it came to the Court's attention that there was a patent error in the order "5" which deals with costs, in that

the costs were also granted not only against the first, second respondents but also the third respondent.

[3] The only parties against whom the interdict was granted were the first, second and fourth respondents. These last mentioned three parties on the principle of the costs follow the event, must be mulcted with the costs of the applicant on party and party scale. There was no interdict restraint order granted against the third respondent, nor was any order sought against it. Therefore the order of costs in so far as it was also granted against the third respondent was a patent error and should therefore be *mero motu* corrected, by deleting reference to the third respondent and in its place substituting it with "fourth respondent".

[4]. It needs mentioning that, the Court may correct a patent error once it is brought to its attention. In my view, the principle of *functus officio* does not apply *in casu*, because the reasons were still outstanding and the patent error sought to be corrected, only came to this Court's attention as the reasons were being prepared.

[5] For purposes of avoiding any confusion, the entire order marked "X" granted on the 3 November, is withdrawn and substituted with the following order which will be marked: "AMENDED ORDER MARKED X". This amends order contains all but the incorrect order "5" which is deleted and substituted with the following:

- [6] I now proceed to set out the reason for the order granted on the 3 November 2015, as amended.
- [7] The first respondent is a State owned company responsible for, amongst others, the provision of affordable commuter transport services through, amongst others, busses which convey commuters between different cities in the Republic and has its principal offices of business at *Nzazm Building*, 546 Paul Kruger Street, Pretoria.
- [8] The second respondent is Venda Johannesburg Taxi Association., which is an association of taxi or minibus operators who convey passengers from Venda to Johannesburg and *visa versa*. As far as conveying passengers from Venda is concerned, their main loading zone is situated in Sibasa, a few meters from the applicant's loading zone.
- [9] No relief was sought against the third, fifth, sixth, seventh, and eighth respondents.
- [10] The applicant approached this Court on way of urgency for the relief culminating in the order granted herein above. The applicant's case was that it conducts the business of conveying passengers from one city to another. According to the applicant it was granted licence to conduct its business in Gauteng, Limpopo, Mpumalanga and Kwa-Zulu-Natal. The applicant's licence entitles it to convey passengers between

Johannesburg and Sibasa; and Johannesburg and Mpumalanga. The applicant commenced its business in October 2015.

[11] The applicant in Sibasa entered into a lease agreement with East and West Investments (Pty) Ltd in terms of which it has been granted permission to use premises to sell its bus tickets to its customers and to load and off- load passengers travelling between Johannesburg and Sibasa. The applicant has similar arrangements in other areas.

[12] Without chronicling all the allegations contained in the applicant's founding affidavit, some of these are that: The applicant alleged that on the 3 and 4 October 2015 the first and second respondent's members and employees violently disrupted the applicant's operations. Prior to its commencement in October 2015 between Johannesburg and Sibasa and between Johannesburg and Acornhoek in Mpumalanga, the first respondent's employees, acting in the course and scope of their employment with the first respondent, informed the applicant's personnel based in Pretoria that such operations would be disrupted by the second and fourth respondents. The first respondent had prior knowledge of this disruption and must therefore have been in collusion with the second and fourth respondents alternatively instigated such disruptions. The applicant attached a confirmatory affidavit of one of its employees by the name of Lettie Ntuli as annexure "FA3" in which she confirmed the first respondent's drivers communicating about the disruption by the second respondent.

[13] The applicant further averred that when its operations started at Kaalfontein Station, the first respondent's security personnel intimidated and harassed the applicant's employees on the basis that the applicant was not entitled to operate from the station. Further the first respondent's drivers Chauke Caiphus and Edmond Tshwane told the applicant's customers not to use the applicant's busses because the applicant's busses were not safe and arrive late at their destination. This resulted in some of the applicant's passengers opting to use the first respondent's busses. In this regard confirmatory affidavits of Constance Sithole and Nonkululeko Madiba were attached as annexure "FA4" and "FA5" respectively. At Pretoria station the first respondent's employees usually park their busses in front of the applicant's offices and loading zone, thus effectively preventing the applicant from loading passengers and making access to its offices difficult.

[14] Some of the alleged disruption of the applicant's business of plying for and conveying passengers, *inter alia*, occurred on the 3 October 2015, when Rudzani in charge of the applicant's offices in Sibasa, was intimidated and harassed by the second respondent's members; and Robert Maluleke one of the applicant's drivers, was physically forced to drive his bus away from the loading zone preventing him from loading passengers from Sibasa to Johannesburg. The confirmatory affidavits of both mentioned applicant's personnel are attached as annexure "FA9" and "FA7" respectively. On the 14 October 2015 second respondent's members in Sibasa disrupted, interfered with and prevented the applicant's passengers from purchasing tickets and physically removed them from applicant's busses; damaged safety glass door on applicant's

premises; damaged windows of applicant's bus resulting at a loss of R55, 000. 00 for repairs; *inter alia*. The applicant as the result of the events of the 3 and 14 October 2015 had to engage the services of Stalion Security to prevent more harm and or damage.

- [15] According to the applicant, the fourth respondent and its members operate taxis to convey passengers between Johannesburg and Mpumalanga, and have its offices at Bushbuckridge. The applicant commenced its operations between Johannesburg and Mpumalanga in May 2015, with its loading and off-loading zone in Acornhoek. Since its operations the fourth respondent continued to intimidate applicant's customers, blockading the applicant's busses from loading passengers in Acornhoek, Bushbuckridge and Hazyview, threatened to blockade the busses even going through the aforesaid towns; on the 19 June 2015 fourth respondent disrupted applicant's operations by preventing passengers from boarding applicant's busses, demanded payment of a fee of R100 from applicant's passengers, told applicant's passengers that applicant does not have a valid permit. The applicant attached annexure "FA11A" which is a confirmatory affidavit of Oupa Mkansi who witnessed the events of 19 June 2015. On the 9 August 2015 the fourth respondent's members forced passengers out of applicant's busses conveying them from Arconhoek to Bushbuckridge. In this regard is attached a confirmatory affidavit of Masindi Muvhulawa who witnessed these incidents.

[16] The applicant contended that the matter is urgent and it has no alternative relief.

[17] It needs mentioning that both the first and second respondents filed opposing affidavits, in which they denied the applicant's allegations, in so far as they relate to each one of them. The second respondent also contended in its opposing papers that it is not aware of any licences having been granted to the applicant and therefore applicant is operating its business illegally. This contention must be out rightly be rejected because neither the first, second and fourth respondents are the repositories of licences nor the authority that issues these. Second respondent further took issue with the applicant's lease of premises with East and West, and further alleged that the applicant is not authorised to load, *inter alia*, at Checkers Shopping premises. The second respondent further raised its concern that its members' business of plying for passengers transportation trade on the routes allocated to them would be adversely affected by the applicant's alleged illegal operations in those routes. Second respondent further contended that the matter was not urgent and that the applicant has alternative remedies and that the Court to dismiss the application with costs. Needless to state that, the first respondent also sought dismissal of the application. There was no opposition by the fourth respondent.

[18] In my view, it is not in dispute that the applicant's passenger transporting business is in direct competition with that of the first, second and fourth respondents.

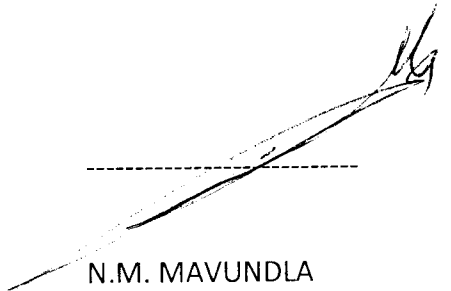
[19] In my view, it is a notorious fact that the transport industry in the Country is plagued by violence, as the stake holders vie for the turf. It is a notorious fact that taxi operators in the Country would sometimes violently oppose any new comer, be it a taxi operator or bus operator. Some of the violence in the transport industry would result in fatalities.

[20] *In casu*, the applicant made allegations of intimidation and disruption. The Court need not wait until there is blood on the wall before granting the relief sought. The allegation that the applicant is illegally plying its business is in my view, irrelevant and no ground to refuse granting the order. The respondents, who allege that the applicant is operating illegally, are at large to approach the Court to interdict the applicant from so operating. They certainly cannot take the law unto themselves. Besides, their denial of the allegations is most probably not true. The second respondent contended in papers that "the bus operations of the applicant harm the business of the second respondent." It is therefore not surprising that there have been disruptions directed towards the applicant's buss operations.

[21] In my view, the applicant has placed enough material before this Court to justify the granting of the relief sought, as contained in order "X" of the 3 November 2015, now substituted with the order marked: "AMENDED ORDER MARKED X".

[22] In the premises for the above reasons the following order

“AMENDED ORDER MARKED X” is made an order of this Court.



N.M. MAVUNDLA

JUDGE OF THE HIGH COURT

DATE OF JUDGEMENT : 01 /07 /2016

APPLICANT'S ADV : ADV. M E MANALA

INSTRUCTED BY : GILDENHUYS MALATJI INC

1ST RESPONDENT'S' ADV: T MOKHATLA

INSTRUCTED BY : HOGEN LOVELLS (SOUTH AFRICA) INCORPORATED AS

ROUTLEDGE MODISE INC

2ND RESPONDENT'S' ADV: ADV. P M MAAKE

INSTRUCTED BY : SAM SEKHU ATTORNEYS