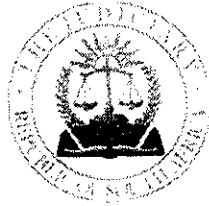


IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)


REPUBLIC OF SOUTH AFRICA



Case Number: 77388/2014

Date Heard: 28 January 2016

Date delivered: 16 August 2016

(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED	
16.8.2016	
DATE	SIGNATURE

In the matter between:

PRETORIA LONG DISTANCE TAXI ASSOCIATION

Applicant

and

MAROTHONG TAXI ASSOCIATION

First Respondent

MEC: SAFETY SECURITY AND LIAISON

Second Respondent

LIMPOPO OPERATING LICENSE BOARD

Third Respondent

GAUTENG OPERATING LICENSE BOARD

Fourth Respondent

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JUDGMENT

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JANSE VAN NIEUWENHUIZEN J

[1] The applicant claims, *inter alia*, the following relief:

- "1. Interdicting and restraining the first respondent's members from, in any manner whatsoever, acting either personally or through any appointed agents, threatening, insulting, intimidating or harassing the members of the applicant.*
- 2. Interdicting and restraining the first respondent's members from interfering with the lawful taxi operations of the applicant's members through either:*
  - 2.1 preventing the applicant's members access to the Pick 'n Pay taxi rank, 87 Paul Kruger Street, Polokwane; or*
  - 2.2 preventing the applicants' members from off-loading and loading passengers at the Pick 'n Pay taxi rank, Polokwane; or*
  - 2.3 any other conduct that interferes with the lawful operations of the applicants members.*
- 3. Alternatively to prayers 1 and 2 above, that the relief set out in prayers 1 and 2 do issue, pending finalisation of an action for final relief to be instituted by the applicant within 30 days from date of order."*

[2] Only the first respondent opposes the relief claimed by the applicant and will hereafter, for the sake of convenience, be referred to as "the respondent".

**POINTS *IN LIMINE***

[3] The respondent raised two points *in limine*, to wit

- i. the applicant's lack of *locus standi* and entitlement to the relief sought, and
- ii. non-joinder of the City of Polokwane.

[4] During his address, Mr Mahoto, counsel for the respondent indicated that the respondent does not persist with its second point *in limine*. Consequently it is only the applicant's *locus standi* that needs to be considered *in limine*.

**Applicant's *locus standi***

[5] It is common cause that the applicant is a voluntary association and that it launched the application in its capacity as such. The respondent avers that the applicant does not have *locus standi* to launch the present proceedings, because:

- i. the applicant does not allege in its founding affidavit that the application is launched on behalf of its members;
- ii. the applicant is not the holder of an operating license pertaining to the route that forms the subject matter of the relief claimed herein; and
- iii. in the result, it is not the applicant, but its members who are in possession of operating licenses for the route, that have a direct and substantial interest in the relief claimed.

[6] Mr Gouws, counsel for the applicant, pointed out that the applicant, in its founding affidavit, stated the following:

- i. it is a voluntary association with full legal standing
- ii. it is capable to sue and to be sued in its own name; and
- iii. it is duly registered in accordance with the provincial and / or national legislation applicable to mini-bus taxi associations and members.

[7] The applicant did, however, not attach its constitution to its founding papers. In view of the attack on its *locus standi*, the applicant attached its constitution to the replying affidavit. I will refer to the contents of the constitution *infra*.

#### Legal principles

[8] The *locus standi* of a voluntary association has been considered in a number of reported decisions. In *Interim Ward S 19 Council v Premier, Western Cape Province* 1998 (3) SA 1056 C, King J held as follows at 1060 F to 1061 B:

*'Molotlegi and Another v President of Bophuthatswana and Others 1989 (3) SA 119 (B) is to similar effect and it is clear from these decisions and earlier decisions referred to therein that the relevant principles are:*

*(a) For a voluntary association of persons to have locus standi in judico it must be a corporate of the nature of a universitas personarum.*

*(b) That the two chief characteristics of a universitas upon which its locus standi depends are:-*

*(i) 'perpetual succession' in the sense that the organisation has a continued existence or identity despite changes in its membership (see Tilbrook v Higgins 1932 WLD 147 at 153 and cases there cited),*

- (ii) *The capacity of acquiring rights and incurring obligations independently of its members, most importantly the capacity to own property (ie landed property - see Levin v Transvaal Miners Association 1912 WLD 144 AT 147).*

*With these qualities it will be an entity distinct from the individuals forming it – Webb and Co Ltd v Northern rifles (supra at 464-5). The requisites of a universitas personarum have recently been restated by Corbett CJ in African National Congress and Another v Lombo 1997 (3) SA 187 (A) at 195-6 ([1997] 1 B All SA 697 (A) at 700g).*

- (c) *That in order to determine whether a voluntary association is a universitas it is necessary to look in the first instance at its constitution.*
- (d) *If it is not possible so to determine by reference to the constitution, either from its express terms or by way of implication, regard must be had to the nature of and objects of the association. See as to (c) and (d), the Ahmadiyya Anjuman case supra (loc cit).*

*These are the primary aids in the determination of the locus standi of an association such as applicant."*

- [9] In considering whether the applicant meets the criteria referred to *supra*, the following clauses in the applicant's constitution are significant:

**"4. AIMS AND OBJECTIVES**

- g) *To raise funds for the Association by legal manner;*

- h) To apply all funds for the purpose of giving effect to the objectives of the addition, to acquire by purchase, lease, exchange or gift, immovable, or movable property."*

and

#### ***"5. MEMBERSHIP OF THE ASSOCIATION***

*5.1 A full member of the Association shall be referred to as a registered, permit holder, bound and adhered to the constitution, grievance procedure and code of conduct.*

*5.2 A new member shall be recognised in the case of the following, but pending on provision of space/vacancy.*

*Written application*

*Testimonial from previous association (if any)"*

[10] Having regard to the aforesaid, I am satisfied that the applicant satisfies the requirements necessary to confer upon it the necessary *locus standi in judico* to launch the application.

[11] In the result, the point *in limine* is dismissed with costs.

## FACTS

- [12] The applicant claims for a final *alternatively* interim interdict.
- [13] Prior to considering the legal principles pertaining to interdicts, a short summary of the facts underpinning the relief is necessary.
- [14] The applicant is a Gauteng based inter-provincial taxi association with its point of departure situated at Pretoria Station, Gauteng. The members of the applicant possess operating licenses that allow them to transport passengers from Pretoria to Polokwane. These facts are not in dispute.
- [15] The exact location of the taxi rank in Polokwane where the members of the applicant may load and off-load passengers forms the point of dispute in the matter.
- [16] The applicant relies on an Operating Licence issued by the Department of Transport to its members, in support of its contention that the taxi rank they are entitled to utilise is situated at 87 Kruger Street, Polokwane. The relevant route description reads as follows:

*"PROCEED STRAIGHT AND ENTER GROBLER STREET, TURN LEFT AND TURN LEFT INTO ELXESIOR STREET, TURN LEFT INTO PRES. KRUGER STREET, AND PROCEED AND TURN RIGHT INTO PICK N PAY TAXI RANK, OFF LOAD AND LOAD. RETURN BACK THE SAME WAY."*

- [17] The applicant alleges that members of the respondent prevents its members from utilising the Pick 'n Pay taxi rank, which conduct results in intimidation, threats of violence and more often than not actual violence. It is clear from the papers that the situation is untenable and definitely not in the interests of innocent commuters.
- [18] The respondent steadfastly denies these allegations.
- [19] The respondent avers that the taxi rank situated at 87 Paul Kruger Street is a private taxi rank utilised by its members. In support hereof a photo is attached to the answering affidavit, which clearly depicts a private house with street number 87.
- [20] The respondent alleges that the Pick 'n Pay taxi rank referred to in the operating licence relied upon by the applicant is situated at the corner of Devenish- and Church Streets. Once again a photo is attached which depicts a taxi rank in a public space in Devenish Street.
- [21] In the premises, the respondent avers that its members do not utilise the Pick n Pay taxi rank and are consequently not involved in any altercations with members of the applicant. The applicant has, quite correctly, pointed out that the respondent does not deny any incidents at the 87 Paul Kruger Street taxi rank.
- [22] The applicant admits that a community taxi rank exists at the corner of Devenish- and Church Streets, but denies that it is the Pick n Pay taxi rank referred to in its operating licence. The applicant states that three distinct taxi ranks exist, to wit:



- i. the Pick n Pay community taxi rank which is situated at the corners of Church and Devenish Streets and which is used by local taxi associations in Polokwane;
- ii. the Pick n Pay taxi rank located at 87 Paul Kruger Street which is exclusively used by inter-provincial associations; and
- iii. the Indian Centre rank which is situated at the corners of Excelsior and Paul Kruger Streets.

[23] In support of the aforesaid, the applicant attached a hand drawn map to its replying affidavit, which map is attached hereto as "X".

[24] It is clear from the map, that the route description on the operating licence of the applicants' members do not refer to the Pick 'n Pay community taxi rank, which taxi rank is on the left when turning into Paul Kruger Street from Excelsior Street. The only taxi rank on the right is the taxi rank at 87 Paul Kruger Street.

[25] None of the parties alleged that there is another taxi rank further down Paul Kruger Street.

[26] Two problems, however, emerge, to wit:

- i. there is clearly not a Pick 'n Pay at 87 Paul Kruger Street; and
- ii. the operating licence simply refers to Pick n Pay without mentioning the exact street number in Paul Kruger Street.

[27] In endeavour to resolve these apparent anomalies and mainly due to the fact that the safety of innocent commuters are at stake, I issued an order on 24 February 2016, directing the Fourth Respondent to file an affidavit explaining the exact location of the Pick 'n Pay taxi rank referred to in the operating licence of the applicant.

[28] The chairperson of the fourth respondent or its successor in title was ordered to file the affidavit on or before 11 March 2016.

[29] The court order was duly served on the fourth respondent on 3 March 2016 at its offices at 11 Diagonal Street, Johannesburg. In response to the order, a letter dated 14 March 2016 was received from Mr Edward Ngqola, chairperson of the Gauteng Provincial Regulatory Entity. The letter reads as follows:

*"The above matter as well as the court order dated the 24 February 2016 and served at our Registration and Monitoring Directorate on the 03 March 2016 refers.*

*Kindly be advised that the said court order was not served to me personally by the sheriff and I only had knowledge of it on the 08 February 2016 through our officials at Registration and Monitoring Directorate. Kindly note that the Gauteng Operating Licensing Board ("GOLB") was disbanded on the 30 November 2011 when the regulation establishing the Gauteng Provincial Regulatory Entity ("GPREG") was promulgated and I became the Chairperson of the GPREG on the 30 April 2012. Annexure "PTA3" to the founding papers in this application is a copy of an Operating Licence which was issued by the erstwhile GOLB on the 31 March 2011 and I was not a member of the board and/or was never a member of the board.*

*I have requested the officials from Registration and Monitoring Directorate, which is an office of records and the custodian of all the records pertaining to the registration of taxi association, their routes, permits or operating licences and individuals operator's records to retrieve the files of this association and the individual operator who's operating licence is annexed to the founding papers and referred to as annexure "PTA3". Upon receipt of these archived files, I will be in a position to depose an affidavit confirming the contents of the files.*

*Based on the abovementioned, I therefore request an extension of time until the 30 of March 2016 to file the affidavit in compliance with the court order of the 24 February 2016."*

- [30] Notwithstanding the undertaking in the aforesaid letter, the fourth respondent has to date failed to file an affidavit. This aspect will be referred to *infra* when an appropriate cost order is considered.

#### FINAL INTERDICT

- [31] The requirements for a final interdict is well established. An applicant must proof:

- i. a clear right to the relief claimed;
- ii. an injury actually committed or reasonably apprehended; and
- iii. the absence of similar protection by any other remedy.

#### Clear right

- [32] The respondent purports to raise a factual dispute in respect of the exact location of the taxi rank referred to in the applicants' members operating licence. Once a factual dispute arises, the court must determine whether it is possible to adjudicate the matter on the facts contained in the affidavits. The test to be applied was formulated by Harms DP in *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 SCA at para [26] as follows:

*"Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual disputes because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes of fact arise in the affidavits, a final order can be granted only if the facts averred in the applicant's (..) affidavits, which have been admitted by*

*the respondent (...), together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of facts, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on papers. ...."*

- [33] In *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 SCA, the court sounded the following warning at 347 G:

*"Yet motion proceedings are quicker and cheaper than trial proceedings and, in the interests of justice, courts have been at pains not to permit unvirtuous respondents to shelter behind patently implausible versions or bald denials."*

and further at 348 B:

*"Practice in this regard has become considerably more robust, and rightly so. If it were otherwise, most of the busy motion courts in the country might cease functioning. But the limits remains, and however robust a court may be inclined to be, a respondent's version can be rejected in motion proceedings only if it is 'fictitious' or so far-fetched and clearly untenable that it can confidently be said, on the papers alone, that it is demonstrably unworthy of credence."*

- [34] It is common cause between the parties that the members of the applicant are holders of operating licences similar to the one attached to the founding papers. If one have regard to the physical outlay of the streets referred to in the licence, it is clear that the route description does not entitle the applicants' members to utilise the Pick n Pay community taxi rank situated in Paul Kruger Street.

[35] It is clear from the papers that the only taxi rank that accords with the route description is situated at 87 Paul Kruger Street. The respondent's denial in this regard is untenable. The respondent, in an effort to create a fictitious factual dispute, latched on to the reference to 'Pick-n-Pay' in the route description. To my mind the name given to the taxi rank does not distract from the physical location of the rank as it appears from the route description.

[36] The fourth respondent was ordered to clear up the apparent confusion that the name of the taxi rank may create, but as alluded to earlier, failed to comply with the court order.

[37] Be that as it may, I am satisfied that the applicant established a clear right in respect of the relief it claims.

An injury actually committed or reasonably apprehended

[38] The respondent did not deny that they prevent members of the applicant to utilise the taxi rank situated at 87 Paul Kruger Street. To the contrary, these allegations were cleverly avoided by constant reference to the Pick n Pay community taxi rank.

[39] In this regard, I accept the version of the applicant and am satisfied that the applicant has succeeded in proving the second requirement for an interdict.

The absence of similar protection by any other remedy

[40] No other legal remedy exists to enforce and protect the right of the applicant's members to utilise the taxi rank.

[41] In the premises, the applicant has succeeded in meeting all the requirements for a final interdict.

### **COSTS**

[42] A cost order remains in the discretion of the court. I have considered the various legal options consequent upon the failure of the fourth respondent to comply with the order of this court.

[43] The matter has been dragged out unnecessarily due to the fourth respondent's inaction. As a token of my displeasure with the fourth respondent's absolute disregard for orders of this court, the fourth respondent will be ordered to pay the costs of the application.

### **ORDER**

In the premises, I grant the following order:

1. The First Respondents' members are Interdicted from, in any manner whatsoever, acting either personally or through any appointed agents, to threaten, assault, intimidate or harass the members of the applicant.
2. The First Respondent's members are interdicted from interfering with the lawful taxi operations of the applicant's members through either:
  - 2.1 preventing the applicant's members access to the Pick 'n Pay taxi rank, 87 Paul Kruger Street, Polokwane; or
  - 2.2 preventing the applicant's members from off-loading and loading passengers as the Pick 'n Pay taxi rank, Polokwane; or

2.3 any other conduct that interferes with the lawful operations of the applicant's members.

3. The Fourth Respondent's successor in title to wit, the *Gauteng Provincial Regulatory Entity*, is ordered to pay the costs of the application.



**N JANSE VAN NIEUWENHUIZEN**  
**JUDGE OF THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG DIVISION, PRETORIA**

Appearances:

Counsel for the Applicant	:	Advocate Gouws
Instructed by	:	DE BRUIN OBERHOLZER INC
Counsel for the first Respondent	:	Advocate Mashaba
Instructed by	:	MAPULANA MAPONYANA INC

ST PAUL KAUZER  
RANK \*

INDIAN  
CENTRE RANK

"BBM  
EXCELSIO

RISSIK

Pick n Pay \*  
CENTRE

DEVENISH

JORRISON

ENTRANCE  
ONLY

\* PNP  
COMMUNITY  
TAXI RANK

EXIT

PAUL KAUZER STR

CHURCH STR

GRUBLER STR

D.A.