

HIN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO: 26239/09

DATE: 15 December 2009

5 In the matter between:

CHAKATTACK NUMBER 10 CC

t/a MAINLINE ADVERTISING Applicant

and

THE CITY OF CAPE TOWN Respondent

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JUDGMENT

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DAVIS, J

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This is an application which was brought by the applicant, who appears to carry on a business as a third party advertiser by using approximately 100 vehicle trailers that he owns as a mobile or transit advertising medium for rent to its clients. He

20 has approached the Court because he contends that the respondent has prevented him from conducting its business in and around Cape Town by arbitrarily and unlawfully impounding applicant's trailers without recourse to the Court.

25 I have no difficulty in finding that if this is so, indeed arguably

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if it is not so, the respondent is obliged to return every trailer to the applicant, but that is not what applicant came to Court to procure. The draft order, which is attached to the notice of motion, in essence provides that respondent be interdicted and  
5 restrained from impounding applicant's trailers pending the establishment or implementation by respondent, as the case may be, of the relevant designated sites and the relevant trailer registration system, as envisaged in Schedule 15 of By-Law 10518: In other words the relief being sought is in effect  
10 that the applicant be entitled to employ his trailers, pursuant to his business operation in an unrestricted fashion, arguably until 11 January 2010 in terms of the Rule Nisi which is prayed for on these papers. The opposing affidavit, deposed to by Ms Evans, Chief Environmental Control Officer of the  
15 respondent, makes it perfectly clear that applicant has never applied for permission to utilise these trailers in the fashions indicated above.

Ms Evans informs the Court "the City has previously approved  
20 transit advertising although applications of this nature are extremely rare in my experience." To the argument that there is no basis by which to procure permission for such trailers to be located in the City Ms Evans avers as follows:

25 "The registration of trailers as mobile transit

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advertising trailers will only take place when an application for approval is processed by the City. In this regard I refer to what I said above."

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In other words, the argument on behalf of respondent is that, whilst there may be no designated site for the display of transit signs, there is a discretion given to the City to consider an application for approval of transit signs and accordingly to  
10 decide whether they should be employed or not.

Respondent makes clear that the remedy which applicant "has steadfastly refused to deal with is of course to make application for approval for the signs in question prior to its  
15 display." Ms Carter, who appeared on behalf of the applicant, contends that respondent has placed such obstacles in the way of the applicant that no point would be served in making such an application. As I have already indicated, from the answering affidavit respondent indicates that he will consider  
20 such an application.

What this Court cannot do, which is in effect what it is being asked to do, is to ignore any restrictions on such transit advertising, to ignore the by-laws of the City and to simply  
25 permit the applicant to use its trailer advertising as it so

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deems fit, notwithstanding the clear violation of the relevant by-law. That clearly cannot be countenanced by a Court in these circumstances.

5 Accordingly save for an order which would compel the respondents to return the relevant trailers to applicant, the balance of the relief cannot be granted. The reason for this is clear; were it to be granted this Court would be countenancing advertising in breach of a law and that law is not the subject of  
10 this application. That is if the applicant wishes to set aside the by-law then that must be the subject matter of entirely different proceedings.

Furthermore it appears to me that there is no further merit in  
15 any of these particular arguments and accordingly, save for the caveat with regard to the return of the impounded trailers the APPLICATION IS DISMISSED.

In light of the fact that the relief for which the applicant has  
20 come to Court cannot be granted, costs are awarded to respondent.

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DAVIS, J

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