

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO LOCAL DIVISION, THOHOYANDOU)

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED

CASE NO:232/2023

Signature

Date

In the matter between:

SASELAMANI TAXI ASSOCIATION**APPLICANT**

And

**PROVINCIAL REGULATORY ENTITY
LIMPOPO PROVINCE**

1ST RESPONDENT

**MEC OF TRANSPORT AND COMMUNITY
SAFETY, LIMPOPO PROVINCE**

2ND RESPONDENT**MINISTER OF POLICE****3RD RESPONDENT****STATION COMMISSIONER,**

MALAMULELE SAPS

4TH RESPONDENT

**STATION COMMISSIONER,
SASELAMANE SAPS**

5TH RESPONDENT

**MUNICIPAL MANAGER, COLLINS
CHABANE LOCAL MUNICIPALITY**

6TH RESPONDENT

MAGEZI WILSON MAHLAULE

7TH RESPONDENT

HASANI TIMOTHY NTSONANE

8TH RESPONDENT

And

CASE NO 2138/2022

In the matter between

MAHLAULE MAGEZI WILSON

1ST APPLICANT

NTSONANE HASANI TIMOTHY

2ND APPLICANT

And

**LIMPOPO PROVINCIAL REGULATORY ENTITY
LIMPOPO DEPARTMENT OF TRANSPORT AND
COMMUNITY SAFETY**

1ST RESPONDENT

**MEC OF DEPARTMENT OF TRANSPORT AND
COMMUNITY SAFETY**

2ND RESPONDENT

**LIMPOPO DEPARTMENT OF TRANSPORT AND
COMMUNITY SAFETY**

3RD RESPONDENT

MR PAUL MAINGANYE

4TH RESPONDENT

SASELAMANI TAXI ASSOCIATION

5TH RESPONDENT

MALAMULELE TAXI ASSOCIATION

6TH RESPONDENT

TRANSPORT APPEAL TRIBUNAL

7TH RESPONDENT

JUDGMENT

MONENE AJ

- [1] This judgement speaks to two applications involving essentially the same parties and the same subject matter which although launched separately were on 28 February 2023 per order of Justice AML Phatudi ordered to be heard together. Owing to the uncertainty that may arise from interchange of roles between applicants and respondents and the numbering thereto the parties will in this judgement be referred to by name.
- [2] On 8 February 2023 2023, Saselamani Taxi Association("STA") approached this court on an urgent basis seeking, in the main, interdictory relief as against Magezi Wilson Mahlaule("Mahlaule") and Hasani Timothy Ntsonane("Ntsonane") that the two who are taxi business operators cease taxi transport business in the areas of Malamulele and Saselamani which are places within the Collins Chabane Local Municipality. This application, under case number 232/2023 was the second of the two applications to be determined by this court.

- [3] What makes this application the second, although mentioned first, was the fact that already on 26 October 2022 Mahlaule and Ntsonana had, under case number 2138/2022 launched review proceedings in which they sought to set aside the withdrawal of their taxi business operating licenses which had been administratively effected by the Limpopo Provincial Regulatory Entity("PRE"), a functionary regulating the business of taxis under the auspices of the Limpopo Department of Transport and Community Safety("the Transport Department"). That application comprised Part A which sought an interim interdict over the withdrawal of the operating licenses pending the actual review of the withdrawal of the licenses in Part B.
- [4] The letters which withdraw the operating licenses of Mahlaule and Ntsonane had been given under the signature of a Paul Mainganye, ostensible a functionary of PRE.
- [5] The Minister of Police and Station Commissioners of the police at Malamulele and Saselamani were cited routinely as they routinely are by interdictory relief seekers with a view to having them help enforce the interdictory orders sought if granted. The Collins Chabane Municipality and its Municipal Manager appear to have been cited simply because the disputes arose within their sphere of governance influence.

- [6] It was Part A of Mahlaule and Ntsonane's application which was ordered to be heard with STA's "urgent" application when the latter was postponed sine die on 28 February 2023 as already stated above.

FACTUAL BACKGROUND

- [7] Mahlaule is a founder member of the Saselamani Taxi Association which came into existence in 1992. Ntsonane was a member of Malamulele Taxi Association since 1984. Mahlaule has since ditched STA to join Ntsonane in the Malamulele Taxi Association.
- [8] In 2019 Mahlaule applied for and was legally issued three taxi operating licenses in respect of three of his vehicles. The issuing was done by the Limpopo Provincial Regulatory Entity("PRE"). It is unclear what legalized his operations since 1992.
- [9] In 2020 Ntsonane applied for and was granted three taxi operating licences in respect of three of his vehicles. He was issued those licenses by PRE. It is not known how his operations since 1984 until the issuing of licenses in 2020 were authorized.

- [10] The papers, although voluminous, are very sketchy and unhelpful but it is apparent that PRE decided to withdraw both Mahlaule and Ntsonane's licenses having determined that the operating licences had been illegally granted on account of the pair having never had permits worthy of conversion to licenses.
- [11] Unhappy with the withdrawal of licenses, the pair appealed to the Transport Appeal Tribunal which not only upheld their appeal but ordered on 15 November that the matter be referred back to PRE for reconsideration.
- [12] On 31 August 2022, PRE per its chairperson Paul Mainganye, post reconsidering the matter, issued a ruling that the applications of the duo were unsuccessful due to none compliance, effectively meaning that the conversion of their permits to licenses had failed and thus their licenses remained withdrawn.
- [13] This saw Mahlaule and Ntsonana bringing the already mentioned review application styling it as interim suspension of the withdrawal of the licenses under Part A and the main review under Part B.
- [14] It would appear, at least from STA's meagre averments on the subject that Mahlaule and Ntsonane have continued to operate their taxi business despite the

reconsideration application which was unfavorable to them. Aggrieved by this STA launched the urgent application already mentioned supra, seeking to interdict the duo's operations.

THE ISSUES

[15] As regards STA's application the issue is whether a case has been made to result in Mahlaule and Ntsonane to be interdicted from operating their taxi business. A further issue is whether *lis pendens* as raised by the respondents to that application is sustainable.

[16] Urgency in that matter does not arise as it is inconceivable that a matter which was postponed *sine die* can still be urgent eight months down the line.

[17] As regards part A of the application of Mahlaule and Ntsonane the question is whether a case for interim interdictory relief pending the review application has been made.

[18] A further issue in that regard is whether the defence of failure of the applicants to exhaust the internal remedy of appealing to the Transport Appeal Tribunal *pot* the reconsideration by PRE is sustainable.

THE APPLICABLE LAW, ITS ANALYSIS AN APPLICATION TO THE FACTS

[19] All that the STA alleges as the trigger to their application to interdict Mahlaule and Ntsonane is the following at paragraph 21 of their founding affidavit:

"Notwithstanding the above, the seventh and eighth respondents have refused to hand over their illegal and/or cancelled operating licenses to the authorities or first respondent or second or third respondent or sixth respondent. The seventh and eighth respondent are busy continuing to use the aforesaid illegal and/or cancelled operating licenses on a daily basis."

[20] Beyond that STA has not said anything to explain exactly how the licenses are being used, when that misuse of the licenses commenced and exactly how and to what extent that abuse, or misuse prejudices them. A more meagre and threadbare factual basis for a matter I am yet to see.

[21] It is trite that in application proceedings a party must rise and fall by its papers. All evidence relied upon must be spoken to and elaborated on by the applicant. It is not for the court to fill in blanks in an applicant's case by supposition and inference or to engage in some connection of illegible dots.

[22] Absent facts around what the respondents did to be visited upon with an application for an interdict it is not difficult to find that the application for an interdict would be still born as the trite **Setlogelo v Setlogelo** requirements of an interdict will barely be submitted. There is no way harm nor reasonable apprehension of harm can ever be said to be established if the court is left in the dark about exactly what it is that constitutes harmful conduct by the respondents.

[23] For this reason alone I find that the application by STA under case number 232/2023 fails to get out of the starting blocks and must fail. In my view it ought to have been seen for the non-starter it is from the beginning and dismissed.

[24] On that score I find it unnecessary to delve into and decide on the respondents defence raised against the STA application. I find it unnecessary and superfluous to determine that point as the application is lacking in evidence and is thus completely unsustainable on the merits.

[25] In much the same way as STA did in their application Mahlaule and Ntsonane have, in their founding affidavit, woefully failed to set out the grounds upon which they base their prayer for interim interdictory relief. All that is stated at paragraphs 4 to 6 of the founding affidavit are generalized

and context-divorced bandying about of phrases like legitimate expectation, audi alteram partem rule and supremacy of the constitution. Nothing in the form of evidence is adduced to suggest even remotely that the trite requirements of an interim interdict, as sought in part A of their application, are met.

[26] Furthermore I find the submission made by the respondents to this application that Mahlaule and Ntsonane needed to first exhaust internal appeal remedies before approaching this court to, on the facts most persuasive. Indeed, post their lack of success at reconsideration by PRE, it remained available to Mahlaule and Ntsonane to appeal to the Transport Appeal Tribunal before approaching this court. I however will fall short of pronouncing on whether their failure to approach the Transport Appeal Tribunal was fatal or not as that will have a flavour of encroaching into their main review under Part B, which review is not before. I do not need to determine that conclusively as I have found on the merits that a case for the interim interdictory relief they seek has not been made before me at all.

COSTS

[27] It is trite law that costs should ordinarily be granted to a litigant who has achieved substantial success in a matter as such a litigant shall be in need of indemnification having been unnecessarily put in a position to initiate or defend litigation.

[28] As regards STA's application in case 232/2023 the respondents, in particular the 1st and second have successfully opposed the application. So too, it can be said, did Mahlaule and Ntsonane.

[29] As regards the application brought by Mahlaule and Ntsonane, the respondents, particularly the first and second respondents, have successfully opposed the application.

[30] In my view it will serve no meaningful purpose in a situation where both the STA and the Mahlaule and Ntsonane duo have failed against each other to mulct one with costs in one application and the other in the other application. The best course would, in my view, be that each party pay its own costs in both matters.

[31] Ordinarily both STA and Mahlaule and Ntsonane should be mulcted with costs as relate to the Limpopo Provincial Regulatory Entity and the MEC for Transport and Community safety, Limpopo Province as the latter two have achieved success in both applications.

[32] However this court has a disinclination to ordering costs against well-meaning but mostly mis-advised individuals and entities whenever they pit

their litigation muscles against well-resourced state entities and will only order such costs if the powerless acted recklessly. I cannot find that either STA or Mahlaule or Ntsonane acted so recklessly in these applications as to attract this court's wrath on costs despite their momentous litigation losses to the mighty state entities.

[33] In all the above premises the following order is made:

33.1 The application in case number 232/2023 is dismissed with no order as to costs.

33.2 Part A of the application in case number 2138/2022 is dismissed with no order as to costs.

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M S MONENE

**ACTING JUDGE OF THE HIGH COURT,
LIMPOPO LOCAL DIVISION, THOHOYANDOU**

APPEARANCES

Heard on : 12 October 2023

Judgment delivered on : 23 January 2024

For Magezi Wilson Mahlaule

**And Hasani Timothy Ntsonane
(In both applications)**

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