

SOUTH AFRICA / JUDGMENT

Greenpoint Taxi Association v MEC for Transport Northern Cape Province and Others (2002/13) [2014] ZANCHC 24 (17 April 2014)

[2014] ZANCHC 24

COURT

Northern Cape High Court, Kimberley

BEFORE

BM Pakati

CASE / FILE NUMBER

2002/13

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IN THE HIGH COURT OF

SOUTH AFRICA

(NORTHERN CAPE

DIVISION, KIMBERLEY)

Case No: 2002/13

DATE: 17 APRIL 2014

In the matter between

GREENPOINT TAXI

ASSOCIATION.....APPLICANT

And

THE MEC FOR

TRANSPORT.....1st

RESPONDENT

NORTHERN CAPE PROVINCE

THE HEAD OF
DEPARTMENT:DEPARTMENT.....2nd
RESPONDENTOF TRANSPORT, SAFETY
AND LIASON:THE CHAIRPERSON OF THE
OPERATING.....3rd
RESPONDENT
LICENSING BOARD FOR THE

JUDGMENT

Date heard: 21/02/2014

Date Delivered: 17/04/2014

PAKATI J

1. The applicant, Greenpoint Taxi Association, approached this Court seeking an order for the committal for contempt of an order of this Court dated 29 October 2012 of the respondents, the Member of the Executive Council for Transport, Northern Cape Province (“the MEC”), the Head of Department, Department of Transport, Safety and Liaison Northern Cape (“the Dept”), and the Chairperson of the Operating Licensing Board for the Northern Cape Province (“the Chairperson of the Licensing Board”), the 1st to 3rd respondents respectively.

BACKGROUND

2. On 10 October 2012 the applicant under Case No1737/12 sought an order against the respondents compelling them to provide information in respect of a number of applications for taxi operating licenses on certain routes which affect the applicant and its members directly. Subsequent to the application of 10 October 2012 the applicant brought another application on 24 October 2012 under Case No 1832/12 wherein it sought an interdict against the Dept and the Chairperson of the Licensing Board to issue new licenses and also amending the terms of the operating licenses of the operators listed in Annexure “Y”, alternatively to suspend all the operating licenses already issued for the said applications.
3. On 29 October 2012 the parties signed a settlement agreement which was made an order of court (Annexure “X”) and disposed of both Case Numbers 1737/12 and 1832/12. The order reads as follows:

“1. That the RESPONDENTS are authorised and instructed to supply to the APPLICANT the information requested per points 1, 2, 4, 5 and 6 of page 2 of Annexure “X” annexed hereto, pertaining to the applications for operating licenses set out per Annexure “Y” annexed hereto, within 7 days from date of this order;

2. That the APPLICANT will, within 7 days from date of receipt of the abovementioned information, file a request for reasons for the decisions made by the RESPONDENTS on the abovementioned applications that the APPLICANT intends appealing, in the prescribed manner;
3. That the RESPONDENTS will supply the APPLICANT with the reasons requested per paragraph 2 herein above, within 14 days after receipt of such request;

4. That the APPLICANT will lodge its appeal, if any, against the decisions made by the RESPONDENTS in the prescribed manner within 21 days after receipt of the reasons mentioned per paragraph 3 above;
5. That the RESPONDENTS be interdicted from proceeding with the issuing of new as well as amending operating licences as set out per Annexure “Y” until finalisation of any appeal process against any of the aforementioned operating licences set out per Annexure “Y”;
6. That the RESPONDENTS be ordered to formally inform all holders of operating licences already issued as mentioned in paragraph 2 above, of the possibility of the pending appeals;
7. That the RESPONDENTS shall be allowed to issue such operating licences as per Annexure “Y” against which no appeal process is pending, after the 21 days set out above has expired, as per paragraph 4 hereof;
8. That the APPLICANT withdraws its application under Case Number 1832/12, apart from the issue of costs; [and]
9. The issue of costs of both applications, under Case Numbers 1737/12 and 1832/12 is postponed for argument until 08 February 2013.”
4. Points 1, 2, 4, 5 and 6 (in the previous para) are the points referred to in clause 1 of the court order dated 29 October 2012 attached to the settlement agreement (Annexure “X”). The following appears at page 2 of Annexure “X”:

“In addition to the above we hereby demand that the board provide us with the following information:-

1. The outcome of the hearing held on 19 September 2012;
2. Which applications [were] granted/declined;
3. Reasons for the refusal or acceptance of [the] applications;
4. Minutes of the meeting held by the board on 19 September 2012;
5. Date on when the applications granted will be issued to the relevant Taxi Associations; [and]
6. Proof that CBDTA [Central Business District Taxi Association] is a registered taxi association.”
5. The applicant submitted that the respondents have failed to provide the reasons for their decision(s) within fourteen days of receipt of the request in compliance with clause 3 of the order. (See Clause 3 of para 3 above). Subsequent to the respondents’ failure the applicant’s attorney of record, Ms Vanessa Herbst, addressed two letters to the State Attorney; on 12 November 2012 and 16 November 2012. The latter demanded that the respondents comply with the court order failing which an application for contempt of court would be lodged. The State Attorney did not provide the required information in terms of Clause 1 of the court order. It was only on 19 November 2012, 15 days after the order was granted, that the minutes of the meeting held on 19 September 2012 were provided.

6. On 27 November 2012 the applicant requested the respondents to furnish reasons for the decision of the Licencing Board taken on 19 September 2012 in respect of the applications set out in Annexure “F” as directed in the court order. Within 21 days of receipt of the reasons the applicant had to lodge its appeals, if any, in the prescribed manner against the decision made by the respondents.
7. What seems peculiar about the minutes of the meeting provided by the Chairman of the Licensing Board is that page 1 shows that the board meeting took place on 19 September 2012 at the Community Hall in Kimberley at 09h00. Present were Mr Mokwena, Mrs Afrikaner and Ms Tjiposa. The rest of the pages contain the dates on which each of the application was received, the details of the applicant, the date on which the application was advertised in the Government Gazette, the application number and type, the decision of the board (whether granted or refused), the routes applied for and whether or not there were objections received. The last page records: ‘No Service Conditions’ and whether the applicant was present or not. No reasons for decisions taken by the board are reflected. There is also no indication when the operating licences were to be issued to the relevant taxi association as provided for in Clause 5 of the court order (See para 4 above).
8. On 30 January 2013, about 41 days after the applicant’s request for reasons from the Licensing Board, the respondents forwarded a letter to which was attached Annexure “H” which purported to be the reasons requested.
9. The applicant submitted that the respondents have also failed to supply proof of registration of the CBDTA. The document submitted by the respondents as proof of registration is blank, with no indication that it was issued by the Registrar. No signature or date stamp appears on it either; nor have the respondents supplied the applicant with the reasons in compliance with the court order. This conduct, submits the applicant, was wilful and mala fide.
10. Counsel for the respondents, Mr Van Tonder, contended that his clients have complied with the court order on 30 January 2013 but concedes that the respondents are in default in respect of application No. 231804. They undertook not to issue the operator’s licence (in respect of this application) before the respondents have provided the reasons as required. They insisted that Annexure “H” contains the full reasons. It was argued that for seven months after receipt of the said reasons and documentation the applicant has not complained about any deficiency. The complaint was only received for the first time on 03 September 2013.
11. The respondents submitted further that the applicant claimed, for months now, that it was in the process of filing its appeals against a number of the applications in terms of Clause 4 of the order in respect of which adverse decisions were made (See para 3 above). The period for lodgement of those appeals has lapsed. As a consequence of the applicant’s failure to lodge the said appeals the respondents were entitled to issue the relevant licences within 14 days from such default in terms of para 7 of the court order. The respondents argued that the applicant could not prevent the respondents indefinitely from issuing operators’

licences as this resulted in the delays, backlogs and prejudice to the affected applicants. The operators' licences had to be uplifted and issued within 60 days. The respondents argued that the applicants have failed to lodge their appeals.

12. The respondents argued further that the alleged inadequacy of the reasons they provided did not prevent the applicant from lodging the said appeals. This is so because in the normal course of events the Chairman of the Board supplies reasons once an appeal has been lodged and not before. The applicant was therefore expected to proceed with the lodgement of the appeals within 21 days and the Chairperson of the Licencing Board would supply the reasons for its decision afterwards. For this argument the respondents relied on Regulation 3(2) of the Transport Appeal Tribunal Regulations 2012, as published in GN 26 of 17 January 2013, Government Gazette No. 36077 which states:

“Appeal Practice Procedure: Entity

3. (2) The relevant entity must within 21 days after the date of issue of the Notice to Entity by the Tribunal, forward to the Tribunal and to all the parties to the Appeal –
 - (a) [C]opies of all documents relating to an act, direction or decision, the original application form, the Gazette wherein the application was published if applicable, any written representation lodged with it in regard to the application, any letters of recommendations from the municipalities, any maps and route descriptions that were considered and any applicable integrated transport plans (ITP's) that were considered together with a transcript of the proceedings before it, if mechanically or manually recorded, if applicable state to state agreements relating to the application and any further document that was considered during the application process; and
 - (b) [I]ts reasons in writing for the decision appealed against.”

The aforementioned regulation and the procedure it describes was not an issue and was never raised or referred to when the settlement agreement was made an order of court.

13. As far as the CBDTA (the Central Business District Taxi Association) is concerned the respondents explained that the CBDTA was the last association registered in terms of the old National Land Transport Transmission Act, 22 of 2000, because the Northern Cape Provincial Transport Act had not been repealed. The original certificates were submitted to the CBDTA. It is for that reason that the respondents only had blank forms provided to them.
14. The issue to be determined is whether the respondents are guilty of contempt of court for failing to comply with the court order dated 29 October 2012. The respondents deny any contemptuous conduct and contend that they were not wilful or mala fide.
15. Contempt of court is committed, generally speaking, when a person unlawfully and intentionally violates the “dignity, repute or authority of a judicial body” or interferes in the administration of justice. (See para 15 of VICTORIA PARK RATEPAYERS ASSOCIATION v GREYVENOUW CC [2004] 3 ALL SA 623 (SE)).

16. Cameron JA (Howie P and Cachalia AJA concurring) in *FAKIE NO v CCII SYSTEMS (PTY) LTD* [2006] ZASCA 52; 2006 (4) SA 326 (SCA) at para 42 held:

“[42] To sum up:

- (a) The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders, and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.
 - (b) The respondent in such proceedings is not an ‘accused person’, but is entitled to analogous protections as are appropriate to motion proceedings.
 - (c) In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and wilfulness and mala fides) beyond reasonable doubt.
 - (d) But, once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and mala fides: Should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and mala fides, contempt will have been established beyond reasonable doubt.
 - (e) A declaratory and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities.”
17. It is common cause that a court order issued and was served on the respondents. What appears on “Annexure H” is the decision of the Board; the representations by the applicant; the motivation and objections, letters of support received, whether the applicant was present or not; but no reasons were furnished why a particular application was granted. When this was brought to the attention of Mr Van Tonder he maintained that Mr Lategan advised the respondents that Annexure “H” constituted the full reasons. It is not clear under what circumstances that advice was given and what advice was actually given.
18. The fact that the applicant complained seven months after the purported reasons were provided does not detract from the validity of the relief sought because the applicant only has to prove that there was an order of court, service thereof or notice and non-compliance with the order by the affected respondent.
19. It is not sufficient that the respondents ‘bent over backwards in an attempt to accommodate the applicant’ in that they entered into a settlement agreement with the applicant which was made an order of court. What was required of them was to comply with the court order. For the respondents to now somersault and say ‘normally the information and reasons from the Chairman of the Licencing Board are only provided once an appeal has been lodged’ is to deliberately misconstrue the court order. Clauses 1 and 2 of the Court order in para 3 above do not need clarification as it is unambiguous. The respondents’ argument that the rights of the operators need to be taken into account as the delay in issuing the licences has no merit as no justification has been shown to limit or take away their rights.

20. The next question is whether the respondents' non-compliance was wilful and mala fide? Mr Van Tonder submitted that at all material times the consent to furnish reasons was intended to assist the applicant with the documentation in order to lodge the appeals, which the applicant has not done. He insisted that Annexure "H" constituted the reasons.
21. In my view the evidence before me established that the respondents have deliberately failed to supply the reasons as required. No evidence was presented to show that they were not mala fide and wilful in their conduct. In terms of the order the 'applicant will lodge its appeal, if any, against the decisions made by the respondents in the prescribed manner within 21 days after receipt of the reasons.' I am satisfied that what is contained in Annexure "H" cannot be equated with reasons by the Licensing Board to grant or refuse the said licenses. It is therefore not possible for the applicant to lodge any appeal due to

the respondents' non-compliance with the order. Nothing in the agreement entered into between the parties, which is now made an order of court was merely intended to assist the applicant and its members with processing of their applications or the acquisition of operators' licences.

22. Cameron JA in the Fakie case cited above (para 16) quoted with approval the case of VICTORIA PARK RATEPAYERS ASSOCIATION (see para 15 above) where Plasket J pointed out that contempt of court has obvious implications for the effectiveness and legitimacy of the legal system and the legal arm of government: There is thus a public interest element in every contempt committal. At para 23 Plasket J said:

"It is clear that contempt of court is not merely a mechanism for the enforcement of court orders. The jurisdiction of the superior courts to commit recalcitrant litigants for contempt of court when they fail or refuse to obey court orders has at its heart the very effectiveness and legitimacy of the judicial system. In this sense, contempt of court must be viewed in a particularly serious light in a Constitutional State such as ours that is based on the democratic values listed in section 1 of the Constitution, particularly those of constitutional supremacy and the rule of law. Contempt of court is not merely a means by which a frustrated successful litigant is able to force his or her opponent to obey a court order. Whenever a litigant fails or refuses to obey a court order, he or she thereby undermines the Constitution. That, in turn, means that the court called upon to commit such a litigant for his or her contempt is not only dealing with the individual interest of the frustrated successful litigant but also, as importantly,

acting as guardian of the public interest."

23. In the instant case the applicant launched these proceedings to punish the respondents in the hope of compelling performance with the court order. At para 19 Plasket J stated:

"The principal purpose of contempt of court proceedings when an order has been disobeyed has been held to be "the imposition of a penalty in order to vindicate the Court's honour consequent upon the disregard of its order and to compel the performance thereof." This purpose must, however, be viewed in a wider context. The Constitution, in which the judicial authority of the State is sourced, is founded, inter alia, on constitutional supremacy and the rule of law. At the heart of the rule of law is the idea, foundational in civilised society, that the law must be administered by independent courts and that, as Dicey expressed it, "no man is above the law" and every man, whatever be his rank or condition, is

subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.”

I am satisfied that the applicant has successfully demonstrated that the respondents wilfully disregarded the Court order dated 29 October 2012.

24. The circumstances of this case warrant that I make a special costs order to show my disapproval of the deliberate violation of this Court’s dignity and authority. I also take into account that the respondents are senior officials who are obliged to maintain integrity and honesty as heads of their departments for which the service delivery injunction is: “Batho pele – People first”. It is also deeply concerning that the respondents have not offered to purge their default by furnishing

the long outstanding reasons.

I make the following order.

1. The first to third respondents, the MEC for Transport, Northern Cape, the Head of the Department of Transport, Safety and Liaison, Northern Cape and the Chairperson of the Operating Licensing Board for the Northern Cape Province, have acted in contempt of this Court’s order dated 29 October 2012 in cases number 1737/12 and 1832/12 and are still in contempt of the said order.

2. The respondents are committed to goal for a period of 30 (thirty) days which is suspended on the following conditions:

2.1 That the respondents comply with the order dated 29 October 2012 within 30 (thirty) days from the date of this order. The respondents are to provide the applicant, Greenpoint Taxi Association, with proper reasons for the decisions taken by the 2nd respondent, the Chairperson of the Operating Licensing Board for the Northern Cape Province, on 19 September 2012 in respect of all the applications set out in Annexure “F” to the Founding Affidavit.

2.2 That the respondents revoke all licenses issued in respect of any of the applications set out in Annexure “F” within 15 (fifteen) days of this order.

2.3 That the respondents refrain from issuing any license in respect of any of the applications as set out in Annexure “F” for as long as any appeal is still pending.

2.4 That paras 2.2 and 2.3 of this order shall operate as an interim interdict with immediate effect pending the final determination of this application.

3. The respondents are ordered to pay the costs of this application on the scale as between attorney and client.

BM PAKATI

JUDGE

On behalf of the Applicant: Adv van Niekerk

Instructed by: Office of the State Attorneys

On behalf of the Respondent: Adv van Tonder

Instructed by: Engelsman Magabane Inc

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Prepared on 14 October 2026 · Esheria