

SOUTH AFRICA / JUDGMENT

Kweleta v George Municipality and Others (22547/2023) [2024] ZAWCHC 5 (22 January 2024)

[2024] ZAWCHC 5

COURT

Western Cape High Court, Cape Town

BEFORE

Lekhuleni

CASE / FILE NUMBER

22547/2023

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Policy

In the High Court of

South Africa

(Western

Cape Division, Cape Town)

Case

No: 22547/2023

In

the matter between:

NTOMBOXOLO

KWELETA

Applicant

And

GEORGE

MUNICIPALITY

First

Respondent

GEORGE

MUNICIPAL MANAGER

Second

Respondent

GEORGE

	TRAFFIC MANAGER
	Third
	Respondent
	GEORGE
	PROVINCIAL TRAFFIC DEPARTMENT
	Fourth
	Respondent
	CHIEF
	PROVINCIAL TRAFFIC
	Fifth
	Respondent
MEC:	MOBILITY WESTERN CAPE
	Sixth
	Respondent
	MINISTER
	OF POLICE
	Seventh
	Respondent
	NATIONAL
	COMMISSIONER OF POLICE
	Eighth
	Respondent
	PROVINCIAL
COMMISSIONER OF POLICE:	WESTERN
	CAPE
	Ninth
	Respondent
	DIRECTOR
OF PUBLIC PROSECUTIONS:	WESTERN
	CAPE
	Tenth
	Respondent
Heard:	14 December 2023
	Delivered
	(electronically): 22 January 2024

JUDGMENT

LEKHULENI J

[1] This urgent application is in response to the applicant's request for the release of her five-seater motor vehicle, bearing registration number CAW [...], which was seized and impounded from its driver on the grounds that the driver provided road-based public transport services without a valid permit issued under the National Land Transport Act 5 of 2009 ('the NLTA') for the vehicle in question.

- [2] The applicant believes that the seizure and impoundment of her vehicle constitutes an abuse of process by the respondents and is not in accordance with the empowering provisions of the NLTA, which applies to public transport exclusively and not private vehicles. In addition, the applicant sought an order declaring that the impoundment of her motor vehicle was unconstitutional and unlawful. The applicant also sought an order compelling the respondents to release and return the vehicle to her forthwith.
- [3] The first to the sixth respondents opposed the application and filed their answering affidavits. The tenth respondent did not oppose the application but instead, filed a notice of intention to abide by this court's decision. At the hearing of this application, the court was advised that the applicant does not seek relief against the seventh to the tenth respondents. The court was further informed that these respondents were cited merely for the interest they may have in this matter.

BACKGROUND

FACTS

- [4] The applicant is a registered owner of a Tata Indica motor vehicle bearing registration number CAW [...]. The applicant asserts that during the morning of 4 December 2023, she received a request from her family relatives residing at Borcheds to be transported to George Central Business District to receive their disability grant. The applicant asked her husband, Mr Tshuta, to transport her relatives. While driving on Victoria Street, a traffic officer, Mr Sibanda, pulled over Mr Tshuta, who was transporting two adults and a child.
- [5] The applicant averred that Mr Sibanda informed Mr Tshuta of his intention to impound the vehicle since Mr Tshuta was carrying passengers without a permit, violating the NLTA. According to the applicant, Mr Sibanda did not even bother to seek an explanation from Mr Tshuta to establish on what basis he was carrying passengers in the vehicle. Had Mr Sibanda enquired from Mr Tshuta civilly why he was carrying those passengers in the vehicle, the latter would have explained to him. Mr Sibanda issued Mr Tshuta a traffic fine of R2500 payable on 11 February 2024 and in addition to the fine, he also charged Mr Tshuta for contravening section 50(1) read with section 90(1) of the NLTA.
- [6] Mr Sibanda subsequently impounded the vehicle as he believed Mr Tshuta operated a public transport service without a valid license or permit. The vehicle was taken to the fifth respondent's impoundment yard at York Street George. On the same day, Mr Sibanda took Mr Tshuta to the George Police Station, where he registered a criminal case of reckless and negligent driving. On the same day, the applicant explained to the first and third respondents through representations why the vehicle should not be impounded and asked for its release. She stated that she owned the vehicle and that her husband was transporting relatives and not operating the vehicle as a taxi. On 6th December 2023, Mr. Tshuta submitted his wife's representations to the respondents to recover the vehicle.

- [7] Notwithstanding this, Mr Tshuta returned without the vehicle, as the officials at the Municipal Traffic Court were still waiting for documentation from the traffic officer who impounded the vehicle. The applicant asserted that the vehicle remains in possession of the respondents, and she needs the vehicle urgently for family related errands. The applicant has approached the court for an urgent intervention to restore possession of her vehicle, citing that she cannot wait any longer. The applicant further stated that the impoundment of her vehicle by the respondents constitutes an abuse of process. She bought this vehicle in February 2018 and has used it to ferry family members as passengers. This vehicle has never been impounded before.
- [8] The applicant asserted that the ongoing impounding of the vehicle infringes her constitutional rights to provide her children a safe, secure, and comfortable living. One of her children has a disability, is autistic, and finds it difficult and challenging to communicate with members of the public. The applicant averred that it is in the best interest of her minor children that the vehicle be released so that they can be transported in a safe and comfortable family vehicle, particularly during the school holidays. As there was no positive response from the respondents, on 7 December 2023, the applicant, and her husband, with the assistance of CODETA, instructed their legal representatives to institute these proceedings against the respondents. The applicant believes that the continuous retention of her vehicle is merely intended to harass her husband and, by extension, and through him, her entire family. The applicant appealed to this court to grant the relief sought in the notice of motion with
- a punitive costs order against the respondents.
- [9] The first, second and third respondents opposed the application. They asserted that this application is an abuse of process, vexatious, and a deliberate attempt to waste the taxpayers' money. These respondents averred that the applicant's vehicle was lawfully impounded in terms of section 87(1) of the NLTA for a violation of section 90(1)(a) read with section 50(1) of the said Act. Additionally, the respondents averred that the applicant has an alternative remedy: to pay the impoundment fee, and the vehicle would be returned to her. In this regard, the respondents asserted that the applicant would be entitled to repayment of the said fee should the Municipal Court, seized with the matter, find in her favour. The respondents further asserted that the case is not ripe for hearing due to its pending before the Municipal Traffic Court, which is yet to decide on 25 January 2024, among other things, whether the impounding of the vehicle was unlawful. These respondents further contended that the fact that this application was brought under Rule 6(12) of the Uniform Rules is erroneous, ill-considered, and improper.
- [10] According to the respondents, Rule 6(12) requires the applicant to make out a case for urgency and, among other things, state why she cannot obtain relief in the ordinary course. The respondents further averred that the abuse inherent in the application is compounded by the fact that there was simply no reasonable and rational basis, alleged in the founding affidavit, justifying, explaining, or providing the reasons why the applicant could simply not

follow the normal process and pay the release fee to secure her vehicle. The respondents further asserted that the applicant's founding affidavit amounts to nothing more than generic and unsubstantiated allegations against the traffic official, Mr Sibanda, who impounded the applicant's vehicle in terms of the Act.

- [11] Notably, the respondents asserted that the version of the applicant that the vehicle was not used as a taxi, is contradicted by the passengers, Jerome Jantjies, Ludel Malgas, Joanna Meyer, and Kaylucia Meyer, who all appended their signatures to the 'Passenger List' wherein they confirmed that Mr Tshuta indeed conveyed them for reward and a fee of R14.00 per passenger was paid to him in respect of each of them. In support of their contention, the respondents attached the said 'Passenger List' to their answering affidavit which formed part of the impound documents which Mr Sibanda issued when he impounded the vehicle on 4 December 2023.
- [12] The respondents refuted the account of the applicant of what transpired on that day. According to the respondents, officer Sibanda encountered an overloaded vehicle while on duty driving along Nelson Mandela Boulevard. Mr Sibanda then activated his blue lights to stop the said vehicle. However, the vehicle refused to stop and drove over the barrier line into oncoming traffic, disregarding and failing to stop at the red traffic light. Mr Sibanda managed to block the vehicle at the corner of Victoria Street and Nelson Mandela Boulevard, and informed the driver, Mr Tshuta, that he was being arrested for reckless and negligent driving.
- [13] Mr. Sibanda was subsequently informed by the four occupants in the applicant's vehicle that they had each paid Mr Tshuta R14.00 for the journey. Subsequently, Mr Sibanda notified Mr Tshuta that the vehicle would be impounded as he (Mr Tshuta) provided road-based public transport without a valid operating licence, as mandated by the NLTA. The respondents attached Mr Sibanda's statement to their answering affidavit to confirm these assertions.
- [14] Furthermore, the respondents asserted that the applicant is aware that the vehicle is currently in the custody of the fifth respondent. Accordingly, the applicant ought to have approached the fifth respondent to secure the release of the vehicle after paying the necessary impoundment fee. In addition, the fourth to the sixth respondent averred that the entire application was unnecessary as the applicant had an alternative remedy available to her to secure the return of the vehicle. According to them, if the applicant pays the impound fee and the Municipal Traffic Court determines that her vehicle was not used for public transport, the court will direct that the applicant be reimbursed for any impound fees paid.
- [15] The respondents further stated that the applicant did not at all tender the payment of the impound fees, which she is obliged to pay in terms of the law. Instead, the applicant approached this court seeking the release of her vehicle without paying the impound fees.

SUBMISSIONS

BY THE PARTIES

[16] Mr M Titus, the applicant's legal representative, submitted that the applicant is the owner of the vehicle in question, and she bought the vehicle in 2018. The vehicle was acquired for her private use, and not for commercial purposes. The applicant's husband was transporting relatives on the day the vehicle was impounded. Mr Titus submitted that the passengers in the vehicle when it was impounded were relatives of the applicant. Counsel referred the court to the statement attached to the answering affidavit of Mr Sibanda, who stated that 'in the vehicle, there were four passengers and one child, and the four adults paid R14.00 for the trip, and they are related to the driver, and some are not related to each other'. Mr Titus further submitted that the NLTA does not apply to the applicant's vehicle and that the impoundment of the vehicle was unlawful.

[17] Counsel further contended that the fare of R14.00 allegedly paid by the passengers could not be viewed as a payment for reward as envisaged by the NLTA. According to Mr Titus, the impoundment of the vehicle was a glaring abuse of power. Concerning the *lis pendens* argument raised by the respondents, Mr Titus submitted that this preliminary point is irrelevant in these proceedings as the applicant

is not a party in the Municipal Court, and those proceedings are not germane to her. Her husband is the accused in those allegations.

Counsel argued that it cannot be said that Mr Sibanda had reasonable suspicion to impound the applicant's vehicle even if the NLTA

applied. Mr Titus implored the court to grant the relief sought in the notice of motion.

[18] Mr T Titus (sharing the same surname as the applicant's Counsel), who appeared for the first, second and third respondents, submitted that section 87(1) of the NLTA dealing with the impoundment of vehicles is applicable to private and public transport vehicles. Counsel submitted that the NLTA is not limited to taxis, nor does it exempt private vehicles. Mr Titus submitted that Mr Sibanda was duly authorised to impound the applicant's vehicle. The passengers in the vehicle informed him that they paid R14.00 for the trip. As a result, he formed a reasonable suspicion that the applicant's husband was utilising the vehicle for a reward or as a taxi. Mr Titus requested that this application be dismissed, and that the applicant's legal representative (the instructing attorney) be ordered to pay the costs thereof, *de bonis propriis*.

[19] The arguments put forth by Mr. Titus for the first, second and third respondents were substantially consistent with the submissions of the fourth, fifth, and sixth respondents. However, Mr Abass, Counsel for the fourth to the sixth respondents, also submitted that the applicant was aware that she must pay the impoundment fee before her vehicle could be released. Notwithstanding, Counsel submitted that the applicant has not tendered to pay the relevant fee for the release of her vehicle. Instead, the applicant chose to approach this court

urgently in circumstances that were not warranted.

- [20] Furthermore, in tandem with the first to third respondents' submissions, Mr Abass submitted that the applicant should have paid the impoundment fee to release her vehicle. If it is later found that the impoundment of her vehicle was unlawful by the criminal court, argued Counsel, the court would direct that she be refunded the impoundment fee paid for the release of her vehicle. According to Mr Abass, the fourth respondent is only responsible for establishing an impoundment facility. Impounded vehicles are held by the fourth respondent until the impoundment fee is paid, or until the relevant person's criminal charges are dropped or until he is acquitted in court.
- [21] Mr Abass submitted that the applicant's husband, who works as a taxi driver, should have been aware of the laws governing public transportation, specifically the permit requirement. However, he used the applicant's vehicle to transport passengers without a permit, thus violating the law. This action not only put him at risk of having his vehicle impounded but also endangered his family. Counsel applied that the applicant's application be dismissed with costs, which are to be paid by the applicant's legal representative *de bonis propriis*.

ISSUES

TO BE DECIDED

- [22] This court is enjoined to determine whether the impoundment of the applicant's vehicle is unlawful or not. Secondly, whether the respondents should be compelled to release and return the vehicle to the applicant.

RELEVANT LEGAL PRINCIPLES AND ANALYSIS

- [23] This case, in my view, hinges on the application and the interpretation of Section 87(1), read with Section 50(1), and Section 89 of the NLTA. For the sake of completeness, I deem it necessary to refer to these sections verbatim:

- [24] Section 50 of the Act provides as follows:

“(1) No person may operate a road-based public transport service, unless he or she is the holder of an operating licence or a permit, subject to sections 47, 48 and 49, issued for the vehicle concerned in terms of this Act.”

- [25] Section 87 of the same Act provides as follows:

“(1) An authorised officer who is satisfied on reasonable grounds that a motor vehicle is being used by any person for the operation of public transport without the necessary operating licence or permit or contrary to the conditions thereof, may impound the vehicle pending the investigation and prosecution of that person for an offence mentioned in section 90(1)(a) or (b).

- (2) A vehicle impounded under subsection (1) must be delivered to the head of the depot contemplated in subsection (4), who must retain the vehicle in the depot and release it to the person concerned only—
 - (a) when the criminal charges against the person have been withdrawn or the person has been acquitted of the offence charged; or
 - (b) in the case where the person is convicted of the offence charged, and unless the court has ordered otherwise, on payment to the head of the depot of the amount determined by the MEC, which is an impoundment fee.
- (3) The impoundment fee must be increased accordingly, for the second or subsequent impoundment of a vehicle.
- (4) The MEC or municipality may, by notice in the Provincial Gazette, designate any suitable place defined in the notice to be a depot.”

[26] While section 89(1) (a) and (b) provides as follows:

89. (1) In addition to the functions and duties imposed on an authorised officer by or in terms of this Act, an authorised officer may—
- (a) cause a motor vehicle to be stopped in the prescribed manner and enter such a vehicle in order to establish if it is used for public transport or monitor compliance with any provision of this Act, or with the terms of any operating licence or permit, and may for those purposes examine or inspect the vehicle and any documentation that may be relevant;
 - (b) ...
 - (c) ...
 - (d) require that any person in a motor vehicle suspected on reasonable grounds to be used for public transport, or a person suspected on reasonable grounds to have been in such a vehicle recently, furnish the full name and address of such suspected person and documentary proof thereof and state if such person has paid or has to pay any consideration for conveyance in the vehicle, and furnish the name and address of the person to whom the payment has been made...”

[27] Our Constitution requires a purposive approach to statutory interpretation.[1] The starting point in interpreting these sections should be section 39(2) of the Constitution, which enjoins courts when interpreting any legislation and when developing the common law to promote the spirit, purport, and objects of the Bill of Rights. In *Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors: In Re Hyundai Motor Distributors (Pty) Ltd and Others v Smit NO and Others*,[2] the Constitutional Court interpreted this provision to mean, inter alia, that the Constitution requires judicial officers to read

legislation, where possible, in ways which give effect to its fundamental values and in conformity with the Constitution.

[28] In interpreting the above sections, this court must also consider the principles espoused by the Supreme Court of Appeal in *Natal Joint Municipal Pension Fund v Endumeni Municipality*,^[3] where the court stated that the interpretation of legislations or documents must be made considering the language of the Act, its

context and purpose together with the potential consequences of different interpretation.

[29] Mindful of the imperative to read and interpret legislation in a way that conforms with section 39(2) of the Constitution, I turn to consider whether the traffic officer had the authority or justification to impound the applicant's vehicle in line with the sections quoted above. Section 50 of the NLTA forbids any person from operating a road-based public transport service unless he holds an operating licence or permit. In other words, a person may not operate a public transport business without the relevant permit. Operating a public transport service without a required permit in conflict with section 50 is a criminal offence under Section 90(1)(a) of the NLTA. Thus, section 90(1)(a) criminalises the operation of a public transport service without the required permit.

[30] Meanwhile, section 87 of the NLTA empowers an authorised officer who is satisfied on reasonable grounds that a vehicle is being used by any person for the operation of public transport without the necessary permit to impound the vehicle pending the prosecution of that person for operating a road based public transport without a permit or an operating licence. The test whether the suspicion is reasonably entertained within the meaning of section 87(1) is objectively justiciable. The question, in my view, is: would a reasonable person in Mr Sibanda's position, with the same information, have considered that there were good (reasonable) and sufficient grounds for believing that Mr Tshuta was operating his vehicle as a taxi without the required permit?^[4]

[31] The dispute between the parties pivots around the interpretation of section 87. This section, in my view, sets out four jurisdictional requirements before a traffic inspector, or the police (an authorised person) may lawfully impound a vehicle in terms of the NLTA. Namely:

- (a) the impounding officer must be an authorised officer as defined in section 1 of the Act;
- (b) the authorised officer must entertain a suspicion;
- (c) the suspicion must be based on reasonable grounds;
- (d) that the person/ driver of the vehicle in question is operating a vehicle without the necessary operating licence.

[32] For the sake of convenience, I will deal with these jurisdictional facts one after the other vis-à-vis the present matter.

The impounding officer must be an authorised officer as defined in section 1 of the NLTA.

[33] It is not disputed that Mr Sibanda is an officer as envisaged in section 1 of the NLTA. His authority has not been challenged in this court. Section 1 of the NLTA defines an authorised officer, among others, as an inspector contemplated in section 86 of the Act or a member of the South African Police Service, including a member of a municipal police service as defined in section 1 of the South African Police Service Act 68 of 1995. Mr Sibanda stated in his impounding statement that he was on duty in full uniform doing patrol duties on Nelson Mandela Boulevard when he spotted the impounded vehicle. He was driving his official vehicle. In my view, this jurisdictional fact has been satisfied, and I turn to consider the second jurisdictional requirement.

The authorised officer must entertain a suspicion.

[34] Mr Sibanda asserted in his statement that as he patrolled the area, he observed the applicant's vehicle driving towards town. He then switched on the blue lights of his official vehicle to stop the applicant's vehicle as it appeared to him to be overloaded. The vehicle refused to stop. He followed the applicant's vehicle, which overtook other vehicles on a barrier line and even failed to stop at a red traffic light. The vehicle did not stop, and he had to block it to stop.

[35] In my view, Mr Sibanda entertained a suspicion of a violation of traffic regulations when he stopped the vehicle. It is essential to note that his version was not contradicted. Thus, in my opinion the fact that Mr Sibanda formed a suspicion when he stopped the applicant's vehicle cannot be faulted. I turn to consider the remaining jurisdictional facts. In my view, the third and fourth jurisdictional requirements are inextricably imbricated, and I will consider them jointly.

The suspicions must be based on reasonable grounds that the driver of the impugned vehicle is operating that vehicle for public transport without the necessary operating licence.

[36] As mentioned earlier, the issue is whether a reasonable person in Mr Sibanda's position, with the same information, would have believed that there were valid reasons to suspect that the applicant's vehicle was being used as a taxi without the required permit. From the totality of the facts placed before this court, I am of the view that Mr Sibanda entertained a reasonable suspicion when he impounded the applicant's vehicle in question. The common cause facts are that he was on duty when he noticed the applicant's vehicle. When he observed the vehicle, he thought it was overloaded.

[37] Subsequently, Mr Sibanda then activated his blue lights to stop the vehicle. However, the vehicle refused to stop and drove over the barrier line into the course of oncoming traffic and failed to stop at the traffic light. Mr Sibanda only managed to stop this vehicle at the corner of Victoria Street and Nelson Mandela Boulevard. He informed the driver, the applicant's husband (Mr Tshuta), that he was arresting him for reckless and negligent driving. According to Mr Sibanda, the four passengers in the applicant's vehicle informed him that they had paid R14.00 each for the trip.

- [38] Subsequent thereto, Mr Sibanda informed the driver of the vehicle that he would impound the vehicle in terms of the NLTA for operating a road-based public transport service without the valid permit or license as required in terms of the Act. The court was presented with a passenger list including names, surnames, amount paid, and signatures of all passengers on board the applicant's vehicle. In my view, the list of passengers and the fact that these passengers informed Mr Sibanda that they had paid R14.00 was sufficient for Mr Sibanda to form a reasonable suspicion that Mr Tshuta was using the vehicle for reward.
- [39] It has been argued on behalf of the applicant, that this list is undated, and that it cannot be concluded that it involved passengers of that day when the vehicle was impounded. This is not a proposition with which I concur. I am of the view that that argument lacks validity. The respondents have no reason to fabricate evidence and lie against the applicant. Furthermore, the version of the applicant corroborates the respondents' version on the list of passengers. According to the applicant, all the passengers on board were her relatives. Mr Sibanda recorded in his statement that four passengers were allegedly related to the applicant.
- [40] It is common cause that four passengers were in the applicant's car when it was impounded. Mr Sibanda stopped the vehicle as he suspected the vehicle to be overloaded. The four passengers in the vehicle informed him that they paid R14.00 for the trip. There was a list in the vehicle to confirm their assertion. The impoundment notice that Mr Sibanda issued recorded the impoundment fee and the fine on the section 56 Notice that must be paid before the vehicle can be released. In my view, there were reasonable grounds for Mr Sibanda to impound the vehicle in question as he reasonably suspected it to be operating as a taxi without the necessary permit.
- [41] The applicant asserted that the individuals in her car were her relatives, and her husband was transporting them to go and collect their grants. Before this court, there is no plausible explanation why their confirmatory affidavits were not filed. If these witnesses were related to the applicant, it is strange that they didn't file affidavits confirming that Mr Tshutu was transporting them to collect their grants. Consequently, on a conspectus of all the facts placed before this court, I am satisfied that the respondents, particularly Mr Sibanda, had reasonable grounds to impound the applicant's vehicle.
- [42] Additionally, it is disconcerting that the appellant filed this urgent motion seeking a declaration that the impoundment of her vehicle conducted in terms of the NLTA was unconstitutional and unlawful. In my view, this prayer is legally incompetent. The declaration that the applicant seeks in this prayer would have far-reaching consequences on the public of George, including other municipalities in our Country. While I appreciate that the applicant wants her vehicle to be returned, I believe there was no basis for this application to have been brought on an urgent basis.

- [43] It must be borne in mind that Rule 6(12) of the Uniform Rules of Court, requires an applicant to set out the circumstances which justify the hearing of an application on an urgent basis and the basis on which it contends that it would not obtain substantial redress at a hearing in due course. Thus, Rule 6(12)(b) requires two things of an applicant in an urgent application. First, the applicant must set forth explicitly the circumstances that he avers render the matter urgent and, secondly, the reasons why he claims that he would not be afforded substantial redress at a hearing in due course.[5] In my view, the applicant, in casu, would have substantial redress at the hearing in due course.
- [44] It is imperative to emphasise that section 87 of the NLTA empowers an authorised officer who is satisfied on reasonable grounds that a vehicle is being used by any person for the operation of public transport without the necessary permit to impound the vehicle pending the outcome of court proceedings or the payment of the impound fees. An impound fee of R2500 was set as a condition for the release of the applicant's vehicle. The applicant is aware that the vehicle is currently in the custody of the fifth respondent.
- [45] The applicant had an alternative remedy at her disposal. If the applicant wanted her vehicle urgently, she could have paid the R2500 and challenged the impoundment of her vehicle in due course at the Municipal Traffic Court as envisaged in section 87(1)(a) and (b) of the NLTA. Alternatively, the applicant could have waited for the release of her vehicle when the matter is finalised as envisaged in section 87(1)(a) or (b) of the Act.
- [46] I agree with the views articulated by Mr Abass and Mr T Titus that the determination of whether the vehicle was used as a public transport is something to be determined in the Municipal Traffic Court where the matter is set down to be heard on 25 January 2024. The applicant is seeking an order that the court determine that the respondents' impoundment of the vehicle be declared unlawful when the Municipal Court had not decided whether the vehicle was used to transport the public.
- [47] In my view, the Municipal Traffic Court, as envisaged in section 87(1) of the Act, is better positioned to determine after hearing viva voce evidence as to whether the vehicle was used to transport the public or not. For greater certainty and to avoid any confusion regarding the pending proceedings at the Municipal Traffic Court, the finding of this court is that there were justifiable grounds for Mr Sibanda to impound the vehicle.
- [48] Given all these considerations, the applicant's application must fail.

COSTS

- [49] The respondents' legal representatives have applied that the applicant's attorney be ordered to pay costs de bonis propriis. It was further contended that the applicant's current attorney of record is aware, or ought to be aware, of the issues discussed above, as she represented another party in the matter of the Cape Organization for the Democratic Taxi Association: *George Branch v George Municipality and Four Others* Case 20698/2023, a few days before the launching of this application in which similar issues were unsuccessfully raised.

[50] It is a trite principle of our law that a court considering an order of costs exercises a discretion which must be exercised judicially.[6] In my view, costs de bonis propriis is an extraordinary one which should be reserved for cases where it can be found that the legal representative concerned conducted himself undoubtedly in a vexatious and reprehensible manner. It is not the case in this matter.

[51] Whilst this matter was unnecessarily brought on an urgent basis, it cannot be said that there was vexatious or reprehensible conduct on the part of the applicant's legal representative that amounts to an abuse of court process that would warrant an award of costs against her personally. Having considered the parties' submissions on the issue of costs, I am of the view that a personal costs order against the applicant's attorney is not warranted. I am further of the view that the applicant must pay the costs of this application.

ORDER

[52] In the result, the following order is granted.

52.1 The applicant's application is hereby dismissed.

52.2 The applicant is ordered to pay the costs of this application, including the costs of the two Counsels who appeared in this matter.

LEKHULENI JD

JUDGE OF THE HIGH COURT

APPEARANCES For the Applicant: Advocate M Titus Instructed by: Finini Attorneys 2nd Floor Waalburg Building 28 Wale Street Cape Town For the first, second and third Respondents: Advocate T Titus Instructed by: BDP Attorneys 1A Grotto Mews Rondebosch Cape Town For the fourth, fifth and sixth Respondents: Advocate Abass Instructed by: The State Attorney 22 Long Street Cape Town

[1] National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others

[1999] ZACC 17; 2000

(1) BCLR 39 (CC) at para 24; Daniels v Campbell NO and Others [2004] ZACC 14; 2004 (7) BCLR 735 (CC) at paras 22-23.

[2] 2000

(10) BCLR 1079 (CC) at para 22.

[3] 2012

(4) SA 593 (SCA) at para 18.

[4] Duncan v Minister of Law and Order 1986

- (2) SA 805 (A) at 818G-H; Minister of Safety and Security v Sekhoto and Another 2011
- (1) SACR 315 (SCA); where the court dealt with the jurisdictional facts which must exist before the power conferred by s 40(1)(b) of the Criminal Procedure Act 51 of 1977 may be invoked for an arrest without a warrant.
- [5] Luna Meubel Vervaardigers (Edms) Bpk v Makin (t/a Makin's Furniture Manufacturers) 1977
- (4) SA 135 (W) at 137F; Karino Homeland Distribution (Pty) Ltd v Commissioner for the South African Revenue Service (21279/2023)
- [2023] ZAWCHC 329 (27 December 2023) at para 16.
- [6] Ferreira v Levin NO and Others; Vreyenhoek and Others v Powell NO and Others
- [1996] ZACC 27; 1996
- (2) SA 621 (CC); Motaung v Makubela and Another, NNO; Motaung v Mothiba NO 1975
- (1) SA 618 (O) at 631A.

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