

SOUTH AFRICA / JUDGMENT

Makama v Ivory Park Taxi Association and Others (24487/12) [2014] ZAGPPHC 20 (18 February 2014)

[2014] ZAGPPHC 20

COURT

North Gauteng High Court, Pretoria

BEFORE

Malindi

CASE / FILE NUMBER

24487/12

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IN

THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC
OF SOUTH AFRICA)

CASE

NO: 24487/12

DATE:

18/2/2014

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

In

the matter between:

MAKAMA,

MODUNGWANE

PETRUS.....Applicant

v

IVORY

PARK TAXI ASSOCIATION.....1st

Respondent

BUTI

JOHANNES MKHONZA (in his capacity as

The

Chairperson of the 1st

Respondent).....

2nd Respondent

REGISTRAR

OF TRANSPORT, GAUTENG.....3rd

Respondent

JUDGMENT

MALINDI AJ

INTRODUCTION

[1.] The Applicant seeks an order in the following terms:

1.1. That the decision of the 1st and 2nd respondents to deregister, remove and expel the applicant from being a member of the 1st Respondent be declared to be unlawful, invalid and void ab initio;

1.2. That the 1st and 2nd respondents be ordered and directed to re-register, retain and maintain the status quo ante the deregistration and expulsion of the Applicant, and allow the latter to operate his taxi business as a member of the 1st Respondent;

1.3. That the 3rd respondent be called upon and/or directed to intervene in the operations of the 1st respondent in respect of its functions and conduct, and also to participate in the latter's electoral process and provision of its constitution to the members;

1.4. That the 1st and 2nd respondents as well as members of the executive committee of the 1st respondent be interdicted from either directly or indirectly threatening the applicant's life;

1.5. That the 1st and 2nd respondents be ordered to pay the costs of this application on an attorney and own client scale.

[2.] In his founding affidavit the applicant alleges that he has been a member of the first respondent, the Taxi Association, since its inception in 1990. He has been on the list of members, participated in every meeting and paid all applicable fees to the Taxi

Association. His status as such lasted until on or about February 2010 when the second respondent, Mr Mkhonza, stopped his taxi from operating on the taxi route that the third respondent has registered him and his vehicle to operate.

[3.] According to the applicant the actions of the Taxi Association and Mkhonza were not done in terms of the Taxi Association constitution.

Furthermore, his attempts to have his complaint heard by the Association have been frustrated by the two respondents.

[4.] In their Answering Affidavit the two respondents state that the applicant has not been expelled as a member and attach a register of members that is kept by the third respondent that reflects the applicant's name as having one vehicle registered under his name but without an operating licence.

[5.] They aver further that the applicant's vehicle was stopped from operating in February 2009, not 2010, and that this was because of his failure to pay his annual subscription and other fees due to the Association. They rely on the summary suspension in clause 4.6 of the Association's constitution which state that:

"4.6 Membership of the Association may be terminated in the event of a member's:

4.6.1 voluntary resignation given in writing;

4.6.2 failure to pay the fees due as laid down by IPTA. In the event of any member failing to pay the fees due within 30 (thirty) days of due date thereof, such member shall be suspended

from IPTA until the fee is paid and shall not be entitled to participate in the proceedings of any meeting of IPTA or to operate his/her taxi at from, to or on any taxi rank or route, network or area operated by IPTA."

[6.] They also allege that the applicant had provided false information to the Association regarding a vehicle that may be authorized to operate on the route and further that without an operating licence it is impossible to regularise his position.

[7.] When the applicant was called to a meeting of the disciplinary committee he refused to sign the attendance register and the hearing could not proceed. It is implied that the suspension applied because of his failure to attend a properly called and constituted hearing.

[8.] In his replying affidavit the applicant states that he still has permits and certificates to operate the routes that he operated prior to being stopped from operating. This affidavit was deposed to on 14 March 2013.

[9.] There are many other allegations hurled at each other by the parties. Most are not relevant or not supported by admissible evidence for the court to deal with them in any meaningful manner. I might just point out that were all such allegations to be assessed in terms of the rules applying to application proceedings the applicant would come out second best.

[10.] In respect of the fundamental issue in this matter I do not agree with the respondents that the Association's constitution

permits an expulsion or suspension or the meting out of any sanction without following due process. In this regard it was stated in *National Horse Racing Authority v Naidoo* 2010 (3) SA 182 (D) at

[4] that "the weight of legal authority in South Africa favours the view that the quartet of Jockey Club cases is still applicable." The court continued to quote with approval the well-known extract from the 1974 Jockey Club case as follows:

"[8] In Turner v Jockey Club of South Africa 1974

- (3) SA 633 at 646 D-H Botha JA dealt in detail with the concept of the fundamental principles of justice which are applicable and which arise from the express and implied terms of the agreement between the Jockey Club and those that are bound by that agreement. The learned judge of appeal observed:

"What the fundamental principles of justice are which underlie our system of law, and which are to be read as tacitly included in the respondent's rules, have never been exhaustively defined and are not altogether clear. In Russell v Duke of Norfolk and Others, (1949) 1 All ER 109, Lord TUCKER said at p. 118 that -

"The requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."

The principles of natural justice do not require a domestic tribunal to follow the procedure and to apply the technical rules of evidence observed in a court of law, but they do require such a tribunal to adopt a procedure which would afford the person charged a proper hearing by the tribunal, and an opportunity of producing his evidence and of correcting or contradicting any prejudicial statement or allegation made against him (Marlin's case, supra at p. 126; Bekker v Western Province Sports Club (Inc), 1972

- (3) SA 803 (C) at p. 811). The tribunal is required to listen fairly to both sides and to observe "the principles of fair play"

(Marlin's case, supra at pp. 126 and 128). In addition to what may be described as the procedural requirements, the fundamental principles of justice require a domestic tribunal to discharge its duties honestly and impartially (Dabner v SA Railways and Harbours, 1920 AD 583 at

- p. 589). They require also that the tribunal's finding of the facts on which its decision is to be based shall be "fair and bona fide" (Jockey Club of S.A. v Transvaal Racing Club, supra at p. 450). It is, in other words, "under an obligation to act honestly and in good faith (Maclean v Workers' Union, supra at p. 623). (My emphasis)."

[11.] I have come to the conclusion therefore that the suspension of the applicant from operating his taxi was procedurally flawed as no formal hearing heard the first respondent's complaints against him after he was given due notice of the charges against him, and therefore unlawful. In regard to the hearing that the applicant failed to remain in attendance at, the respondents have provided no evidence that he had been notified in writing to attend and that the charges were specified. Nor is there evidence that he was afforded the right to be represented by another member of the Association or independent representative.

[12.] I take into consideration also that he has been a loyal member of the Association since its inception. The appropriate remedy to the applicant and the appropriate solution to the Association will be the following:

1. That the applicant produce information to the satisfaction of the first respondent in the form of prescribed permits and certificates

in order that full authority to operate his taxi is obtained;

2. Alternatively, in the event that the applicant is unable to comply with para 1, the first and second respondents do everything in their power to facilitate the registration and operating licence, which empowers the applicant to conduct a minibus taxi service in the relevant route.
3. That the first respondent verifies all amounts in subscription and all other applicable fees that the applicant still owes to the first respondent, and that the applicant pays all the fees that are due and payable before the first respondent assists him with the compliance with either para 1 or 2 of this order.
4. That each party pays its costs.

SIGNED AT PRETORIA ON THIS DAY OF FEBRUARY 2014.

Acting Judge of the High Court

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Prepared on 12 October 2026 · Esheria