

SOUTH AFRICA / JUDGMENT

Masemola Taxi Association and Others v MEC of Roads and Transport (Limpopo Province) and Another (7708/2016) [2016] ZAGPPHC 81 (12 February 2016)

[2016] ZAGPPHC 81

COURT

North Gauteng High Court, Pretoria

BEFORE

N Davis

CASE / FILE NUMBER

7708/2016

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IN

THE HIGH COURT OF SOUTH AFRICA
GAUTENG
DIVISION, PRETORIA

DATE:

12 February 2016

CASE

NO: 7708/2016

In

the matter between:

MASEMOLA

TAXI

ASSOCIATION

First Applicant

DITEDI

NCHABELENG Second

Applicant

KAU

KGALEME

VINCENT Third

Applicant

NCHABELENG

MAKATE

JOSHUA Fourth

Applicant

MATSIMELA

JAN NKABANE

Fifth

Applicant
RANAPE
MAREKA
GEORGE Sixth
Applicant
RAPOLAI
JOHN RAMARU
Seventh
Applicant
and
MEC
OF ROADS AND
TRANSPORT First
Respondent
(LIMPOPO
PROVINCE)
THE
GENERAL MANAGER OF
TRAFFIC Second
Respondent

JUDGMENT

DAVIS AJ

- [1] This is an urgent application in which the Applicants seek to have certain "impoundment documents" set aside pending the finalisation of criminal proceedings pending against some of the Applicants.
- [2] The First Applicant is a taxi association and the other six applicants are either owners or the drivers of the five taxi vehicles

which were impounded, or both. They are also all members of the First Applicant. The First Respondent is the MEC of Roads and

Transport of the Limpopo Province and the Second Respondent is the General Manager of Transport, Limpopo Province.

- [3] On 26 January 2016, traffic officers under the control of the Second Respondent, acting in the course and scope of their duties, impounded the five taxi vehicles in question and issued impoundment notices. The notices state the following as the reasons for impoundment: "operating contrary to terms and conditions of an operating licence," An "impoundment fee" of R5000.00 was also levied. Written notices to appear in court were also issued to the respective applicants to answer to charges of contravening relevant portions of section 50 of the National Land Transportation Act, No 5 of 2009 read with section 90 of the said act. The particulars of the alleged offences were similarly described in the said notices as "mini-bus operating contrary to the condition of the operating licence". The notices were ostensibly

issued in terms of section 87 of the said act.

- [4] Apart from the paucity of particularity of the nature and extent of the alleged contraventions of the operating licences in question, there is also a dispute as to whether the "Big Boy Filling Station", being where the impoundments had taken place, fell within the area of operation or routes authorised by the various applicants' operating licences.
- [5] There is a further side-issue regarding the difficulties experienced by the police and traffic officials in maintaining law and order due to an alleged "twf war" between the First Applicant and a rival taxi association which had recently escalated in intensity and violence and may or may not have caused the death of a member of the rival taxi association.
- [6] Before considering any of the issues pertaining to the above and the relief claimed by the Applicants, this court's jurisdiction to do so must first be established. The issue of jurisdiction was pertinently raised on behalf of the Respondents and it appeared that counsel in the matter (and indeed in some of the other matters on this week's urgent motion court roll) were not fully conversant with the statutory provisions pertaining to the jurisdiction of the Limpopo Division of the High Court. This ignorance appears to extend to other practitioners as well in varying degrees.
- [7] The jurisdiction of the Limpopo Division of the High Court of South Africa.

7.1 In terms of section 166 of the Constitution of the Republic of South Africa, Act 108 of 1996 ('the Constitution'), the judicial system comprises of the Constitutional Court, the Supreme Court of Appeal, the High Court of South Africa, the Magistrates' Courts and "any court established or recognised in terms of any Act of Parliament".

7.2 In terms of section 169(2) of the Constitution the High Court of South Africa consists of the Divisions determined by an Act of Parliament which must provide for the establishment of Divisions, with one or more seats in a Division and the assignment of jurisdiction to a Division or a seat within a Division.

7.3 The relevant Act contemplated in the abovementioned section of the Constitution is the Superior Courts Act, No 10 of 2013 which commenced on 23 August 2013 ('the Superior Courts Act' >).

7.4 In terms of section 6 of the Superior Courts Act, the High Court of South Africa consists of (inter alia) the Gauteng Division with its main seat in Pretoria (section 6(1)(c)), the Limpopo Division with its main seat in Polokwane (section 6(1)(e)) and the Mpumalanga Division with its main seat in Nelspruit/Mbombela (section 6(1)(f)).

0.49in; line-height: 200%">7.5 Section 6(3)(a) read with section 1 prescribes that the Minister responsible for the administration of justice must, after consultation with the Judicial Service Commission, by notice in the Gazette, determine the area under the jurisdiction of a Division.

7.6 The area under the jurisdiction of a Division may comprise any part of one or more provinces (section 6(3)(b)) and the Minister may similarly establish one or more local seats for a Division and determine the area under the jurisdiction of a local seat.

7.7 The publication of any of the aforementioned notices (which include amendments or withdrawals) does not affect any proceedings which are pending at the time of such publication.

7.8 Transitional provisions are catered for in Chapter 9 of the Superior Courts Act. In terms hereof, section 50(1) prescribed that the Limpopo High Court, Thohoyandou became a local seat of the Limpopo Division and that South Gauteng High Court, Johannesburg became the local seat of the Gauteng Division.

7.9 In addition, section 50(2) prescribe as follows:

"Notwithstanding section 6(1), the Gauteng Division should also function as the Limpopo and Mpumalanga Divisions respectively until a notice published in terms of section 6(3) in respect of those Divisions comes into operation." (my emphasis)

7.10 For present purposes, it is not necessary to refer to various amendments of the areas of jurisdiction of Divisions preceeding the commencement of the Superior Courts Act promulgated from time to time in terms of section 6(1) of the (now repealed) Supreme Court Act 59 of 1959 or section 4 of the Interim Rationalisation of the Jurisdiction of the High Courts Act 41 of 2001 or to the fact that since the second half of 2015, the Limpopo Division had been staffed with a Judge President and a complement of judges.

7.11 The determining fact regarding the issue of jurisdiction raised above, is the fact that on 15 January 2016 the Minister of Justice and Correctional Services and by GN30 published in Government Gazette No 39601 determined the areas of jurisdiction of the Limpopo Division and its local seats. In addition to the already aforementioned established local seat at Thoyandou, the Lephalale Magistrates' Court was also established as a local seat. The magisterial districts and sub-districts constituting the areas of jurisdiction of the Main Seat of the Limpopo Division, Polokwane and the Local Seats were determined in a Schedule to the aforesaid notice.

7.12 The abovementioned determination and establishment came into effect on 25 January 2016.

7.13 The publication of the aforementioned notice therefore terminated the Gauteng Division's functioning as the Limpopo Division as contemplated in the transitional provisions mentioned above.

7.14 For sake of completeness, I mention that on the same date, of publication of the abovementioned notice and also with effect from 25 January 2016, the Minister has created, established, appointed, detached and defined magisterial districts and portions thereof in terms of section 2(1)(a) and (f) of the Magistrates Courts Act, No 32 of 1944 read with section 16(6) of Schedule 6 of the Constitution in respect of Magisterial districts and district courts in the Limpopo Province. (GN 33 also in Government Gazette No 39601)

[8] The present dispute:

8.1 Section 31(1) of the Superior Courts Act determines that a Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within its area of jurisdiction.

8.2 In the present matter:

8.2.1 All the applicants are residing in the area of jurisdiction of the Limpopo Division.

8.2.2 The Respondents and their offices are in the area of jurisdiction of the Limpopo Division. That is also where the applicants caused the notice of motion to be served.

8.2.3 The "impoundments" complained of by the applicants all took place in the area of jurisdiction of the Limpopo Division.

8.2.4 The criminal offences which the various applicants are alleged to have committed all took place within the area of jurisdiction of the Limpopo Division.

8.2.5 The application was launched in the Gauteng Division on 1 February 2016.

8.3 In short there is no jurisdictional connecting factor in the application which is situated or which occurred within the area of jurisdiction of the Gauteng Division.

8.4 The Applicant argued that the route of the Applicants pass through the area of jurisdiction of the Gauteng Division (the relevant route runs from Ga-Masemola/Moshate to Johannesburg South and back). This

may be so, but that is not where the alleged offences occurred nor where the alleged delicts were committed.

8.5 The Applicants further argued that the Gauteng Division has concurrent jurisdiction with the Limpopo Division but since the publication of the notice

envisioned in sections 6(3) and 50(2) of the Superior Courts Act this is no longer the position, as explained above.

[9] In the premises I find that the point in limine is good in law.

[10] In considering the issue of costs, I intend taking into account the financial positions and hardship of the second to seventh applicants. In fact the emotive allegations of their being deprived of the means of income necessary to provide for their wives and children formed part of the grounds of urgency on which they relied. They were furthermore clearly ignorant of the full extent of the issue of jurisdiction and so apparently were those who advised them. This ignorance is probably due to the relevant novelty of the situation as set out above but is, to an extent shared even by the Respondents who, upon my invitation to deliver supplementary heads of argument, in particular in respect of their point in limine regarding jurisdiction, still argue that this Court should not exercise concurrent jurisdiction as this would "open the floodgates" for litigants to flock from the Limpopo Division to the Gauteng

Division rendering the Limpopo Court a "white elephant" (so the argument goes). As explained above, the legal position will prevent any such fears from becoming a reality.

[11] What counsel for the Respondents did do in her supplementary heads of argument, was to draw my attention to a notice issued by the Honourable Judge President of the Limpopo Division on 19 January

2016. Although this notice was addressed to all registrars, court officials, legal practitioners and directors of public prosecutions, it appears as if it may not have come to the notice of all those addressees, be they in the area of jurisdiction of the Limpopo Division or the area of jurisdiction of the Gauteng Division, let alone practitioners in other divisions of the High Court. The notice is in conformity with the formal notices referred to in the Superior Courts Act and the Magistrates Courts Act 40 to which I have referred and due to the relevance thereof, I quote the contents:

"With effect from the 25th January 2016 our two Courts should be named as follows on all court processes:

1. IN THE HIGH COURT OF SOUTH AFRICA LIMPOPO DIVISION, POLOKWANE
2. IN THE HIGH COURT OF SOUTH AFRICA LIMPOPO LOCAL DIVISION, THOYANDOU.

The following Municipal districts will fall within the area of jurisdiction of the Local Division at Thoyandou: Giyani, Malamalele,

Makhado, Musina, Mutale, Thulamela and Vuwani.

The Provincial Division at Polokwane shall have jurisdiction over the whole of the Limpopo Province and concurrent jurisdiction over the areas falling under the jurisdiction of the Local Division.

I TRUST THAT YOU WILL FIND ALL IN ORDER AND TAKE PRIDE IN OUR NEWLY PROCLAIMED COURTS."

The reference to "the whole of the Limpopo Province" should be read to refer to those districts contained in the schedule to the Ministerial notice issued in terms of section 6(3) of the Superior Courts Act to which I have referred.

[12] I therefore make the following order:

12.1 The point in limine is upheld.

12.2 The application is refused due to this court's lack of jurisdiction to entertain the merits thereof.

12.3 No order is made as to costs.

N DAVIS

ACTING JUDGE OF THE HIGH COURT

Heard On: 9 February 2016

For the Applicants: Adv KK Kekana

Instructed By: JM Rampora Attorneys

For the Respondents: Adv EK Tsatsi

Instructed By: State Attorney, Pretoria

Date of Judgment: 12 February 2016

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Prepared on 12 October 2026 · Esheria