

SOUTH AFRICA / JUDGMENT

Naledi Municipality Taxi Association (NAMTA) and Others v MEC, Department of Public Works, Road and Transport and Others (1872/2013) [2021] ZANWHC 4 (15 January 2021) [2021] ZANWHC 4

COURT

North West High Court, Mafikeng

BEFORE

R D Hendricks

CASE / FILE NUMBER

1872/2013

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IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NO: 1872/2013

Reportable: YES/NO

Circulate to Judges: YES/NO

Circulate to Magistrates: YES/NO

Circulate to Regional Magistrates: YES/NO

In the matter between: -

NALEDI MUNICIPALITY TAXI

ASSOCIATION (NAMTA)

1st Applicant

JIM MACHOGO

2nd Applicant

EDWARD MAMPE

3rd Applicant

EDESON MAOGWE

4th Applicant

DAVID GAESALE

5th Applicant

JOHN GAOBONWE

6th Applicant

THYS MOTSWANE

7th Applicant

GEORGE BAINGWAI

8th Applicant

and

THE MEC, DEPARTMENT OF PUBLIC

WORKS, ROAD AND TRANSPORT

1st Respondent

D S MOKWENA

2nd Respondent

K E MOKWENA

3rd Respondent

M J NCHOCHOBABA

4th Respondent

K J DISIPI

5th Respondent

O A BAREKI

6th Respondent

K GAOBAPE

7th Respondent

K C RATLOU

8th Respondent

K J MATHUBE

9th Respondent

B G MAPHAGE

10th Respondent

M J HEBE

11th Respondent

K LECOGE

12th Respondent

S TSHIKANE

13th Respondent

M MARUPING

14th Respondent

E H TLADI

15th Respondent

DR RUTH MOMPATI REGIONAL TAXI COUNCIL

16th Respondent

NALEDI LOCAL AND LONG DISTANCE TAXI

ASSOCIATION (NALLDTA)

17th Respondent

DATE OF HEARING & ORDER GRANTED : 28 AUGUST 2020

REQUEST

- REASONS FOR JUDGMENT : 11 DECEMBER 2020

REASONS

FOR ORDER/JUDGMENT : 15 JANUARY 2021

COUNSEL FOR APPLICANT

: ADV. RILEY

COUNSEL FOR RESPONDENT

: ADV. MAKOTI

HENDRICKS DJP.

REASON FOR JUDGMENT

[1] On the 28th August 2020, this Court granted an order in the following terms:

“(i) The application for postponement is refused;

(ii) The application is dismissed;

(iii) The applicants are ordered to pay the costs of the application on a party-and-party scale, jointly and severally, the one paying the other to be absolved.”

On 11th December 2020, the last day of term, this file was brought to my office by the Registrar. A request for reasons for judgment/order are made. The Registrar included in the file a copy of a letter which was sent to the applicant's attorneys. It is apparent from the content of the letter that a request for reasons for judgment/order was made on 18th September 2020, but that there was a procedural irregularity which resulted in the file only brought to my attention on the 11th December 2020.

[2] Perhaps it will be prudent to quote the content of the letter from the Registrar verbatim. It reads as follows:

“RE: NALEDI MUNICIPALITY TAXI ASSOCIATION // MEC FOR PUBLIC WORKS

The above matter and your Request for reasons dated 18th day of September 2020 refer.

This letter serves to inform your office that registrar's office only became aware about your request for reasons on the 02nd day of December 2020 when your messenger was enquiring about them. Our office checked your office filling book and it came to our

attention that same was written in your filling book but our registrar's clerk who was doing filling that week marked them

with question marks, (attached kindly find copy of filling book marked “LM”). This means the documents were stamped by our office, and were never left in the filling book.

Kindly take further note, your request was only brought to the attention of the Judge on the 11th day of December 2020 and your office will be notified as soon as same is ready.”

Although the document (request for reasons for judgment) was stamped in the office of the Registrar, same were not left in the filling book. It means that the document was taken by the messenger of the applicant's attorney. That explain why the file was never brought to me prior to the 11th December 2020. The reasons for judgment/order could have been provided much earlier had it been brought to my attention. This delay

is regrettable and could have been avoided.

[3] This matter has a long protracted history. On the 07th November 2013, the applicants launched this application on an urgent basis, set down for hearing on 08th November 2013. On 08th November 2013, the matter was struck from the urgent court roll by Chwaro AJ, due

to lack of urgency. There was a period of inactiveness in this file, on the part of the applicants. The respondent's attorney applied for a date of hearing seeing that nothing was happening with this matter. This was done during December 2018. A date for hearing was allocated for 06th September 2019 and the matter was set down for hearing by the respondent's attorney on that date. The applicants were not

ready to proceed with the matter and by consent between the parties, the matter was postponed to the 27th February 2020, by Gura J, to the opposed motion court roll for argument. Costs were ordered to be costs in the application.

[4] On 27th February 2020, the matter was still not ripe for hearing as no heads of argument were filed by both parties. The matter was again

postponed, by agreement between the parties, to 20th August 2020. On the 17th August 2020, the respondents filed their heads of argument seeing that the applicants, who are dominis litis, failed to file their heads of argument, which were supposed to have been filed two (2) weeks before the date of hearing. On the 19th August 2020, the applicant's attorneys served and filed a "Notice in terms of Rule 30 read with Rule 30A", complaining that the respondents' heads of argument had been filed prematurely and did not comply with the Practice Directions of this Court.

[5] The postponement was argued on 20th August 2020. This Court, granted a postponement to the 28th August 2020. This was a final postponement. The applicants were ordered to file their heads of argument on or before Wednesday, 26th August 2020 at 14h00. Costs were reserved. On the 27th August 2020, the applicants filed a "Notice of application for postponement", in which it prays that the late filing of the application for postponement be condoned and that the matter be postponed for one (1) month. Attached to this notice is an affidavit deposed to by Mr. Francois Fortuin, the attorney of record for the applicants. In this affidavit it is stated that when counsel was briefed to apply for a postponement of the matter on 20th August 2020, it was intended that the matter be postponed until 28th September 2020 and not 28th August 2020 as ordered by this Court, seeing that counsel who was initially on brief in this matter was indisposed until 18th September 2020. Therefore, so it was further contended, could the applicants "on such short notice not brief a new counsel to file heads of argument within a few days. This is a complex matter that has a long history, which is familiar to the counsel briefed herein".

[6] The application for postponement was opposed by the respondents. In an opposing affidavit filed on 28th August 2020, it was contended that the respondents suffer prejudice each time that the matter is postponed and the litigation is not brought to finality. It was worsened by the fact that the applicants opted to file a Rule 30 read with Rule 30A application, when they failed to file their heads of argument. Indulgence were granted by this Court to the applicants, but they still failed to comply with the court order and persisted in their failure to file their heads of argument.

[7] I am in full agreement with this contention by the respondents. No reason is proffered why counsel is indisposed; when did it become known that counsel is indisposed; and why steps were not taken to appoint another counsel timeously to draft heads of argument and to attend to this matter. The periods of delay remain unexplained. It is quite apparent that nothing was done by the applicants to get the matter ripe for hearing from 07th November 2013 to 06th September 2019. This is a period of almost six (6) years. Seeing that the matter was not ripe for hearing, it was postponed until 27th February 2020, more than six (6) months later. On 27th February 2020, it was postponed until 20th August 2020, which is another six (6) months. Yet again, it was postponed to 28th August 2020 for another week. In total this matter dragged on for almost seven (7) years. Without any stretch of the imagination, this is an inordinately long delay. Justice delayed is justice denied. Matters must be finalized as expeditiously as possible.

[8] Postponements are not for the mere asking. In *Myburg Transport v Botha t/a Truck Bodies* 1991 (3) SA 310 (Nms) at 314F – 315J the following is stated:

“1. The trial Judge has a discretion as to whether an application for a postponement should be granted or refused (R v Zackey 1945 AD 505).

2. That discretion must be exercised judicially. It should not be exercised capriciously or upon any wrong principle, but for substantial

reasons

(*R v Zackey* (supra), *Madnitsky v Rosenberg* 1949 (2) SA 392 (A) at 398-9; *Joshua v Joshua* 1961 (1) SA 455 (GW) at 457D).

3. An appeal Court is not entitled to set aside the decision of a trial Court granting or refusing a postponement in the exercise of its discretion merely on the ground that if the members of the Court of appeal had been sitting as a trial Court they would have exercised their discretion differently.
4. An appeal Court is, however, entitled to, and will in an appropriate case, set aside the decision of a trial Court granting or refusing a postponement where it appears that the trial Court had not exercised its discretion judicially, or that it had been influenced by wrong principles or a misdirection on the facts, or that it has reached a decision which in the result could not reasonably have been made by a Court properly directing itself to all the relevant facts and principles. (*Prinsloo v Saaiman* 1984 (2) SA 56 (O); cf *Northwest Towns/zips (Pty) Ltd v Administrator, Transvaal, and Another* 1975 (4) SA 1 (T) at 8E-G; *Johannesburg Stock Exchange and Another v Witwatersrand Nigel Ltd and Another* 1988 (3) SA 132 (A) at 152.)
5. A Court should be slow to refuse a postponement where the true reason for a party's non-preparedness has been fully explained, where his unreadiness to proceed is not due to delaying tactics and where justice demands that he should have further time for the purpose of presenting his case. *Madnitsky v Rosenberg* (supra at 398-9).

6. An application for a postponement must be made timeously, as soon as the circumstances which might justify such an application become known to the applicant. *Greyventein v Neethling* 1952 (1) SA 463 (C). Where, however, fundamental fairness and justice justifies a postponement, the Court may in an appropriate case allow such an application for postponement, even if the application was not so timeously made. *Greyventein v Neethling* (supra at 467F).
7. An application for postponement must always be bona fide and not used simply as a tactical manoeuvre for the purposes of obtaining an advantage to which the applicant is not legitimately entitled.
8. Considerations of prejudice will ordinarily constitute the dominant component of the total structure in terms of which the discretion of Court will be exercised. What the Court has primarily to consider is whether any prejudice caused by a postponement to the adversary of the applicant for a postponement can fairly, be compensated by an appropriate order of costs or any other ancillary mechanisms. (*Herbstein and Van Winsen The Civil Practice of the Superior Courts in South Africa* 3rd ed at 453.)
9. The Court should weigh the prejudice which will be caused to the respondent in such an application if the postponement is granted

against the prejudice which will be caused to the applicant if it is not.

10. Where the applicant for a postponement has not made his application timeously, or is otherwise to blame with respect to the procedure

which he has followed, but justice nevertheless justifies a postponement in the particular circumstances of a case, the Court in

its discretion might allow the postponement but direct the applicant in a suitable case to pay the wasted costs of the respondent

occasioned to such a respondent on the scale of attorney and client. Such an applicant might even be directed to pay the costs of his adversary before he is allowed to proceed with his action or defence in the action, as the case may be. *Van Dyk v Conradie and Another* 1963 (2) SA 413 (C) at 418; *Tarry & Co Ltd v Matatiele Municipality* 1965 (3) SA 131 (E) at 137.”

See also: *Hall v Multilateral Motor Vehicle Accidents Fund* 1998 (4) SA 195 (C).

National Coalition for Gay and Lesbian Equality v Minister of Home Affairs 2002 (2) SA 1 (CC).

- [9] In *National Police Services Union v Minister of Safety and Security* 2000 (4) SA 1110 (CC) at page 1112-1113, the following is stated:

“[4] The Constitutional Court has the inherent power to protect and regulate its own process. The postponement of a matter set down for hearing on a particular date cannot be claimed as of right. An applicant for a postponement seeks an indulgence from the Court. Such postponement will not be granted unless this Court is satisfied that it is in the interests of justice to do so. In this respect the

applicant must show that there is good cause for the postponement. In order to satisfy the Court that good cause does exist, it will be necessary to furnish a full and satisfactory explanation of the circumstances that give rise to the application. Whether a postponement will be granted is therefore in the discretion of the Court and cannot be secured by mere agreement between the parties. In exercising that discretion, this Court will take into account a number of factors, including (but not limited to): whether the application has been timeously made, whether the explanation given by the applicant for postponement is full and satisfactory, whether there is prejudice to any of the parties and whether the application is opposed. All these factors will be weighed by the Court to determine whether it is in the interests of justice to grant the postponement.

[5] What is in the interests of justice will in turn be determined not only by what is in the interests of the parties themselves, but also by what, in the opinion of the Court, is in the public interest. The interests of justice may require that a litigant be granted more time, but account will also be taken of the need to have matters before this Court finalised without undue delay.

[7] It is necessary to emphasise that a postponement will not be granted simply because the parties agree to it. Ordinarily therefore, if an application for a postponement is to be made on the day of the hearing of a case, the legal representatives for the opposing party must appear and be ready to assist the Court both in regard to the application for the postponement itself and if the application is refused, the consequences that would follow.”

[10] In *McCarthy Retail Ltd v Shortdistance Carriers CC* 2001 (3) SA 482 (SCA), the following is stated:

“[28] A party opposing an application to postpone an appeal has a procedural right that the appeal should proceed on the appointed day. It is also in the public interest that there should be an end to litigation. Accordingly, in order for an applicant for a postponement to succeed, he must show a ‘good and strong reason’ for the grant of such relief: Centirugo AG v Firestone SA (Pty) Ltd 1969

(3) SA 318 (T) at 320C-321B. The more detailed principles governing the grant and refusal of postponements have recently been summarised by the Constitutional Court in *National Police Service Union and Others v Minister of Safety and Security and Others* 2000 (4) SA.1110

(CC) at 1112C-F as follows:

The postponement of a matter set down for hearing on a particular date cannot be claimed as of right. An applicant for a postponement seeks an indulgence from the Court. Such postponement will not be granted unless this Court is satisfied that it is in the interests of justice to do so. In this respect the applicant must show that there is good cause for the postponement. In order to satisfy the Court that good cause does exist, it will be necessary to furnish a full and satisfactory explanation of the circumstances that give rise to the application. Whether a postponement will be granted is therefore in the discretion of the Court and cannot be secured by mere agreement between the parties. In exercising that discretion, this Court will take into account a number of factors, including (but not limited to) whether the application has been timeously made, whether

the explanation given by the applicant for postponement is full and satisfactory, whether there is prejudice to any of the parties and whether the application is opposed.’

[31] The application for postponement falls short on all counts. There is not even a serious attempt to provide a ‘full and satisfactory explanation’ for the owner’s unpreparedness or the lateness of the application. Nor is such explanation as there is on oath, notwithstanding counsel’s advice to the new attorney.”

[11] There is no explanation why the applicants have not prosecuted this matter to finality in almost seven (7) years and yet they still wanted a further indulgence of a month, when they were already afforded indulgence on no less than three

(3) previous occasions. The applicants launched this application on an urgent basis, but seemingly were in no hurry to finalize it. As dominis litis their heads should have been filed before the respondents filed their heads of argument, but they failed even when granted two (2) opportunities to do so. When the respondents took the initiative to file their heads of argument, despite the failure of the applicants to first file their heads of argument, they complaint that the respondents took an irregular step by so doing. They filed a Rule 30 read with Rule 30A notice, which is unmeritorious. This, to my mind, was but just a ploy to obtain the indulgence of a postponement and was nothing else than a delaying tactic. It is for the aforementioned reasons that the application for a postponement was refused.

[12] As far as the merits of the application is concerned, the applicants are praying:

“2. That a Rule nisi be issued calling upon the respondents to furnish reasons, if any, on 30 January 2014 at 10h00 as to why the following order should not be made a final order of Court:

2.1 That a Annual General Meeting held on 31 October 2013 and/or 1 November 2013 by the Second, Third, Fifth to Seventeenth respondents in terms whereof inter alia the following decisions had been taken:

2.1.1 The election of a new Executive Committee in respect of the First applicant;

2.1.2 The changing of the First applicant’s name to NALEDI LOCAL AND LONG DISTANCE TAXI ASSOCIATION;

And all and any other decisions taken, or resolutions adopted by the aforesaid respondents be hereby declared null and void and of no force and effect, and set aside.

2.2 That the Second to Seventeenth respondents be interdicted:

2.2.1 Not to implement any decision taken on the aforesaid meeting, or any other meeting.

2.2.2 To refrain from convening meetings and/or any acts which might influence the First applicant, or its Executive Committee, or bona fide members in any respect.

2.2.3 Not to intimidate the bona fide members of the First applicant in any respect, identities as contained in annexure “JM13” to the Founding Affidavit.

2.2.4 That the Executive Committee of the Seventeenth respondents and/or any other respondent be interdicted from convening meetings and taking and implementing any decisions, on behalf of the First applicant.

2.2.5 The Second to Seventeenth respondents be interdicted from conducting any affairs in the taxi industry under the name and style of the Seventeenth respondent.

2.3 That the First respondent be and is hereby interdicted:

2.3.1 Not to implement any decision taken by the Second to Seventeenth respondents at a meeting held on 31 October 2013 and/or 1 November 2013, as communicated to the First respondent per annexure “JM16” to the Founding Affidavit, by the Fifteenth respondent.

2.3.2 Be interdicted from registering a taxi association under the name of NALEDI LOCAL AND LONG DISTANCE TAXI ASSOCIATION (NALLDTA), alternatively if such organisation is already registered to remove same from the First respondent’s record.

2.3.3 That the First respondent’s Provincial Regulatory Entity Board, which holds a sitting in respect of issuing new operating licences on 11 – 14 NOVEMBER 2013 in VRYBURG, be ordered to allow the Chairperson of the First applicant (Second applicant) and the Secretary of the First applicant (Third applicant) to attend the sitting of the Board, and to afford same an opportunity of making representations in favour of their members who are applying for new operating licences as per general practice.

2.3.4 The First respondent be ordered to objectively consider these applications for new operating licences by the members of the First applicant.

2.4 That it be declared that the First applicant is an independent taxi association and juristic person, with an adopted Constitution, and that the Sixteenth respondent has no authority over the First applicant.

2.5 That the Second, Third and Fifth to Seventeenth respondents be ordered to pay the costs jointly and severally, the one paying the other to be absolved, on an attorney and Client scale, alternatively party and party scale. Costs against the First and Fourth respondent only in the event that same opposes the Application.

2.6 Further and/or alternative relief.

3. That prayers 2.1, 2.2, 2.3 and 2.4 be of interim force pending the return date.

4. That service of this interim order be effected in the following manner

(a) By service on the respondents as far as possible.

(b) By one publication of the order in the STELLALANDER NEWSPAPER”.

[13] A brief synopsis of the background to this application is that there was a dispute and impasse in the Naledi Local and Long Distance Taxi Association (NALLDTA), also referred to as the Naledi Municipal Taxi Association (NAMTA). As a result of the disagreements, the

then Department of Public Works, Roads and Transport (“the Department”) arranged a meeting between the interested and affected parties. The meeting was held on 23rd September 2013 and was duly constituted. At that meeting, it was resolved that the executive members of the Naledi Municipal Taxi

Association (NAMTA) (1st applicant) would ceased to hold their positions due to a vote of no confidence that was passed in them as executive. Furthermore, that an Annual General Meeting (AGM) be held on 31st October 2013, to elect new executive members. The Annual General Meeting (AGM) was held. New office bearers were elected, much to the dislike of the 2nd to 8th applicants who were replaced. Disgruntled by the election of new office bearers, the 2nd to 8th applicants launched this application on 07th November 2013.

- [14] It is quite apparent that the applicants pray for interdictory relief against the respondents and also for a mandamus, pending final determination of the application. In essence, the 2nd to 8th applicants ask that this Court direct that the respondents should not interfere with the administration of the 1st applicant and that they retain their erstwhile positions as executive committee of the 1st applicant. This cannot be done as they ceased to be members of the executive committee on 23rd September 2013, by a vote of no confidence that was passed, which decision they decided not to challenge.
- [15] The requirements for an interim interdict is trite, namely the existence of a prima facie right even though open to same doubt; a well-grounded apprehension of irreparable harm; that the balance of convenience favours the granting of the relief sought; and the absence of a suitable alternative remedy.

See: Knox D’ Arcy Ltd v Jamieson 1995 (2) SA 579 (W) on page 593 B-D

Ferreira v Lenim NO; Vryenhoek v Powell NO 1995 (2) SA 8/3 W at 824 C-E and 850 D-F

[16] In Rizla International BV v Suzman Distributors (Pty) Ltd 1996

(2) SA 527 (C) at page 530, with reference to a judgment of Heher J, it is stated that the Appellate Division has seemingly approved the following principles in adjudicating upon applications, for interim interdicts:

- (i) A prima facie right though open to some doubt exists when there is a prospect of success in the claim for the principal, relief albeit that such

prospect may be assessed as weak by the Judge hearing the interim application.

(ii) Provided that there is a prospect of success, there is no further threshold which must be crossed before proceeding to a consideration of the other elements of an interim interdict.

(iii) The strength of one element may make up for the frailty of another.

(iv) The process of measuring each element requires a holistic approach to the affidavits in the case, examining and balancing the facts and coming to such conclusion as one may as to the probabilities where disputes exist.

[17] The 2nd to 8th applicants have been removed as executive members of the 1st applicant. As such, they cannot act for or on behalf of the 1st applicant. Whilst they may have the requisite locus standi to act in their personal capacities, they do not have locus standi to act for and on behalf of the 1st applicant, which is a legal persona. As a result, they do not have a prima facie right to act on behalf of the 1st applicant. Insofar as they attempt to prove the existence of a prima facie right with reference to the 1st applicant, it cannot succeed.

[18] As to the apprehension of irreparable harm, the 2nd to 8th applicants fail to establish that they will suffer any irreparable harm with the change of guard of the executive of the 1st applicant. The harm, if any, that the 1st applicant may suffer cannot be attributed to and be similar to the harm that the 2nd to 8th applicants will suffer. They must prove that they will suffer harm, and not the 1st applicant, if they will not be protected by an order of court in the form of an interdict. On this basis too, the application could not succeed.

See: Ngaka Modiri Molema District Municipality v Chairperson of the North West Provincial Executive Council and Others (M390/2014)

[2014] ZANWHC 46 (25 September 2014).

Ngaka Modiri Molema District Municipality v Chairperson of the North West Provincial Executive Committee and Others 2015 (1) BCLR 72 (CC) (18 November 2014).

[19] It is for the aforementioned reasons that I granted the order as set out in paragraph 1, supra.

R.D HENDRICKS

DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

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