

SOUTH AFRICA / JUDGMENT

Theletsane v Civic Centre Taxi Association and Others (2024/114933)

[2024] ZAGPJHC 1223 (26 November 2024)

[2024] ZAGPJHC 1223

COURT

South Gauteng High Court, Johannesburg

BEFORE

E Raubenheimer

CASE / FILE NUMBER

2024/114933

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2024-114933

- (1) REPORTABLE: YES / NO
- (2) OF INTEREST TO OTHER JUDGES: YES / NO
- (3) REVISED: YES / NO

26 November 2024

In the matter between:-

DIKELEDI ELIZABETH THELETSANE Applicant And CIVIC CENTRE TAXI ASSOCIATION First Respondent CHAIRPERSON CIVIC CENTRE TAXI ASSOCIATION Second Respondent SECRETARY GENERAL CIVIC CENTRE TAXI ASSOCIATION Third Respondent DEPUTY SECRETARY CIVIC CENTRE TAXI ASSOCIATION Fourth Respondent BERENG JOHANNES THELETSANE Fifth Respondent

JUDGMENT

Raubenheimer AJ:

Order

[1] In this matter I make the following order:

1. The application is dismissed with costs on scale B
- [2] The reasons for the order follow below.

Introduction

- [3] The matter came before me on 5 November 2024 in urgent court as a Mandament van Spolie.
- [4] The applicant alleges that she was spoliated from her right to use a specific taxi route that she was entitled to use as a licenced taxi operator.

The parties

- [5] The applicant is Dikeledi Elizabeth Theletsane (Dikeledi), the widow of Malelu Joseph Theletsane (Malelu) and the executrix of his estate.
- [6] During his lifetime Malelu was a member of the first respondent and was a taxi operator. Due to his membership of the first respondent he was permitted to provide commuter services along the routes controlled by the first respondent.
- [7] The first respondent is a taxi association, functioning as a voluntary association and governed by its constitution.
- [8] The second, third and fourth respondents are the Chairperson, Secretary General and deputy Secretary General respectively of the first respondent.
- [9] The fifth respondent is the eldest son of the applicant.

The factual chronology

- [10] Due to ill health, Malelu appointed the fifth respondent in 2013 as his proxy in respect of the former's affairs in the first respondent.
- [11] Malelu passed away on 12 November 2023 and the applicant was appointed as executrix of his estate on 13 March 2024.
- [12] The Theletsane family has been embroiled in disputes in respect of the status of the taxis as well as the membership of the first respondent ever since the passing of Malelu.
- [13] The first respondent has been engaging with the applicant since 15 March 2024 on the issue of membership of the first respondent and the internal family disputes.
- [14] The essence of the family dispute was the failure of the fifth respondent to contribute towards his membership fees of the first respondent.
- [15] The first respondent informed the applicant and members of her family that should the family dispute in respect of the membership not be resolved the first respondent will terminate the late Malelu's membership.

- [16] On 2 August 2024, the applicant was informed that four taxis were removed from the routes controlled by the first respondent by removing the identification stickers of the applicant from the taxis and instructing the applicant to remove the taxis from the routes.
- [17] It is this conduct that the applicant avers amounts to spoliation based on quasi possession. Due to the conclusion that I arrive at there is no need to enter into a discussion about this potentially interesting legal debate.

The Factual matrix

- [18] Malelu operated four taxis on the routes controlled by the first respondent.
- [19] When he became ill and could not proceed with the operation of the taxis he transferred the taxis to his oldest son who at a later stage transferred two to his younger brother.
- [20] The two taxis assigned to the oldest son (fifth respondent) was later reinstated onto the routes controlled by the first respondent on 9 August 2024. The two taxis assigned to the second son was not reinstated. It is these taxis that is the subject of this application.
- [21] After removal of the first respondent's identification stickers and the instruction to remove the taxis from the routes, the applicant and family members attempted to meet with office bearers of the first respondent during August and September
2024. These attempts did not render a favourable outcome, and the applicant instructed her attorneys on 20 September to demand restoration of the two taxis to the routes.
- [22] The applicant launched her application on 2 October 2024.

Membership of the first respondent

- [23] The first respondent is a voluntary organisation governed by its constitution.
- [24] It is registered with registration number GP/T/P/0/0/136 with the Provincial Regulatory Body in terms of sect 23(1) of the National Land Transport Act, Act 5 of 2009 (the Act).
- [25] The constitution defines a member as :
- “a person who is a registered operator who has paid his or her subscription fee to the association and who has agreed to be bound by the provisions of the constitution.[1]”*
- [26] The membership is available to operating licence holders for routes or areas legally operated by members of the Association.[2]
- [27] Membership is subject to an application process initiated by the submission of an application form containing prescribed information.[3]
- [28] An “operator” is a person carrying on the business of operating a public transport service which is defined as:[4]

“A scheduled or unscheduled service for the carriage of passengers by road or rail, whether subject to a contract or not and where the service is provided for a fare or other consideration or reward...”

- [29] A person to carry on such business is required to be issued with a operating licence in terms of sect 50 to 64 of the Act.
- [30] The routes or area of operation of the first respondent is defined in the Registration Administration System. The routes or area of operation is reserved for members of the Association.[5]
- [31] Malelu formally transferred his membership in the first respondent to the fifth respondent on 10 November 2015 by submitting a “Transfer of Membership Form” as well as an affidavit to the effect that he has transferred his membership, four vehicles and operating licenses.
- [32] The transfer provided the fifth respondent with the membership rights which included access to the routes and areas controlled by the first respondent.
- [33] The fifth respondent confirmed on 4 September 2024 that the two taxis operated by him be removed from the routes and areas controlled by the first respondent due to the dispute between him and his brother who was operating the other two taxis.

The family dispute

- [34] The fifth respondent transferred two taxis to his brother. This has spawned a litany of disputes between them in respect of membership of the first respondent, who has attempted to resolve the conflict in terms of its dispute resolution procedure contained in its constitution[6]. These attempts have been fruitless.
- [35] The relationship between the fifth respondent and his brother has escalated to such a stage that he brought an application for a family violence interdict against his brother in the Vereniging Magistrates Court under case number DV/10/2024.

Application

- [36] The applicant avers that as the executrix of the estate of Malelu she is entitled to his membership in the first respondent.
- [37] Malelu’s membership as well as the vehicles was however transferred to the fifth respondent some eight years before his death.
- [38] She was never in possession of the vehicles. She does furthermore not qualify for membership of the first respondent as she is not in possession of an operating licence as a result of which she never was in “possession” of the taxi routes or areas.
- [39] She consequently does not have locus standi to bring this application.
- [40] The applicant raised further arguments in support of the spoliation of the taxis and the routes as well as the urgency of the matter.

[41] In the light of what I have found in respect of locus standi, traversing ose arguments would not be necessary.

Conclusion

[42] For all the reasons as set out above I make the order in paragraph 1.

E Raubenheimer

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 267 November 2024

Counsel for The Applicant: Adv MJ Hlahane Instructed By: Gaula Molaoli Attorneys Counsel for

The Respondent: Adv W J Prinsloo Instructed By: Botes Mahlobogane van Heerden Attorneys

Date of Argument: 05 November 2024 Date of Judgment: 262 November 2024

[1] Civic Centre Taxi Association Constitution certified on 4 April 2023

[2] Clause 6 Constitution

[3] Clause 6 Constitution

[4] Sect 1 National Land Transport Act, Act 5 of 2009

[5] Clause 3 Constitution

[6] Clause 19 Constitution

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