

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 3049/2012

In the matter between:-

KHOKHO M.D.T. Applicant

and

MAKGETLA D.E. First Respondent

JONAS S. Second Respondent

MANAGER-LICENCING BOARD - Third Respondent
ROAD AND TRANSPORT

CHAIRMAN- GREATER BLOEMFONTEIN Fourth Respondent
TAXI ASSOCIATION

HEARD ON: 1 AUGUST 2012

DELIVERED ON: 8 AUGUST 2012

JUDGMENT

K.J. MOLOI, J

[1] The applicant launched an application to this court wherein he sought relief as follows:

- “2. that the selling agreement of the Operating Licence, number LFSLB12248/3 between the First Respondent and Second Respondent be declared unlawful, thus null

and void.

3. that the Second Respondent be ordered to stop utilizing the Operating Licence, number LFLSB12248/3 with immediate effect or from the date of the granting of this order.
4. that all the documents including original and/or copies of the Operating Licence, number LFSLB12248/3 in possession of either the First or Second Respondent be returned to the Applicant within seven (7) days from the date of this order.
5. that the Third Respondent be prohibited from transferring the Operating Licence, number LFSLB12248/3 into the names of the Second Respondent, or cancelling the said licence.
6. that the Third Respondent be ordered to withdraw the temporary Operating Licence issued in favour of the Second Respondent through the cancellation of Operating Licence, number LFSLB12248/3.
7. that the Third Respondent be ordered to reinstate and restore the Operating Licence, number LFSLB12248/3 to its original form before its cancellation, amendment, and its sale to the Second Respondent by the First Respondent.
8. that the Fourth respondent be prohibited from recognising the temporary Operating Licence issued by the Third

Respondent in favour of the Second Respondent through the cancellation/amendment of the Operating Licence, number LFSLB12248/3.

9. that the Fourth Respondent be ordered to recognise the original Operating Licence, number LFSLB12248/3 before its cancellation/amendment or sale.
10. that in the event of opposition, the Respondents be ordered to pay the costs of this application on the scale between attorney and client the one paying to be absolved by the other.”

The First and Second Respondents opposed the application. The Third Respondent elected to abide the decision of the court and drew the attention of the court to the provisions of the National Land Transport Act No 5 of 2009 regarding the cession, alienation or hiring out of operating licence or permit (section 77) thereof. The Fourth Respondent, a taxi association, did not oppose the application and by inference elected to abide the decision of the court.

- [2] The application was based on two agreements concluded between the Applicant and the First Respondent. The first agreement related to the Applicant’s taking over the finance

agreement for a motor vehicle between the First Respondent and ABSA Bank and the lease of the operating permit attaching to the said vehicle. This agreement was verbal and was concluded between the parties on 1 May 2010. In terms of this agreement the Applicant would continue to pay an amount of R4 500,00 being the monthly instalment on the purchase price of the said vehicle to ABSA Bank until the outstanding amount shall have been paid in full whereupon the said vehicle would be the property of the Applicant and be transferred to his name. For the use of the First respondent's taxi operating permit, the Applicant would pay to her an amount of R700,00 per month.

- [3] The above arrangement continued until 30 April 2012 when the parties agreed that the Applicant purchase the said taxi operating permit from the First Respondent for an amount of R30 000,00 which was duly paid and receipt of which was acknowledged by the First Respondent in a document signed at the SA Police Station in Heidedal. From that date the Applicant ceased to make payments of R700,00 to the First respondent as he was then the owner of the operating permit.

[4] On 18 July 2012 the Applicant learned that the First Respondent had sold the taxi operating permit concerned to the Second Respondent and that the Fourth Respondent would consequently not allow him to operate the taxi business any longer. He made enquiries from the First and Second Respondents, as well as from the Third and Fourth Respondents. He learned that the Third Respondent was in the process of transferring the said operating permit into the name of the Second Respondent. The Applicant then launched this application primarily to stop the transfer process of the said operating permit and the return thereof to him.

[5] In her opposition of the application the First Respondent alleged that she was entitled to alienate the said operating permit to the Second Respondent, because the Applicant had cancelled the agreement in terms of which he purchased the said operating permit. The alleged cancellation of the said agreement was done through SMS sent by the Applicant to herself reading as follows:

“I dont have money now. I will pay it month end. You must stop giving people my number to call me. This matter is in the hands of my lawyers. I want my R30 000 back. You must take your licence back. I dont want to work with crooks.”

- [6] The alleged SMS sent by the Applicant was transmitted to the First Respondent on 18 June 2012 and was attached to her opposing affidavit as annexure DM4B headed “UME Content Manager SMS” with no logo nor name of the service provider concerned and was certified as a true copy of the original document by a commissioner of oaths on an unknown date. The Applicant argued strenuously that the SMS, being an electronic communication, was not properly placed before the court and was not authenticated by a certificate of a transcriber and should therefore be ignored. Throughout his argument the Applicant did not deny having sent the SMS, however, and as such the court accepts that the Applicant did send the alleged SMS constituting an offer to cancel the agreement of purchasing the operating permit. Moreover, according to his own papers, the Applicant stated that the relationship between himself and the First Respondent was so strained that direct communication

between them had become impossible.

- [7] On behalf of the First Respondent it was argued that as a consequence of the alleged cancellation of the agreement the First Respondent acted within her rights to look for an alternative buyer of her operating permit and eventually concluded a deal with the Second Respondent. Several other arguments were raised dealing with the urgency of the application and the requirements for an interdict, which the court does not intend dealing with as they do not hold water.
- [8] The crucial issue to be decided is whether or not the First Respondent accepted the offer to cancel the agreement of sale by the Applicant. According to the First Respondent she did by conveying the acceptance to the Applicant's wife as she could not get hold of the Applicant. The First Respondent stated that she also sent an SMS to the Applicant informing him of her acceptance of the cancellation and that she will look for an alternative buyer as a result. Cancellation of an agreement inter-party is an agreement replacing the agreement sought to be cancelled and is signified by an offer to cancel, which must still be accepted

by the offeree failing which the original agreement remains intact.

- [9] It is trite that an acceptance must be in the terms particularised in the offer to be effective i.e. the acceptance must correspond with the offer exactly: **JOUBERT v ENSLIN** 1910 AD 6 at 29; **SAAMBOU-NASIONALE BOUVERENIGING v FRIEDMAN** 1979 (3) SA 978 (A). In this case the offer to cancel the purchase agreement categorically stated:

“I want my R30 000-00 back you must take your licence back...”

Nowhere in the papers nor in argument was the refund of the R30 000,00 offered, let alone paid in terms of the offer to cancel to bring the acceptance in line with the offer to cancel. On the contrary, it was argued that the Applicant did not prove that he had no other remedy to justify the granting of an interdict as he could claim the refund from the First Respondent. This argument signifies that the clear offer to cancel the agreement upon refund of the R30 000,00 paid, was not accepted and that the alleged acceptance is invalid

and ineffective. What this means is that the First Respondent acted unlawfully in selling to the Second Respondent something not belonging to her, but to the Applicant.

[10] Turning to the prayers as per Notice of Motion, the court is of the view that most of them are impractical to be ordered and be acted upon. Since the Applicant prayed for “such further and/or alternative relief”, the court is prepared to consider an appropriate order to make in the circumstances and refrain from being prescriptive to the Third and Fourth Respondents at the same time.

[11] The court is of the view that the following order is appropriate in the circumstances:

11.1 The First Respondent is ordered to take the necessary steps to effect the transfer of the authority under permit LFSLB 12248/3 to the Applicant to be processed by the Third Respondent in terms of section 58 of the National Land Transport Act No 5 of 2009 within ten days from date of this order.

11.2 The First Respondent is ordered to pay the costs of this application.

K.J. MOLOI, J

On behalf of Applicant: D Khokho
Instructed by:
Cengani & Associates
BLOEMFONTEIN

On behalf of First and
Second Respondents: Adv. S E Motloun
Instructed by:
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/sp