



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case no: 1530/2021

In the matter between

LUCIA NTSIUOA ZUNGU
CHOBANE DAVID NTSOEU

And

GLADYS TEBELLO STABELA
(as duly appointed executor in the esate of
the late Sello John Stabella)

1st APPLICANT
2nd APPLICANT

1st RESPONDENT

THE CAHIRPERSON OF THE FS
TRANSPORT OPERATING LICENSING BOARD

2nd RESPONDENT

MOHAHLAULA TAXI ASSOCIATION

3rd RESPONDENT

CORAM: **MZANA AJ**

HEARD ON: **12 AUGUST 2021**

DELIVERED ON: **26 AUGUST 2021**

INTRODUCTION

[1] The applicant in this matter seeks declaratory and interdictory relief against the first respondent. In that, the donation of the operating licence be confirmed and declared valid.

FACTS

[2] It appears that, the 1st respondent is the appointed executor in the estate of the deceased, and his surviving spouse and the 1st applicant is the sister of the deceased. The applicants want the following;

- That, during September 2009, Sello John Stabela (herein referred as the deceased donated an operating licence LFSLB 38532/1 (previously known as operating licence LFSLB11609/1) by), to the 1st applicant, as indicated above the applicants want the said licence be confirmed and declared valid.
- Further that, the 1st respondent be ordered to hand over and sign all documents necessary to effect transfer of the afore said operating license to the second applicant, pursuant to and resulting from the donation referred above, within 10 days from the date of service of the order on her.
- Should the first respondent fail to comply (non-compliance) with the contents of the relief in paragraph 2, it be ordered that, the registrar of this honourable court be authorised to sign all the documents, necessary, to effect transfer of the operating license referred to in paragraph 1, as required by 2nd and 3rd respondents.

[3] This application is opposed by the 1st respondent. The opposition is based on the following:

1. That, in the 1st instance the applicants claim is based on an illegal cause.
2. The applicants claim to the operating licence in question has prescribed.

[4] LEGISLATIVE FRAMEWORK

In terms of section 77 (1) and (2) of the National Land Transport Act 5 of 2009 (the Act), the authority conferred by an operating license or permit may be ceded or otherwise alienated by the holder except in terms of a transfer under section 58 of that Act, and “no person may be a party to such a cession or alienation”. Any transaction of cession or alienation concluded contrary to the foregoing is invalid and has no legal force.

[5] Section 58(1) of Act 5 of 2009 states: The holder of an operating licence issued by a regulatory entity may apply to whichever of those entities that issued the licence for the renewal, amendment or transfer of the operating license. **Section 58 (4):** a

person applying to take transfer of an operating license of a permit must have the written consent of the current holder of the operating license or permit, or of that holder's executor.

[6] Section 44(b)(111) of the Free State Public Transport Act, 4 of 2005 states in (1)that, apart from other powers conferred by this Act, the board may (b) consider and give decision on, or otherwise deal with, in accordance with this Act, an application made to it for renewal, amendment or transfer of an operating license granted by it.

[7] A point of departure would first to distinguish "*alienate*" and "*donation*".

According to nvlaw.co.za, "*a donation is a unilateral contract in terms of which one party referred to as the donor is under no obligation to act, but does so out of pure liberality and benevolence by promising to give to the other party, called the donee something without expecting to receive anything in return*" and to alienate is defined by Oxford Languages, as *the transfer of ownership (property rights) to another person or group. Both donation and alienation work in unison thus when one party donates they alienate themselves from all applicable property rights.*

[8] Here in the Free-state, we also have a leading case (a full court judgment) of this court **NOMNA VS WILLIAMS & OTHERS 2020 ZAFSHC page 183**, wherein JP Musi of this division said in paragraph 14 defined "*alienate as inter alia defined as a transfer of ownership to another*". Where there is an express prohibition against alienating a thing, the word has a wider meaning. In **STRAUSS V DEVILLIERS**, Basson J referred to Huber's jurisprudence of my time where Huber stated: "*I shall firstly say that, alienation is simply the transfer of property, but that nevertheless the word alienation, when we are speaking of prohibition, has a wider signification, so that he who is forbidden to alieante anything may also not partition, nor part with it, whether by way of renunciation or agreement, nor yet by compromise or concession, much less can be exchange it or give it in payment, or do anything of that kind which will occur to us*". Therefore, a donation, similar to a sale, constitutes alienation of property.

[9] It appears that, the applicants had previously launched an application in this court under (case no: 4377/2020 herein after be referred as the first application) wherein they sought same relief that they seek in this application. However the only

difference is that, the applicants are now claiming they received the operating licence as a **donation instead of a sale**. Upon second thoughts the applicants withdrew the first application.

[10] It is a fundamental principle of public policy that courts, by their actions, ought not to sanction or encourage illegal activity. As it appears that the agreement giving rise to the applicant's claim was concluded contrary to a statutory prohibition, and is accordingly unlawful and invalid for want of legality. It is not clear to the court whether the operating licence in this issue was a donation or a financial transaction. Whether the agreement between the 1st applicant and the deceased was a donation or a sale makes no difference either way it is invalid and unenforceable as stipulated in section 77(1) & (2) of the Act and Nomna case is illegal.

[11] It is suspicious that the applicant only spoke up about this agreement years later and only after the deceased had passed on especially considering that:

- 1) She and the deceased belong to different taxi associations.


It is further perplexing that she requests that the said operating permit be transferred to her husband the second applicant, who has no legal cause for claiming the transfer of the operating license as, he is and was part of this unknown agreement the 1st applicant claims. The applicants are taking an easy way out instead of following the right channels.

[12] Both these aspects about this case are not common nor legal. Due to these reasons alluded supra, infer that the applicants knew that, they would not win the first case and therefore came up with a new strategy.

[13] Having heard and read the papers before me I am satisfied that the applicants do not have a legal course.

[14] I therefore, make the following order;

The application is dismissed with costs on an Attorney and client scale.



MZANA AJ

On behalf of the Applicant:

Adv Burger

Instructed by

Van der Berg & Van Vuuren Attorneys

On behalf of the Respondent:

Adv Mazibuko

Instructed by

Symmington & De Kock Inc