

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 017039/2025

DATE: 28-03-2025

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE: 28 March 2025

SIGNATURE



10 In the matter between

NANCEFIELD DUBE WEST

TAXI ASSOCIATION

Applicant

and

WITWATERSRAND AFRICAN
TAXI ASSOCIATION

Respondent

J U D G M E N T *EX TEMPORE*

20

LEAVE TO APPEAL

WILSON J: On 3 March 2025, I granted an interim interdict in favour of the Witwatersrand African Taxi Association (“WATA”). The first paragraph of the interdict restrained the first, second and third respondents, that is the Gauteng Provincial Regulatory Authority (“GPRA”), the Nancefield Dube West Taxi Association (“NANDUWE”), and the MEC for Roads and Transport in Gauteng (“the MEC”), from

implementing a decision recorded in a GPRE letter of 16 January 2025. That decision permanently excluded WATA members from operating on defined taxi routes in Soweto.

The second paragraph of my interim order prevented the GPRE, NANDUWE or the MEC from interfering with WATA members' rights to operate on the defined routes. The second paragraph of the interdict imposed that restraint only insofar as individual members of WATA were in possession of a license permitting them to
10 operate on the defined routes.

NANDUWE now seeks leave to appeal against my interim order. Although they have not said so expressly, it appears that the GPRE and the MEC abide my decision on the application for leave to appeal. They have not turned up to court to support or oppose the application.

I asked the parties to address me first on whether the interim order is appealable. Interim orders are generally not appealable, but there are exceptions to that rule where an interim order is final in effect or when an interim order
20 not having final effect ought nevertheless to be the subject of an appeal in the interests of justice. It was submitted that both these exceptions apply here.

In truth, neither of them does. In the first place, the order is plainly not final. The order does nothing other than restore the situation as it was before the decision to

exclude members of WATA from the defined routes was taken. Only members of WATA in possession of an operating license will be permitted to operate, and even then, only, pending an appeal or review of the 16 January 2025 decision. The question of whether WATA members have enforceable rights arising from their licences was left open for later determination.

Mr Mashavha, who appeared for NANDUWE, sought to persuade me that I had in fact finally determined the
10 issue of whether WATA's members are in possession of valid operating licenses. But my judgment has no such effect. Mr Mashavha's attempts to interpret my order otherwise were untenable.

Mr Mashavha sought further to suggest that paragraph 15.2 of my judgment has final effect insofar as it authorises the Metropolitan Police and the South African Police Services to take such steps as may be necessary to enforce the order. Again, that submission was misguided. The authority granted in paragraph 15.2 of my judgment
20 lasts only for so long as the interim order itself lasts. It can have no final effect.

It was then suggested that the costs order I granted against the second respondent was of final effect. While that is true, an appeal against a cost order is only allowed in exceptional circumstances, such as an abuse of

discretion. No case has been made out for such an appeal. It was not argued before me *a quo* that the second respondent should not bear the costs of the application, jointly and severally with the first and third respondents, if the application succeeded. Accordingly, costs followed the result, which is the normal order.

For all those reasons, the substance of my order has no final effect. To the extent that the costs order does, there is no basis to permit an appeal against it.

10 I now turn to the question of whether it would be in the interests of justice to grant leave to appeal against the interim order. Mr. Mashavha asserted that WATA members are not in possession of operating licenses at all; that my judgment entailed a clearly erroneous factual finding to the contrary; and that leave to appeal should be granted to reverse that erroneous factual finding in the interests of justice.

20 In truth I made no such factual finding, although it seems to me that the existence of such licences – whether they are valid or not – was in fact common cause *a quo*. GPRE's decision refers to the need to review and reissue WATA's licences, and the Gauteng National Taxi Council confirms in an affidavit, the contents of which were undisputed, that such licenses were issued to WATA or its members.

In any event, I was not called upon to make a final factual finding on the issue. The question was whether the WATA's version that such licences exist had been thrown into serious doubt. Clearly it had not. When the application for final relief comes to be heard, the court will be at liberty to revisit the factual issue of whether such licences exist and to determine it on the evidence as it will then stand. There is no need to ask an appeal court to perform that task.

10 Moreover, and in any event, if Mr. Mashavha was right to submit that WATA members are not in fact in possession of operating licences, then my order can cause NANDUWE no harm at all, since it permits WATA members to operate on the defined routes if and only if they can produce an operating licence when challenged to do so.

 Mr Veerasamy, who appeared together with Mr Mncunu for WATA, referred me to the case of *Economic Freedom Fighters v Gordhan* 2020 (6) SA 325 (CC) at paragraph 45. In that matter the Constitutional Court sets
20 out eight factors which a court will generally consider in deciding whether it is in the interests of justice to grant leave to appeal against an order lacking final effect. The overall question seems to me to be whether the second respondent will suffer any irreparable harm to a constitutionally protected interest or an interest of

comparable intensity, unless it is granted leave to appeal against my judgment. No such harm has been demonstrated.

It was finally suggested that my interim order impermissibly interferes with the exercise of GPRE's statutory functions. I think the fact that neither the GPRE nor the MEC have shown up to suggest that I have so interfered counts against that argument. Nevertheless, the possibility of such interference only matters where an
10 applicant for interim relief has not made out a clear case of illegality. In this matter, WATA's case was that the GPRE took a completely unreasoned decision to exclude WATA from routes it had operated for years notwithstanding the fact that this court had ordered that the question of WATA's rights to operate the routes be submitted to arbitration. That, if finally established, would amount to a clear illegality.

For all the reasons I have given there is no basis in law for me to detain a court of appeal with a challenge to an
20 interim order not having final effect.

The parties did not address me on the merits of the appeal, but I have had regard to the application for leave to appeal. I have also had regard to the second respondent's written submissions in support of that application. Having considered those documents, I do not wish to add anything

to my judgment *a quo*, which I think is comprehensive enough to explain why an appeal on the merits is doomed to predictable failure.

Mr. Mashavha asked that, if I refused leave to appeal, NANDUWE should benefit from a costs shield he submitted applies because the application for leave to appeal was brought in the public interest. There are no facts on the record that would allow me conclude that the application for leave to appeal is motivated by anything
10 other than NANDUWE's private commercial interests. In the absence of good reason, I am unwilling to depart from the approach to costs I took *a quo*.

For all these reasons, I make the following order:

1. The second respondent's application for leave to appeal against my judgment of 3 March 2025 is dismissed with costs.
2. Counsels' costs may be taxed on the B Scale.



WILSON, J
JUDGE OF THE HIGH COURT
28 March 2025