

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-079316

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>04-06/2025</u>	
DATE	SIGNATURE

In the matter between:

OR TAMBO AIRPORT CIVILIZED CAB (PTY) LTD

Applicant

and

AIRPORTS COMPANY SOUTH AFRICA (SOC) LTD

Respondent

JUDGMENT

SMIT AJ

Introduction

- [1] This matter came before me on Wednesday, 4 June 2025 as an urgent application launched on Thursday 29 May and set down for Tuesday 3 June. The respondent, to which I will refer as "ACSA", was given until 8pm on 30 May to file an answering affidavit – notice of just one day.

- [2] The only substantive relief sought was an order that ACSA should reinstate the operating permits and unblock the access cards in respect of thirty-four vehicles, the registration numbers of which were specified in the notice of motion. This relates to permission to operate a taxi service at, and have access to, OR Tambo International Airport (ORTIA).

Discussion

- [3] The urgent application was brought in the name of “OR Tambo Civilised Cab (Pty) Ltd” (*the Company*). Mr Clement Nkuna was the deponent of the founding affidavit, dated 29 May 2025. In the founding affidavit, Mr Nkuna stated that he was the chairperson of the Company.
- [4] The cause of action set out in the founding affidavit – and confirmed by counsel from the bar – was an agreement between Mr Nkuna (acting for the Company) and ACSA that is, on its face, dated May 2014.
- [5] Mr Nkuna does not describe in the founding affidavit which provisions of the 2014 agreement create a right for the vehicles with the specified registration numbers to have operating licences and access to ORTIA. He also does not annex the relevant provisions, save for a termination clause which *inter alia* gives ACSA the right to terminate the agreement for convenience on 60 days’ notice. (As appears from what follows, the termination clause is not relevant to this matter.)
- [6] The only allegation in the founding affidavit that seeks to set out a *prima facie* right to the relief sought is as follows:

“The applicant still holds an agreement with the Respondent as same has not been cancelled up until all process of termination are observed. Further, our right to employment and trade are guaranteed by the Constitution.

- [7] The founding affidavit does not provide any evidence (aside from a bare allegation) that the vehicles specified in the notice of motion belong to members of the Company. It also did not attach any confirmatory affidavit by any such members.

- [8] The founding affidavit vaguely alludes to “ongoing discourse [since 2021] between some few former member of [the Company] and us as its leadership as it always happens in this industry”. Mr Nkuna then expresses his shock that “those former members had in fact written to [ACSA] ... informing us that they will be applying for the blocking of our permits and licences that enable us to operate at [ORTIA].”
- [9] According to Mr Nkuna, this came to pass on 22 May 2025, and he discovered on that date that access of a “few of our members” including himself, was blocked. (ACSA says access to Mr Nkuna’s vehicles were already blocked in the week of 16 May, and that its records indicate that only his vehicles were blocked and not those of other alleged members. In light of my conclusion, nothing turns on this dispute of fact.)
- [10] A fuller story emerged in answer and reply.
- [11] In answer, ACSA attached an agreement it entered into in November 2023 with the Company. Pursuant to the agreement, according to ACSA:
- a. The Company’s members would have access to ORTIA.
 - b. The Company informs it from time to time when members are no longer in good standing and ACSA then cuts off the access of those members.
 - c. There has been a long-standing tussle between factions about control of the Company. What ACSA considers to be the current incumbent leadership of the Company instructed ACSA to remove Mr Nkuna’s access, and ACSA complied.
- [12] ACSA also took issue with Mr Nkuna’s authority to represent the Company, given that it said the Company’s leadership had changed in 2024, excluding Mr Nkuna; and also criticised the fact that Mr Nkuna relied on the 2014 agreement, which had on any version been superseded by the November 2023 agreement.
- [13] In relation to the authority issue, ACSA annexed the Constitution of the Company, which specifies that the ExCo has the authority to “appoint attorneys ... to act on behalf of the Association, and to institute and defend legal action on

behalf of the Association". (In argument, counsel for the applicant did not take issue with submissions advanced along these lines, including that "*the Association*" refers to the Company.)

[14] In reply, Mr Nkuna continued to assert his authority to represent the company as its chairperson. He explained that he, in his own name, instituted an urgent application in July 2024 to set aside the election of new office bearers of the Company, which excluded him. He attached the notice of motion and founding affidavit in the July 2024 urgent application to his replying affidavit.

[15] Upon scrutiny of the founding papers in the July 2024 application, the following emerges:

- a. Mr Nkuna sought to set aside the election of an ExCo of the Company ostensibly elected on 3 July 2024.
- b. He sought the convening of an annual general meeting of the Company on due notice to elect a new ExCo.
- c. As an interim position, an until such further election, he sought the reinstatement of a previous ExCo of the Company that was elected for the period June 2017 to June 2019.
- d. He sought to bar ACSA from issuing any operating licences under the banner of the Company and to revoke any operating licences issued on the instructions of the (according to him, illegitimate) ExCo.
- e. In the 2024 application (but not in this urgent application), he referred to the 2023 agreement with ACSA.
- f. As a ground for urgency in the 2024 application, Mr Nkuna stated that he (and other disgruntled members of the Company) was "*alienated and at risk of being cast out*" from the Company. He also acknowledged that the (according to him, illegitimate) ExCo had the power to causes operating licences at ORTIA to be issued and withdrawn.

- g. Importantly, Mr Nkuna lists, in paragraph 36 of the founding affidavit in the 2024 urgent application, the members of the 2017-2019 ExCo, which he wants to be reinstated. He is not among them.

[16] Mr Nkuna did not refer in his founding affidavit in this application (or otherwise) to the 2024 application. He explained nowhere in the papers how he could allege in July 2024 that an illegitimate ExCo was in place, which he wanted replaced with an ExCo on which he was not; while now saying that he is the chairperson of the Company. He did not take the Court into his confidence about the fact that an ExCo (of whatever standing) was in place, and had the power to ask ACSA to issue or revoke access.

[17] This leads to the following conclusions.

[18] First, Mr Nkuna made out no cause of action in his founding affidavit or even, benevolently read, on a conspectus of the affidavits. He relied on the wrong contract and did not identify the operative provisions. In the 2024 proceedings, he acknowledged the power (even if illegitimate, according to him) of the incumbent ExCo to cause the issuance or revocation of licences.

[19] Moreover, Mr Nkuna did not make out a case that the specific vehicles listed in the notice of motion belonged to members of the Company – a necessary fact on which their operating licences and access depend. Further, he clearly knew that a dispute would arise in this application about his standing in the Company, which was sought to be addressed in the 2024 application.

[20] It follows that the application must be dismissed, because no case was made out for relief and because there is a dispute pending in another case the outcome of which would be dispositive of this matter.

[21] Second, it appears from a conspectus of the papers that Mr Nkuna is on no possible version the current chairperson of the Company.

[22] I was told from the bar that the 2024 application was struck from the roll for lack of urgency and that the joinder of a necessary party is required before it could progress. This means that it is highly unlikely that anything occurred in the interim

that changed the position Mr Nkuna described, under oath, in the 2024 application. He therefore does not have the authority to act on behalf of the Company. This would have been a self-standing basis on which to dismiss the application.

- [23] Third, if I did not conclude that the application should be dismissed, I would have struck it from the roll for a lack of urgency. On his own version in the July 2024 papers, Mr Nkuna knew that his membership (and those of the other members of his faction) was precarious and that they were at risk – legitimately or not – of being expelled from the Company and thus losing their operating licences. He did not progress the 2024 application but instead waited for the harm, which was imminent in July 2024, to manifest.
- [24] The urgency of this application was therefore self-created. In addition, the timelines on which it was set down were unreasonably short and to the prejudice of ACSA and the Court.
- [25] While the Court has sympathy with the plight of those who may now be excluded from doing business at ORTIA, this is the direct result of letting fester a problem which was apparent from at least 2024. The inevitable (and anticipated) consequences of that problem do not justify the urgency on which the application was brought. The July 2024 application should have been persisted with and could, by now, have solved the problem (presuming Mr Nkuna's allegations in that application are meritorious – a matter on which I express no view).
- [26] ACSA requested a costs order against "*the applicant*" should I dismiss the application or strike it from the roll. In circumstances where the authority of the deponent to the founding affidavit to represent the Company seems precarious, to say the least, I do not think a costs order against the Company is warranted. There was no request for any other costs order.

Order

- [27] The application is dismissed.
- [28] There is no order as to costs.



DJ SMIT
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of hearing: 4 June 2025

Date of judgment: 9 June 2025

For the applicant:

Mr S. Nkuna instructed by MI Khumalo
Attorneys

For the Respondent:

Ms IE Tshoma instructed by Buthelezi
Vilakazi Inc.