

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

Case Number: 7779/09

In the matter between:

OVERSTRAND TAXI ASSOCIATION

First Applicant

JULIA ALAM

Second Applicant

JEFFREY ZOLILE ALAM

Third Applicant

and

UNCEDO TAXI ASSOCIATION: HERMANUS

First Respondent

SIMON NODOM

Second Respondent

MONGEZI PALISO

Third Respondent

Z SOQWANTULO

Fourth Respondent

Z MAXIBUKWANA

Fifth Respondent

M POSWA

Sixth Respondent

B MPONDOMBINI

Seventh Respondent

WIZANA MEJE

Eighth Respondent

SEBENZILE MGWADLA

Ninth Respondent

M MPONDOMBINI

Tenth Respondent

T MAXAMBA

Eleven Respondent

W MNASENI NTUTHO

Twelfth Respondent

OVERSTRAND MUNICIPALITY

Thirteenth Respondent

JUDGMENT DELIVERED ON 9 DECEMBER 2010

Baartman J

- [1] This is an application for a final interdict, interdicting the respondents from operating any mini bus taxi service in the Overstrand Municipal area as a route based or short distance taxi service (**route based taxi services**), commonly known as the mini bus taxi service, and further ancillary relief.
- [2] In this judgment, I deal only with the relief sought against the 1, 3, 4, 6, 7, 8, 11 and 12 respondents (**the respondents**). On 8 March 2010, this court granted default judgment, a final interdict, against the 2, 5 and 9 respondents. In these proceedings, the applicants have not sought any relief against the 13th respondent.
- [3] On 8 May 2009, Goliath, J granted the following interim relief:
- "1) The application is postponed for hearing on Monday 1 June 2009.*
- 2) A rule nisi do issue returnable on Monday 1 June 2009 calling upon the first to twelfth respondents to show why an order should not be made in the following terms:*
- 2.1 Interdicting and restraining the first to twelfth respondents from operating any mini bus taxi contrary to the conditions contained in the operating licence pertaining to such mini bus taxi;*
- 2.2 Interdicting and restraining the first to twelfth respondents from operating any mini bus taxi in the Overstrand Municipal area as a route base or short distance taxi;*
- 2.3 Interdicting first to twelfth respondents from intimidating, harassing, assaulting or using any form of violence against the applicants and the members of the first applicant;*
- 2.4 Interdicting and restraining the first applicant from organizing or encouraging the operation of a taxi association involved with illegal taxi business within the Overstrand Municipal area;*
- 2.5 Ordering the first to twelfth respondents to pay the cost of this application;*

- 3) *Paragraphs 2.1, 2.3 and 2.4 shall operate as an interim interdict pending the return day;*
- 4) *The applicants consent to an order that they be interdicted, pending the return day, from intimidating, harassing, assaulting or using any form of violence against the respondents and the members of the first respondent;*
- 5) *First to twelfth respondents shall file their answering affidavits by noon on Wednesday 20 May 2009 ..."*

BACKGROUND

- [4] The Overstrand Taxi Association (**the first applicant**) and the Uncedo Taxi Association (**the first respondent**) conducted route based taxi services in the Overstrand Municipal area. The first applicant alleged that its members did so legally and that the second respondent's members did so illegally. Members of the two associations have been in dispute for a number of years, which has resulted in violent confrontations in which a number of persons have lost their lives. Despite, the attempts to resolve the issue by both parties and law enforcement agencies, the violent confrontations have continued even after the interim order referred to above.
- [5] The applicants alleged that they held permits permitting them to operate route based taxi services but that members of the first respondent did not. In addition, so the applicants alleged, some of the first respondent's members held temporary charter licences permitting only the performance of charter services, while others held no valid licences.
- [6] The National Land Transport Transition Act 22 of 2000 (**the NLTTA**) provided for the issue of both licence types and permitted the performance of different functions in respect of each licence. The NLTTA has been repealed but its provisions are relevant to these proceedings because it was the operative legal position at the times relevant to this judgment. The National Land Transport Act 5 of 2009, which commenced on 9 December 2009, has replaced the NLTTA. However, the definitions for a mini bus

taxi/type service and a charter service are in essence the same in both acts. The NLTTA's different services were as follows:

"Minibus taxi type service" means an unscheduled public transport service operated on a specific route or routes, or where applicable, within a particular area, by means of a motor-car, minibus or midibus, subject to Section 31.

"Charter service" means a public transport service operated by road involving the hire of a vehicle and a driver for a journey at a charge arranged beforehand with the operator, where –

- a) Neither the operator nor the driver charges the passengers individual fees;*
- b) The person hiring the service has the right to decide the route, date and time of travel; and*
- c) The passengers are conveyed to a common destination."*

- [7] In opposition, the first respondent alleged that all its members held valid licences to operate route based taxi services. The respondents have further alleged that their licences were the same as those held by members of the first applicant. The respondents therefore asserted the right to operate route based taxi services similar to the applicants' operation.
- [8] The applicants have argued in this matter that "the respondents systematically, and in an organised way, operate their minibus taxis in the Overstrand Municipal area as route based or short distance taxis, which is contrary to the terms and conditions of the temporary charter licences that they have produced".
- [9] The respondents called upon the applicants to produce their licences. They did, although some only produced copies of their licences. After perusal of the licences, Mr Nombambela, the respondents' legal representative, conceded that the first applicant's members held different licences to the first respondent's members, except for two of the first applicant's members. They held valid charter licences but the remainder held licences authorising them to operate route based taxi services. It does not appear from the

papers that those two members had operated contrary to their licences. Mr Nombambela further conceded that none of the respondents held a licence authorising that member to conduct route based taxi services.

[10] Mohamed Joolay (**Joolay**), the chairperson of the Western Cape Provincial Operating Licensing Board, attested to an affidavit in these proceedings and said that the policy of the Western Cape Provincial Operating Licence Board (**the Board**) was to have only one taxi association operating in a particular area.

(a) The Board made exceptions in areas where parties had reached agreement.

(b) He said that the Board did not issue temporary licences for route based taxi operations.

(c) He further said the requirements and conditions for a temporary operating licence (charter licence) were that it had a specific starting point as well as an end point, with a specific reference to the group of people who were to be conveyed and the specific purpose for which the conveyance of the persons was taking place.

(d) The temporary operating licence was intended for a once-off charter of people for a specific function and/or event and not for a route based or short distance conveyance of persons for monetary gain. Usually the same passengers must undertake the forward and return journey and the entire group must be picked up at the same place and be returned to the same place on the departure.

[11] The applicants have in the affidavits of Sharon Telling, Melvyn Kepkar (**Kepkar**), Sam Nywebeni (**Nywebeni**), Matiwane Ntlapo, Maria Yawa (**Yawa**), Zolisa Msopi and Jeffrey Alam alleged that the respondents operated route based taxi services contrary to their licences. The respondents have failed to deal with the allegations in those affidavits; therefore those averments stand to be accepted. (See **Moosa and Another v Knox** 1949(3) SA 327(N) at 331.)

The allegations contained in the uncontested affidavits

[12] It is apparent from Kepkar's affidavit that the first respondent's members operated route based taxi services from a shack on municipal land, in Landlela Street, Zwelihle in the Overstrand area. The 13th respondent, the owner of the property, has since demolished the shack; therefore the applicants sought no relief against the 13th respondent. However, at the time when these proceedings were instituted, the respondents operated route based taxi services from that shack. It was the applicant's case that it was an illegal taxi rank.

[13] Bangile Nodom (**Nodom**), who attested to the respondents' founding affidavit, confirmed that the first respondent's members operated from the shack.

"... we the members of Uncedo Taxi Association operate from the said shack indeed as our "safe haven" for the following reasons: ...

Some of our members have been shot and killed e.g. Anele Mgidlana and Madodo William. ... "

[14] It appears from Nywebeni's affidavit that he had noticed that members of the first respondent "had started operating more openly and intentionally picking up commuters on our routes since March 2009, whereas before they operated long distances to the Eastern Cape". He claimed that "I have also experienced loss of my income as a taxi owner since Uncedo (first respondent) started operating in the Overstrand area during 2006."

[15] Mr Ntlapo echoed the same sentiments, he said:

"I operate out of the taxi rank in Zwelihle. Along with all the other taxi drivers, I have noticed that since Monday, 16 March 2009, the Uncedo Taxi Association has started to act far more forcefully than ever before. They openly pick up passengers and drop them off next to our taxi rank in a challenging way that they have never done before."

[16] Yawa made the following allegations:

"On 10 October 2006, for the first time ever, some Toyota Venture pirate taxis started loading passengers in Gansbaai to take them to the Eastern

Cape. I will never forget that day. I was shocked because I realized that I now had to deal with unlawful competition.

I went to the police and laid a complaint. The police came and arrested the drivers of the Venture pirate taxis. They were fined R1 000.00 and their vehicles were given back to them.

That evening, a crowd of people came to my house and threw stones at my house and sang songs of intimidation and toyi-toyed outside my house. I was very scared. I could hear them saying that I was a witch and that I was jealous and that I wanted to make money alone. My husband has a gun. He shot into the air and they all ran away.

During November 2006, my taxi was stopped in Graaff-Reinet by members of Uncedo Taxi Association. They robbed my driver of R1200.00 and then wrote a receipt for that amount. My husband was driving my taxi at the time. This was done as an act of revenge against me for having caused Uncedo members to be fined by the police in Gansbaai. ...

Since 2006, I have made no further complaints against the illegal taxi operations of Uncedo in Gansbaai at the SAPS Gansbaai. ...

I am no longer targeted and intimidated because I simply allow the members of Uncedo Taxi Association to do what they want. I am too scared to try and stop them."

[17] Mr Msopi said that he had experienced a reduction in income because of the respondents' illegal taxi operations.

[18] I am persuaded based on the uncontested affidavits that the first respondent's members were at the times relevant to these proceedings operating route based taxi services. They have produced charter licences that do not permit route based taxi services.

A final interdict is justified

[19] I now determine whether the applicants have, in the light of the finding above, made out a case for a final interdict. The requirements for a final interdict are well established. It is so that the applicant for a final interdict must first establish a clear right. The applicant must also establish an act of

interference by the respondent and thirdly that there is no other remedy available to such an applicant. (See **The Law and Practice of Interdicts** at 42244 and **Chevron South Africa (Pty) Ltd v Awaiz at 110 Drakensberg CC** (2008) 1 SA 557(T).)

[20] Below, I deal with each requirements:

Clear Right

[21] The applicants alleged that they had a right to operate route based taxi services in the Overstrand area, being authorised in terms of their permits. The applicants annexed the second and third applicants' licences to their founding papers. It appears from these licences that the second and third applicants had indefinite licences to operate route based taxi services. The licences were issued on 15 December 2005 and on 16 September 2005 respectively. I have indicated above that the respondents called for the licences of all the first applicant's members and that the ones produced were primarily valid route based taxi licences.

[22] The applicants have established a clear right to operate freely without intimidation in terms of the licences issued to them.

Act of Interference

[23] The applicants have alleged that since March 2009 the respondents' illegal activities have caused a R200 per day per taxi decrease in their regular earnings. Sharon Telling said: (one of the uncontested affidavits referred to above)

"I have noticed a drop of about R200.00 per day in the money brought in by my husband's taxis. We used to earn about R650.00 and R550.00 per day per taxi. When Uncedo Taxi Association is operating forcefully, we earn between R450.00 and R350.00."

[24] Nodom said the following about the alleged drop in the applicants' earnings:

"If members of the first applicant are negatively affected financially that is not known to me and my colleagues. However, I would imagine that indeed it could be of enormous frustration to have competition, hence on 24 March 2009, I was shot at and injured at my place."

[25] The respondents have asserted the right to compete with the applicants. However, as indicated above, not one of the first respondent's members had a licence authorising him/her to conduct route based taxi services. The applicants have further alleged that the respondent's actions constituted unlawful competition. I agree.

[26] Kepkar said that, on Saturday 27 February 2007, the first respondents' members attempted to take over the applicants' taxi rank at the Zwelihle taxi rank in the Overstrand area. Kepkar said they ordered passengers out of the taxi he was in the process of loading and that he had sought police assistance as a result. Despite police assistance, the act of aggression caused Kepkar to abandon his taxi operations for that day.

[27] The respondents have not denied the alleged decrease in the applicants' earnings; instead the respondents have alleged that the Overstrand offered adequate business opportunity for both sides. Nodom said the following:

"... we dispute in the strongest terms that we were issued with shuttle service licences as our licences are not different to those of the members of the first applicant. Further thereto, Mr Mo Joolay, has not made any confirmatory affidavit to what the deponent has averred. It is clear that the members of the first applicant are prepared to try anything and everything to stop members of the first respondent from competing with them, even though members of the first respondent are prepared to join forces with them on an equal basis."

[28] It is clear that the respondents competed with the applicants for the route based taxi services. They did so illegally. I am of the view that the applicants have shown that the respondents have interfered with their clear right. (See **V&A Waterfront Properties v Helicopter & Marine Services** 2006 (1) SA 252)

No other alternative remedy

- [29] The applicants have alleged that they have no other remedy. They indicated that despite police interference the dispute, between the parties has resulted in violence and death.
- [30] Mr Nombambela submitted that the dispute should be referred to mediation. The respondents want an amalgamated taxi association and the applicants want the respondents to join the first applicant as individual members. Such members would have to submit to the first applicant's rules. The parties are clearly not able to resolve their dispute amicably.
- [31] In my view there is no alternative remedy. The applicants have thus met the 3 requirements for a final interdict.

ORDER

- [32] I, for the reasons set out above, make the following order. "X"

A handwritten signature in black ink, consisting of a large, stylized 'B' followed by a horizontal line.

Baartman J