

**IN THE COURT OF APPEAL OF LESOTHO**

**HELD AT MASERU**

**C of A (CIV) 24/2012**  
**CIV/APN/7/2011**  
**CIV/T/69/2010**

**In the matter between:**

BOCHABELA TRANSPORT OPERATION

APPELLANT

AND

HLOTSE TAXI ASSOCIATION  
ROAD TRANSPORT BOARD  
MINISTER OF PUBLIC WORKS  
ATTORNEY GENERAL

1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT

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**CORAM:** Ramodibedi P  
Howie JA  
Hurt JA

Heard : 10 October 2012  
Delivered : 19 October 2012

**Summary**

Condonation sought for late noting of appeal – explanation inadequate – no reasonable prospects of success – condonation refused.

## **JUDGMENT**

### **HOWIE JA:**

[1] This is a condonation application with a view to an appeal.

[2] Taxi operators providing a service from Maputsoe to Hlotse in terms of C-Permits issued in terms of the Road Transport Act and Regulations 1981 complained that taxis providing a service between Maputsoe and other towns were stopping at Hlotse Bus Stop not only to discharge passengers there (which is unobjectionable) but also to pick up passengers there in unlawful competition with taxi owners operating under C-Permits to and from Hlotse Bus Stop. The latter are members of the Hlotse Taxi Association (“The Association”).

[3] In case 69/2010, an application to the High Court by the Association for relief in which the cited respondents were the Road Transport Board (The Board”) as first respondent, the Minister of

Public Works as second respondent and the Attorney General as third respondent, that court made two orders.

[4] The first order was dated 22 April 2010 and read:

- “1. The first respondent is directed to implement the resolution reached on the 1<sup>st</sup> June 2009.
2. The first respondent is directed to implement the subsequent resolution which was aimed at ensuring that the taxis from Butha-Buthe and Pitseng to Maputsoe are restricted to Main North 1 and Mandela Road only.
3. ....”

[5] The second order, dated 8 December 2010, made a deed of settlement, concluded that day by the parties to the application, an order of court. The relevant paragraphs of the deed read:

- “1. That the 1<sup>st</sup> respondent is directed to implement the resolution reached on the 1<sup>st</sup> June 2009.
2. That the respondents should ensure that Butha-Buthe/Maputsoe Pitseng/Maputsoe and Bokong/Maputsoe (vis vise) operators should only off-load passengers at Hlotse Bus Stop and they should load passengers a kilometer away from Hlotse Bus Stop.
3. That the 1<sup>st</sup> respondent should ensure that the C-Permits of the above mentioned operators in 2 above should be written Bokong to Maputsoe Taxi Rank, Pitseng to Maputsoe Taxi Rank and Butha-Buthe to Maputsoe Taxi Rank (vis vise) and to off-load passengers at Hlotse Taxi Rank and to pick up passengers a kilometer away from the Taxi Rank.
4. That the 1<sup>st</sup> respondent should ensure that said condition in 3 above will be attached to the above mentioned operators' C-Permits upon their renewals.

5. That the respondents shall deploy the officers from the inspectorate office on a full time basis to ensure that the resolution is fully adhered to.
6. That the respondents should ensure that this Deed of Settlement is implemented with immediate effect once signed by the Counsels of both parties.”

6] The resolution of 1<sup>st</sup> June 2009 and the later resolution do not form part of the record. Nor do the terms of the C-Permits of the operators who were said to be unlawfully competing with the Association’s members.

[7] In case 7/2011, on 11 January 2011, the present applicant (to whom, for convenience, I shall refer as “the appellant”) applied successfully in the High Court for a rule nisi staying execution of the order of 8 December 2010 pending its rescission, and permitting opposing affidavits to be filed by the appellant in case 69/2010.

[8] The rule in case 7/2011 was not confirmed on the return day. Months went by. The matter eventually came before Molete AJ. Having heard argument, he dismissed the application, *inter alia* because the appellant had failed to show that it had an interest warranting its joinder in case 69/2010. Molete AJ's order was made on 4 May 2012.

[9] The appellant had six weeks in which to note an appeal. Its legal representatives failed to do so. Mr. Molati, who appeared before us for the appellant to seek condonation of that failure, urged that he be regarded as the person in default. The application, which was dated 23 August 2012 and was accompanied by a notice of appeal bearing the hand-written date 1 June 2012, states (in the founding affidavit which was deposed to by Mr. Molati) that he became aware of the judgment six days after it was delivered. He then goes on to say:

“This was after a tedious search to locate the court's file from the registry where there was a problem with the light bulb that lasted for months thus making it virtually

impossible for clerks to locate some of the files. It follows therefore in the circumstances that the appeal is late....”

He concludes in this regard by saying that the grant of condonation would not prejudice the respondents.

[10] A party seeking an indulgence for being in default has to do more than show an absence of prejudice to the other side, if prejudice is in deed absent. That party owes a duty to the court to explain frankly, responsibly and fully how the default occurred.

[11] The risible reference to the missing light bulb aside, the timeous filing of a notice of appeal involved no need to search for a file. It necessitated nothing more than the drafting and lodgment of a one or two page notice of appeal, all the details for inclusion in which were already in possession of the appellant’s legal advisers. The presence of the file was wholly unnecessary for that purpose.

[12] The application not only fails lamentably to advance any explanation for the failure to file such a notice but it seeks to discharge the duty of giving a responsible and frank explanation by way of a speciously irrelevant – even if true - reference to alleged incompetence and inefficiency in the management of the High Court. The deponent's cavalier indifference is a matter for regret, if not censure.

[13] The inadequacy of the tendered explanation is not offset by prospects of appellate success. The absence of proof of the contents of the C-Permits held by operators allegedly competing unlawfully (i.e. the appellant's members) has resulted in the appellant's inability to demonstrate clearly enough how the orders in case 69/2010 barred their members from doing what their permits allowed them to do or required them to do what their permits did not oblige them to do.



[14] Conflict between those C-Permits and the said court orders would be the obvious measure of the appellant's members' legal interest for joinder purposes but such conflict, and thus such interest, has not been shown.

[15] The application for condonation therefore cannot succeed. It is dismissed, with costs.

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**C. T. HOWIE**  
**Justice of Appeal**

I agree

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**M. M. RAMODIBEDI**  
**President**

I agree

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**N. V. HURT**  
**Justice of Appeal**

For the Appellant : Adv. L. A. Molati

For the Respondent : Adv. R. D. Setlojoane