

IN THE APPEAL COURT OF LESOTHO

HELD AT MASERU

**C OF A (CIV) NO.20/2015
CIV/APN/331/2013**

IN THE MATTER BETWEEN

ROMA TAXI ASSOCIATION

APPELLANT

AND

**OFFICER COMMANDING ROMA
POLICE STATION**

1ST RESPONDENT

COMMISSIONER OF POLICE

2ND RESPONDENT

TRAFFIC COMMISSIONER

3RD RESPONDENT

ROAD TRANSPORT BOARD

4TH RESPONDENT

ATTORNEY GENERAL

5TH RESPONDENT

THABANA-LI-MMELE TAXI

ASSOCIATION

6TH RESPONDENT

STEVE MABEJANE

7TH RESPONDENT

CORAM:

FARLAM AP
CLEAVER AJA
DR MUSONDA AJA

HEARD: 18TH APRIL, 2016

DELIVERED: 29TH APRIL, 2016

DR. MUSONDA AJA

SUMMARY

Administrative law – The Road Transport Board having power to issue taxi and passenger permits – power to determine commencement and termination points pursuant to the Road Transport Act 1981 and the Road Transport Regulations 2004 – whether the High Court can interfere with the Road Transport Board’s determination – when illegality, procedural impropriety, unreasonableness and disproportionality are absent. – Delay in writing a judgment is a matter for judicial administration not judicial adjudication. – Timely delivery handing down of a judgment should be an overriding concern to every judicial officer.

JUDGMENT

- [1] This is an appeal against the judgement of the High Court which dismissed the application by the appellant seeking a variety of orders set out below.
- [2] The appellants approached the court a quo seeking the following orders:-
- (a) Interdicting 6th Respondent (Thabana-li-mmele Taxi Association) from loading passengers at “platform of the appellant contrary to Regulation 20(1) and (21) of the Road Transport Regulation 2004, pending the outcome of the application;

- (b) That the Court declare “that the platform of the appellant covers an area extending from the University (NUL) yard near Roma Police Station and Roma Post Office to the end of the University yard near Scout’s at Roma Being an area measuring plus or minus one (1) kilometre”;
- (c) That the 1st to the 4th respondents be ordered to take all necessary legal measures to prevent the members of the 6th Respondent from acting contrary to the provisions of the Regulations 20(1) and (21) of 2004, in respect of the platform area of the appellant;
- (d) That the respondents be ordered to pay costs of the application on attorney and client scale;
- (e) That Steve Mabejane (the 7th respondent) be interdicted from engaging in violent acts at Roma Taxi Rank pending the finalisation of the matter; and
- (f) That Stebe Mabejane (the 7th respondent) be interdicted from interfering with the appellant’s taxi Rank at Roma lane by due process of law.

That prayers 2(a) and (e) were to operate with immediate effect as interim relief.

[3] **BACKGROUND**

The case for the appellants, whose members held permits to operate taxis from Roma bus stop, was that they were entitled to pick up passengers from the area opposite the main entrance of the University of Lesotho (NUL). They contended that their platform area extended from the Roma Post Office to the other end of the University yard near Ha Scout at Roma in the district of Maseru being an area measuring plus or minus one (1) kilometre.

[4] The members of the 6th respondent were unlawfully and forcefully picking up passengers at the place assigned to the appellant's members. The 6th respondent's members in doing so were violating the rights of the appellants' members, as it was clear that the Roma taxis were the only taxis entitled to pick up passengers from that place or area.

[5] The 1st and 2nd Respondents were doing nothing to stop the 6th Respondent from interfering with their passengers. The appellants therefore approached

the Court on an urgent basis, to stop the 6th Respondent from interfering with their passengers.

[6] The learned Judge after hearing arguments, decided that it was necessary to receive *viva voce* evidence from the Road Transport Board regarding exactly where Roma Bus Stop was physically located on the ground (i.e. Roma Taxi Load Platform). It was clear to the Court a quo that uncertainly as to precisely where at the Roma Bus Stop taxis were entitled to pick up passengers was the source of confusion between Roma Taxi Association and the Thabana-li-mmele Taxi Association.

[7] On 11th June, 2014 the Court a quo heard evidence from Mr. Bahlakoana Makhera *ex officio* member of the Road Transport Board in his capacity of Board Secretary. He testified that when the dispute arose, the parties were called so that the Board could understand the nature of the dispute.

[8] He testified further that, at a Board meeting held on 15th October, 2013, the Board had resolved that:

“Roma Taxi Association’s starting (A-point) is Ha Mafefoane T-junction and destination (B-Point) is Maseru Bus Stop. All passenger vehicles operating Roma/Maseru route will be granted ‘C’ permits endorsed ‘Ha Mafefoane T-junction to Maseru Bus Stop ‘C’ permits pertaining to Moitšupeli/Maseru route will be endorsed ‘Ha Moitšupeli Bus Stop to Maseru Bus Stop and to load 1 kilometre away from Ha Mafefoane T-junction which is Roma Primary School.”

[9] The learned Judge held that:

“The Road Transport Board is the Authority by statute vested with the power to allocate and designate taxi routes in Lesotho. The Board had made the decision that point ‘A’ was the starting point for ‘C’ permit holders was Mafefoane T-junction and ‘B’ point was Maseru Bus Stop. It was not in dispute that for decades there have been taxis plying the route between Moitšupeli and Maseru and also between Roma and Maseru without problems. The problem arose when the appellants allocated themselves the exclusive right of loading passengers at the main gate of the National University of Lesotho (NUL) to the exclusion of other ‘C’ permit holders including Moitšupeli Taxi Association members.”

[10] The Court went on to say:

“Both the Mafefoane T-junction and the main gate of NUL have not been designated by the local council as bus stops. What is well known is that both have always been pick-up points for passengers. It was admitted by the appellants that in recent

years the NUL main gate has been the most lucrative bus stop compared to Mafefoane T-junction because of the increase in student population. However, for decades the Mafefoane T-junction remained a premier bus stop, because of its close proximity to main centre of the Roman Catholic Church in Lesotho, St. Joseph's Hospital, St. Joseph's Nursing College, St. Augustine Junior Seminary, Christ the King High School, St. Mary's High School, shops and cafes and Ha Mafefoane village (the oldest village and primary seat of the Roma valley chieftaincy)."

[11]The learned judge concluded that Regulations 20(1) and 21, which had been relied on by the applicants (appellants) did not assist them as the Regulations did not say that the applicants' (appellants' boarding platform is the NUL main gate. In his view once the Road Transport Board had clarified the definition of the starting point i.e point 'A' of the 'C' permits for taxis belonging to the applicant (appellant) and pick-up point of 'C' permit holders of 6th respondent that was the end of the matter. It was not within the power of the applicants (appellants) to determine for themselves the point 'A' of 'C' - permit holders for Roma to Maseru taxis."

[12] In this court the appellant has canvassed the following grounds:-

- (i) The Court a quo erred in law for allowing the Road Transport Board to determine the platform area of the appellant when it was the court itself that had to make such a determination.
- (ii) The Court erred in ignoring evidence that was before it that the Road Transport Board cannot in law determine a taxi platform at a place or a site which has not been allocated by the Land Allocating Authority to a taxi association.
- (iii) The dismissal of the application amounted a decision, which no reasonable court can arrive at. In particular the fact that the Court a quo failed to direct that at or near NUL campus vehicles should take passengers on the first come first served basis, notwithstanding that the area may not be a loading platform of any taxi association.
- (iv) The Court erred in delivering a judgment in an urgent application after a year.
- (v) The Court erred in dismissing the appellant's application as it found contrary to the evidence that was before it, that the appellant's platform is at a location opposite NUL gate, which is where the appellant lawfully operated from as it was clearly established by the facts.

- (vi) The Court erred in making a finding that Mafefoane T-junction is a bus stop located at the centre of the old Roma village in absence of evidence.

[13] Advocate Molati, augmented his grounds of appeal with a brief oral submission, which reiterated that the essence of the appeal is the issue of preserving harmony as decreed by Regulations 20(1) and 21 of Road Transport Regulation 2004. He argued that the right the appellant seeks to assert is supported by paragraph 5.1 of Lepota Sekola's founding affidavit on page 9 of the record, the 'C' permit on page 44 of the record reading "Maseru Bus Stop to Roma Bus Stop" and the Board Resolution of the Road Transport Board, which resolved that "the Roma Taxi Association's starting point (A-point) is Ha Mafefoane T-junction and destination (B-point) is Maseru Bus Stop."

[14] Advocate Leokaoko, who appeared for the first to fifth respondents argued that, the Board had made a resolution to clear the ambiguity on 15th October, 2013, by defining the pick-up and drop-off points for the appellants and 6th Respondent. The Board has power to alter the tenor of the permit, but will

not alter the permit mid-stream, but will wait until it expires.

[15] In support of her argument she relied on the Road Transport Act 1981, section 17(2) (a) which provides that:

“The Board may attach to permit any condition needed to ensure proper operation under the permit and in addition any of the following conditions

(e) that passengers not to be taken up or set down between specific points

[16] Advocate Leokaoke, valiantly argued that it is the Road Traffic Board, which is empowered to designate ‘A’ point and ‘B’ point and the Ministry of Public Works to identify bus stops at the road reserves and this does not require authority from the Land Allocating Authority.

[17] Advocate Molapo, appeared for the sixth respondent. He argued that the court a quo, did not have jurisdiction to entertain the appellant’s prayer, to define the pick-up and drop-off points. Those prayers fall within the administrative functions and powers of the fourth respondent.

The appellant was asking the court a quo to usurp the powers of the fourth respondent as enacted by the Road Transport Act, 1981 as read with the Road Transport Regulation of 2004, which it could not do.

[18] He submitted further that the duty to designate Taxis Associations' platforms and loading areas is within the exclusive mandate of the 4th respondent. The court has no jurisdiction to declare the parameters of the platform of the appellant. When the dispute arose, the Board intervened and resolved the matter by means of the resolution referred to in para 8.

[19] In **Maseru Region Transport Operator v Traffic Commissioner and others**,¹ Nomngcongong J in that case held:

“that in terms of Road Transport Act, No. 6 of 1981, the Road Transport Board is self-regulatory”

In conclusion the decision demonstrated that the court cannot descend into the arena of disputes involving self-regulating administrative bodies.

¹ CIV/APN/384/2011 (unreported)

Those bodies have to solve their own grievances exhausting internal local remedies. The Courts may thereafter review the administrative decisions.

[20] Advocate Molapo, contended further that, the fourth respondent grants every single Taxi Operator in Lesotho a permit, which also designates the routes and contains terms and conditions. The appellant ought to have attached the respective permits, of its members if it had authority to act on their behalf. There was no proof that the appellant had authority to act on behalf of its members on the Roma Maseru route. His further submissions are set out in paragraph [21] to [23].

[21] The appellants had failed to establish in the founding papers that they had a clear right capable of being violated.

[22] The appellants did not have *locus standi* in the court a quo, as they had not exhausted internal remedies. Internal remedies are designed to provide immediate and cost effective relief giving

the administrative body the opportunity to utilize its own mechanism to rectify irregularities before the aggrieved parties resort to litigation.

[23] The appellants ought to have approached the Minister to compel the fourth respondent to respond to their dissatisfaction at the fourth respondent's determination.

[24] The issues to be determined in this appeal are the following:-

- (a) Did the appellant have a clear right which can be asserted in court of law?
- (b) Was this a proper case for the court a quo to intervene and exercise the power and discretion of a governmental agency, reposed with statutory power as the issuer and determiner of the terms and conditions of the Road Transport permits.

[25] The appellants by approaching the Road Traffic Board to obtain a 'C' permit recognised the authority conferred on that government agency by section 17(2)(a) of the Road Transport Act, 1981. They cannot be heard to say that such authority could only be exercised, subject to the power of

the Local Authority, to allocate land for the purpose of establishing bus stops.

[26] While acknowledging the authority of the fourth respondent to issue permits and attach terms and conditions thereto, they unilaterally determined the breadth of their platform, which had the potential of creating anarchy and in fact did.

[27] They sought in their founding papers to interdict the sixth respondent from loading passengers at a platform which they self-allocated to themselves. Consequently they had no right to protection by an interdict.

[28] The Court a quo was asked to make a determination that:-

“The platform of the appellants covered an area extending from the University yard near Roma Police Station and Roma Post Office to the other end of the University yard near Scout at Roma in the district of Maseru being an area measuring plus or minus one (1) kilometre”

[29] Before a court can legitimately assume administrative decision-making functions, proper

and adequate information must be available, the court must have institutional competence and exceptional circumstances must exist. On the facts, the court a quo was not in a position to substitute its own decision for that of the decision-maker. This was held by the Ciskei High Court in the case of **Intertrade Two (Pty) Ltd v MEC for Roads and Public Works, Eastern Cape, and Another.**²

[30] This Court in **Tšèpè v Independent Electoral Commission and others**³, approved the decision of the Constitutional Court of South Africa in **Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others**⁴, that a court of law should not attribute to itself superior wisdom in relation to matters entrusted to other branches of the government. It is important to quote the relevant passage in extenso:-

“In treating the decisions of administrative agencies with the appropriate respect, a court is recognising the proper role of the Executive within the Constitution. In doing so a court should be careful not to attribute to itself superior wisdom in relation to matters entrusted to other branches of government. A

² 2007 (6) SA 442 (CK)

³ LAC (2005-2006) 169 at 186 (para [38])

⁴ 2004 (4) SA 490 (CC) at 514 F-515C [para [48]]

court should thus give due weight to findings of fact and policy decisions made by those with special expertise and experience in the field. The extent to which a court should give weight to these considerations will depend upon the character of the decision itself, as well on the identity of the decision-maker. A decision that requires an equilibrium to be struck between a range of competing interests or considerations which is to be taken by a person or institution with specific expertise in that area must be shown respect by the courts. Often a power will identify a goal to be achieved, but will not dictate which route should be followed to achieve that goal. In such circumstances a court should pay due respect to the route selected by the decision-maker. This does not mean, however, that where the decision is one which will not reasonably result in the achievement of the goal, or which is not reasonably supported on the facts or not reasonable in the light of the reasons given for it, a court may not review that decision. A court should not rubber-stamp an unreasonable decision simply because of the complexity of the decision or the identity of the decision-maker.”

[31] The decision of the Constitutional Court of South Africa is in consonance with the Zambian Supreme Court decision in **Nyampala Safaris (Z) Limited and Others v Zambia Wildlife Authority and Others.**⁵ It was held that:

“The purpose of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is not part of purpose to substitute

⁵ 2008 Zambian Law Reports 38

the opinion of the Judiciary or of the individual Judges for that of the authority constituted by law to decide the matter in question”

[32] The judiciary will intervene in the exercise of administrative power or discretion, if such exercise descends into illegality, procedural impropriety, irrationality and disproportionality, which has been fashioned as a new ground⁶. In the Zambian case of **Attorney General v Roy Clarke**,⁷ whose brief facts were that:

“A British national had resided in Zambia for forty years. Before independence he volunteered to teach English to the indigenous, married to a black woman, with children and grandchildren. He wrote a satire article characterising the president as a “foolish King” feasting in a game reserve at the expense of running national affairs. The President and Minister of Home Affairs were outraged. He was deported. The deportations was quashed by both the High Court and Supreme Court as it was disproportionate to separate him from his family for writing a silly article.”

[33] There is no untrammelled exercise of power or discretion in modern administrative law. Be it prerogative or ordinary discretion. Gordon Scott says:

⁶ See Barnett Hilaire, Constitutional and Administrative Law second edition (London: Cavendish Publishers, 1998) p101

⁷ 2008 Zambian Law Reports 148

*"In all government there is a perpetual intestine struggle open or secret, between authority and liberty, and neither of them can absolutely prevail in the contest. A great sacrifice of liberty must necessarily be made in every government, yet even authority which confines liberty can never, and perhaps ought never, in any constitution become quite entire and uncontrollableit must be owned that liberty is the perfection of civil society, but still authority must be acknowledged as essential to its very existence."*⁸

[34] Unless the four grounds exist, namely, illegality, procedural impropriety, unreasonableness and disproportionality any "Curial Intervention" will be impermissible. Constant judicial intervention may grind the wheels of government to a halt. Judges are not all-round experts, especially in matters which require specialised knowledge. In any event law is not a subject of mathematical precision. Individuals or governmental agencies having the same power and dealing with the same circumstances may not deal with the matters in exactly the same way.

[35] The question is, were there grounds before the learned judge in the court a quo for judicial intervention. I think not. The appellants had no

⁸ Gordon Scott, *Controlling, constitutionalism from Ancient Athens to today* (Boston: Harvard University Press, 1999) P.S.

legal right to protect; the fourth respondent was the issuing authority of permits, having statutory authority to prescribe terms and conditions to be attached thereto.

[36] There was no illegality, procedural impropriety, irrationality or disproportionality in the way the power and discretion were exercised.

[37] I note that the delay of almost a year in the delivery of judgment has been advanced as a ground of appeal. The applicant approached the court on an urgent basis and the delivery of judgment ought to have been handled on that basis. Rivalry between taxi operators has the potential of degenerating into violence which may result in the loss of life. A delay in handing down a judgment by the High Court or indeed any court, is a matter for “Judicial Administration” and not “Judicial Adjudication.” It is a matter to be handled by the Chief Justice. This Court can only express its displeasure.

[39] **Order:-**

(i) The appeal is dismissed with costs

APPEAL

**P. MUSONDA
ACTING JUSTICE OF**

I agree

**I. G. FARLAM
ACTING PRESIDENT**

I agree

**R. B. CLEAVER
ACTING JUSTICE OF**

APPEAL

For The Appellant: Advocate L.
Molati

For the 1st to 5th Respondents: Advocate M. Leokaoke

For the 6th Respondent: Advocate L. E.
Molapo